



THE CALIFORNIA SUPREME COURT

# Historical Society

NEWSLETTER • FALL/WINTER 2011



Panelists at the October 5, 2011 symposium, “Can Direct Democracy Be Saved?”  
 LEFT TO RIGHT: Robert Stern; Peter Schrag; Justice Carlos Moreno (Ret.); Joel Fox;  
 Moderator Trudy Schaefer. (FULL STORY ON PAGES 3 TO 7.)

PHOTO BY GREG VERVILLE

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Dear members and friends of the Society,



We live in challenging times.

Regardless of political view or judicial philosophy, most of us share the sense that both our country and our state are navigating profoundly troubled times. We are witness to economic distress, political gridlock, a widening gap between the rich and poor, and systemic attacks on an independent judiciary. Which is why the mission and work of the California Supreme Court Historical Society have never been more important or relevant.

The Society, founded in 1989, is dedicated to recovering, preserving, and promoting California’s legal and judicial history, with a particular emphasis on the state’s highest court. The Society examines our collective judicial legacy, good and bad, popular and unpopular, decided by legal giants and mere mortals alike.

The national historical significance of the California Supreme Court is beyond serious debate. In 1972, the Wall Street Journal opined: “The [California] high court over the past 20 years has won a reputation as perhaps the most innovative of the state judiciaries, setting precedents in areas of criminal justice, civil liberties, racial integration, and consumer protection that heavily influence other states and the federal bench.” The trend continues. Jake Dear (a member of the Society’s board) and Edward Jessen, in their 2007 study “‘Followed Rates’ and Leading State Cases 1940–2005,” 41 *U.C. Davis L. Rev.* 683, concluded that the decisions of the California Supreme Court have been, and continue to be, the most followed of any state supreme court in the nation.

**HISTORIC, FAR-SEEING DECISIONS**

For over 150 years, decisions of the Court have fundamentally shaped our lives as Americans and Californians. The examples are as numerous as they are profound:

**POWER OF THE PEOPLE:** In its 1894 decision in *Livermore v. Waite* (1894) 102 Cal. 113, the Supreme Court limited the power of the legislature to alter the California Constitution by ruling that the power to change the Constitution rests exclusively with the people.

**RACIAL EQUALITY:** In *Perez v. Sharp* (1948) 32 Cal.2d 711, the Court overturned the statutory ban on interracial marriage as unconstitutional. *Perez* directly influenced

the landmark 1967 U.S. Supreme Court decision on this issue, *Loving v. Virginia*.

**STRICT LIABILITY FOR PRODUCT DEFECTS:** In *Greenman v. Yuba Power Products, Inc.* (1963) 59 Cal.2d 57, Justice Traynor wrote a majority opinion adopting the rule of strict liability for defective products. This rule has since been adopted throughout most of the United States.

**EDUCATIONAL OPPORTUNITY:** *Serrano v. Priest* (1971) 5 Cal.3d 584, invalidated California’s unequal system of public school funding as violating the Equal Protection Clause.

**FAIR JURIES:** In *People v. Wheeler* (1978) 22 Cal.3d 258, the Court, speaking through Justice Mosk, held that it was a violation of the federal and state constitutional right to a fair and impartial jury for a prosecutor to select a jury in a racially biased manner. The holding of *Wheeler* was adopted in the landmark U.S. Supreme Court decision of *Batson v. Kentucky* (1986).

**WHAT JUDICIAL HISTORY CAN DO FOR US TODAY**

The California Supreme Court is a true national leader. But to many of us, the importance of the Society’s work goes beyond its promotion and assessment of one of the most important judicial bodies in the country. The Society’s work provides all of us critical historical context to understand the difficult issues of our own times and the role that great jurists can play in resolving seemingly intractable disputes.

The legacy of the work of past giants of the Court, including Justices Traynor and Mosk, is not simply the brilliance and impact of their opinions. Rather, their work is a powerful reminder that, as difficult as these times may be, we have faced and overcome worse. By engaging with our judicial history, we affirm that the study of California’s long history of wisdom, courage and an abiding commitment to justice can help us chart a course past our current troubles.

On behalf of the Society, I invite you to attend our public programs, review our outstanding journal, *California Legal History*, and support our efforts in the upcoming year. You may discover, as you study the Court’s legacy, that its innovative and thoughtful approaches to resolution of critical disputes in times past have important lessons to teach us about our own challenging times.

With warm wishes for a Happy New Year,

DAN GRUNFELD



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## “Can Direct Democracy Be Saved?”

A SYMPOSIUM HELD IN LOS ANGELES, OCTOBER 5, 2011

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*Joel Fox, former President of the Howard Jarvis Taxpayers Association, vigorously defended California's system of direct democracy, pointing out that 75 percent of Californians polled favor it, while only 20 percent approve of the Legislature's performance.*



*Retired California Supreme Court Associate Justice Carlos Moreno offered a straightforward recommendation when asked for one reform to improve the initiative process in California: impose a word limit on ballot measures and require that they be written in “simple, plain English.”*

PHOTOS BY GREG VERVILLE

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The California Supreme Court Historical Society marked the centennial of the initiative process in California by co-sponsoring a symposium on its historical, legal, and political legacy over the past 100 years. The Society partnered with the League of Women Voters of California and Zócalo Public Square in presenting a panel discussion in downtown Los Angeles on October 5, 2011. That date is almost exactly a century after California voters enacted the modern system of direct democracy by approving Proposition 7, which established the initiative and referendum, in October 1911.

The symposium was titled “Can Direct Democracy Be Saved?” and the issue for discussion was framed in the following terms:

“The promises of direct democracy are to promote citizen involvement and level the playing field of politics. But after a century of initiative and referendum in California, many wonder how level the playing field is, and whether ballot box legislation has advanced the

cause of good governance, or only contributed to governmental dysfunction. In recent decades, dozens of initiatives have profoundly changed the state's budgeting process, its criminal justice system, its educational system, and the autonomy of local governments. What are the practical and legal limits of governing by initiative, and is California better or worse for it? When it comes to direct democracy, whose voice is being heard?”

Those questions, and others, provoked a lively exchange of views among the distinguished panelists:

**JOEL FOX**, a political consultant, author, and former president of the Howard Jarvis Taxpayers Association;

**HON. CARLOS MORENO**, a former federal district court judge and recently retired Associate Justice of the California Supreme Court;

**PETER SCHRAG**, author and columnist, as well as former editorial page editor of the *Sacramento Bee*; and



*Peter Schrag, former editorial page editor of the Sacramento Bee, was blunt when asked what he would do to improve the initiative system: "I'd like to eliminate it, period."*



*Robert Stern, President of the Center for Governmental Studies and the first General Counsel of California's Fair Political Practices Commission, challenged the audience to "Name one initiative that the voters later regretted passing."*



*Zócalo Public Square Managing Director Dulce Vasquez welcomes audience, thanks CSCHS and League of Women Voters for co-sponsorship.*

**ROBERT STERN**, President of the Center for Governmental Studies and former general counsel for the California Fair Political Practices Commission

The evening's discussion was expertly facilitated by the knowledgeable moderator, Trudy Schaefer, the League of Women Voters Senior Director for Programs and, like Joel Fox, a member of the 2000–2001 commission on the initiative appointed by then-Assembly Speaker Robert Hertzberg.

Opinions about the desirability of California's brand of direct democracy ranged across the spectrum.

Peter Schrag was the system's most severe critic, declaring unequivocally "I'd like to eliminate it, period." He observed that half of the states do not have anything resembling California's system and doubted that anyone could successfully argue that California was better governed than they are. He also pointed out that initiatives, whose express purpose is to restrict the power of the legislature, often provoke legislative responses which in turn lead to additional initiatives in a self-perpetuating and harmful cycle, further reducing the legislature's effectiveness. For example, Proposition 13 was followed in 1979 by the "Gann initiative," which imposed a limit on both the State's receipt and expenditure of taxes. In 1987, when Governor Deukmejian decided that the State had exceeded its "Gann limit" he refunded hundreds of millions of dollars to taxpayers, thereby reducing

funding for schools. This led school interests to support Proposition 98 the following year, guaranteeing a floor for K-12 educational spending. Although protecting schools, this led the legislature to take revenues from local governments, giving rise in turn to initiative measures that insulated local governments from state “raids” on their revenues but only by further limiting State legislative control over public finance.

Joel Fox took the opposite view: “When you look at the polling, 75 percent of the people like direct democracy and only 20 percent like the legislature. So maybe we should be talking about how do we save the legislature.” In response to suggestions that there are too many initiatives, he noted that in 100 years only 116 laws have been enacted by initiative, while in the last seven months alone the legislature passed over 600 bills, many of which emerged only at the last minute and were never the subject of committee hearings. Finally, he emphasized that initiatives arise only when the legislature fails to act on perceived problems.

Bob Stern, a principal co-author of the 1974 California Political Reform Act (an initiative measure passed by 70 percent of the voters) recognized problems with the initiative process but championed reforming the current system rather than eliminating it. He challenged the audience to “Name me an initiative that’s passed, since the beginning, where the voters regretted passing it.” He also argued that there are some subjects that the legislature will never act on, such as term limits, redistricting reform, and political/campaign ethics.

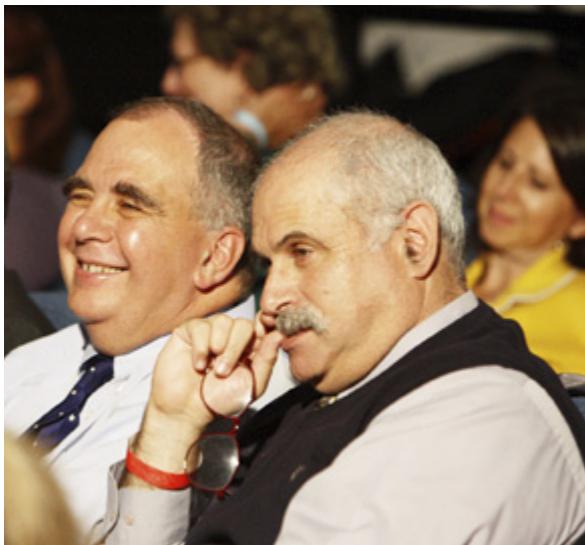
Justice Moreno offered a measured assessment, based on the several occasions he had to consider the legal validity of initiatives during his 10 years on the California Supreme Court. He observed that initiatives tend to be overly-long and poorly drafted, in part because their proponents do not necessarily have the benefit of professional staff, which the Legislative Counsel’s office provides for bills. In addition, he observed, they don’t have the “record” that the legislative process typically develops through committee hearings, staff reports and findings of fact. This makes it more difficult for the courts to determine the intent of the drafters and voters.

Turning to possible reforms, the panelists found more areas of agreement.

Without abandoning his preference for complete abolition of the initiative, Peter Schrag recommended that California incorporate provisions (in effect in several other states) that place an automatic “sunset date” on initiative measures or that allow the legislature to amend or repeal an initiative measure after a specified number of years.

Joel Fox thought that the power to write the ballot summary and assign the ballot title to initiatives should be removed from the Attorney General because it is a partisan office.

Bob Stern felt that the time limit within which signatures must be gathered on initiative petitions (150 days) is far too short. It effectively requires the use of paid signature gatherers, giving an advantage to those interests with plenty of money. His assertion that “If you have \$2 million you are guaranteed to get on the ballot” was not challenged by Joel Fox. However, Mr. Fox insisted that



*CSCHS board members John Caragozian and Bob Wolfe react differently to a point made by a panelist.*



*Peter Israel, judicial staff attorney at the California Court of Appeal, Second District, and CSCHS board member Ray McDevitt.*



*CSCHS President Dan Grunfeld, former California Supreme Court Associate Justice Carlos Moreno, CSCHS board members John Caragozian and Bob Wolfe.*



*Pepperdine School of Law Professor and CSCHS board member Kristine Knaplund.*

money would not similarly guarantee *passage*, pointing to the failure of two recent measures, one sponsored by Mercury Insurance the other by Pacific Gas and Electric Co., despite those companies having vastly outspent their opponents. Stern recommended the time limit to circulate petitions be extended to one year, enabling “grass roots” groups to more easily qualify measures. He also encouraged the audience to look at the range of other reforms recommended by the Center for Governmental Studies in its report on the initiative, “Democ-

racy by Initiative: Shaping California’s Fourth Branch of Government,” which can be found at [www.cgs.org](http://www.cgs.org).

Justice Moreno’s plea was straightforward: a word limit on initiatives and a requirement that drafters use “simple, plain English.”

All agreed that greater disclosure of the identity of the principal supporters and opponents of initiative measures would be useful to voters, as would clear information on those measures’ likely governmental costs and other financial effects. None of the panelists thought that on-line voting for initiatives was ready to be implemented, given the concerns for both accuracy in tabulating results and preserving individual voters’ privacy. And most of the panelists, regardless of their views about the initiative process generally, thought that proponents of a measure should have “standing” to defend it in court if neither the Governor nor the Attorney General are willing to do so.

Justice Moreno provided the evening’s most fascinating personal observation. He remarked that this was the first time he had been in the theater in which the panel discussion was being held, recalling that when he was a child growing up in Los Angeles the theater showed Japanese language films. He also remembered getting his hair cut at the “Barbers College,” right next door to the theatre, where haircuts cost only 25 cents — and were free if you went to the chairs in the back.

Society board members Bob Wolfe and John Caragozian worked diligently to coordinate the Society’s

*CSCHS Administrative Director Chris Stockton welcomed audience members, managed the MCLE sign-up process, and distributed information about the Society.*



involvement with its two co-sponsors in this program and deserve much credit for its success. The Society’s administrative officer Chris Stockton capably handled logistical details before, during and after the event. Vice President Eric Joss and Paul Hastings, LLP, arranged for attorneys attending the symposium to receive State Bar CLE credit, distributing a comprehensive compilation of court opinions and scholarly analysis of the law in California on the initiative and referendum.

The complete audio/video recording of the panel presentation can be viewed online at the Zócalo website, <http://zocalopublicsquare.org>. The Zócalo website also contains a series of brief, briskly-written essays on the topic “This Doggone Democracy — Would California be Better Off Without Ballot Initiatives?” under the heading “Up for Discussion.” Contributors include Tracy Gordon, a Brookings Institution Fellow; Roger Noll, emeritus professor of economics at Stanford University and senior fellow at Stanford’s Institute for Economic Policy Research; Jessica Levinson, visiting associate professor at Loyola Law School, Los Angeles; David McCann, associate professor of economics at Sonoma State University; and Robert Stern, President of the Center for Governmental Studies and one of the participants in the Symposium. ★

## *100 Years of Direct Democracy in California, 1911–2011*



*California Governor Hiram Johnson successfully campaigned for several Progressive causes including popular election of United States senators, women’s right to vote, and direct democracy. The latter two were approved by California voters in 1911.*



*In October 1911, California voters enacted the modern system of direct democracy by approving Proposition 7, which established the initiative and referendum. In the same election, voters approved a constitutional amendment giving women the right to vote.*



*At the ceremony held on July 7, 2011 in the Great Hall of the Hiram Johnson State Building in San Francisco to present a framed resolution of the Judicial Council are: (LEFT TO RIGHT) William Vickrey, Administrative Director of the Courts, since retired; Frances M. Jones, Director of the California Judicial Center Library; Mrs. Eleanor Manuel, wife of the first African-American to serve on the California Supreme Court, the late Justice Wiley Manuel; Ronald Overholt, Interim Director of the Administrative Office of the Courts; Associate Justice Timothy Reardon of the First District Court of Appeal; Judge Winifred Younge Smith of the Superior Court of Alameda County; and Mr. Michael Thompson, son of the late Court of Appeal Associate Justice Leon Thompson.*

PHOTO: RITA MAH, ADMINISTRATIVE OFFICE OF THE COURTS

## “ . . . And Justice For All”

CELEBRATING 50 YEARS OF SERVICE BY  
CALIFORNIA AFRICAN-AMERICAN JUSTICES, 1961-2011

FRANCES M. JONES\*

*Our children must never lose their zeal for building a better world. They must not be discouraged from aspiring toward greatness, for they are to be the leaders of tomorrow.*

FROM “MY LAST WILL AND TESTAMENT”  
BY MARY MCLEOD BETHUNE.

The exhibit, “. . . And Justice for All” was inspired by the ideal of encouraging leadership potential in young people, an ideal powerfully articulated by distinguished African-American educator, Mary McLeod Bethune.<sup>1</sup> Volunteers in Sacramento’s Black Youth Leadership Project, who introduce young students to California’s legislative process, observed many school

visits to the State Capitol’s Rotunda each year. Project volunteer Dia Poole’s<sup>2</sup> work with the Administrative Office of the Courts’ Black History Month Committee led to collaboration with the California Legislative Black Caucus, and to the development of an exhibit in the Rotunda honoring the service of seventeen outstanding African-American jurists on the California Supreme Court and Courts of Appeal.

When planners also observed that the year 2011 marked the seventieth anniversary of the appointment of the first African-American trial court judge as well as the fiftieth anniversary of the appointment of the first African American to the Court of Appeal, the exhibit began to focus on these milestones. The two anniversaries in 2011 — the 70th and the 50th — celebrate one man, the Hon. Edwin L. Jefferson, who served on the

\*Frances M. Jones, M.A., J.D., Member, Academy of Certified Archivists. Director, California Judicial Center Library. The author acknowledges and thanks the Hon. Henry E. Needham, Jr.; Hon. Patricia J. Titus; and Mr. Michael L. Thompson for their guidance and participation in the preparation of this article. And for research support and for kind and constructive criticism, thanks to library colleagues Jessica A. Brasch, Judith S. Mitchell and Martha R. Noble.

Los Angeles Municipal Court from 1941 until 1949, on the Los Angeles Superior Court from 1949 until 1961, and in Division Four of the Second Appellate District, from October 1961 until his retirement in May 1975.

In celebration of the judicial appointments made fifty and seventy years earlier, Senator Curren D. Price, Jr. (D-Los Angeles), introduced Senate Concurrent Resolution 38 and Assemblymember Mike Davis (D-Los Angeles) introduced Assembly Concurrent Resolution 47 to mark the anniversaries. Senator Price and Assemblymember Davis are Chair and Vice-Chair, respectively, of the California Legislative Black Caucus, which provided essential leadership and support for the exhibit and celebration.

Los Angeles Superior Court Judge Patricia J. Titus's important role on the Judiciary Committee of the California Association of Black Lawyers prompted planners to request her guidance and direction. Commenting on the significance of the developing exhibit, Judge Titus remarked that "for a century African Americans have looked to the courts for resolution of injustices. Acknowledging the role of the courts is essential and, without question, confidence in the courts increases with the participation of African Americans in judicial decision making."<sup>3</sup> At Judge Titus's suggestion, the exhibit was entitled "... And Justice for All."

The seventeen Justices have been honored in formal resolutions by the California Senate, the Assembly and the Judicial Council, and in dedication ceremonies in Sacramento, San Francisco and Los Angeles. The Assembly and Senate Concurrent Resolutions were signed on April 25, 2011 and an opening ceremony for the exhibit was held in the State Capitol on that day. The Judicial Council's Resolution, presented by Justice Martin Jenkins of the First District Court of Appeal and William Vickrey, Administrative Director of the Courts, was unanimously approved on June 24, 2011. A dedication program followed on July 7, 2011. The California Supreme Court Historical Society's support for the Los Angeles program, held at USC Gould School of Law on October 26, 2011, acknowledged the historical significance of celebrat-

ing the contributions of African-American jurists to the development of California law. The exhibit, originally developed for the Capitol Rotunda, is currently scheduled to appear in six cities throughout the state.

The celebration of African-American justices marks important anniversaries but, as Judge Titus has observed, the dedication and serious purpose of the current justices — Presiding Justice Raye and Justices Needham, Jenkins, Johnson, Murray and Codrington — also are to be honored and celebrated. They are a continuing source of encouragement and inspiration to young people and to all who respect and honor the law. At the San Francisco ceremony honoring the Judicial Council's resolution Mr. Michael Thompson, Justice Leon Thompson's son, remarked:

"So as we honor these African-American women and men, let their service be a reminder of the work still to be done: to encourage more African-

**"...And Justice For All"**  
 Celebrating **50** Years of Service by  
 California African-American Justices, 1961–2011

**Former California Supreme Court Justices**

 <b>Hon. Wiley W. Manuel*</b> Associate Justice California Supreme Court, 1977–1981 University of California, Hastings College of the Law First African-American Justice of the California Supreme Court	 <b>Hon. Allen E. Broussard*</b> Associate Justice California Supreme Court, 1981–1991 University of California, Berkeley, School of Law (Boalt Hall) First African-American President of the California Judges Association	 <b>Hon. Janice Rogers Brown</b> Associate Justice California Supreme Court, 1996–2005 California Court of Appeal, Third Appellate District, 1994–1996 University of California, Los Angeles, School of Law First African-American Female Justice of the California Supreme Court
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**Justices of the California Supreme Court  
and California Courts of Appeal**

Established by constitutional provision in 1849, the Supreme Court of California is the state's highest court. To be eligible for appointment, a person must have been a member of the State Bar of California or a judge of a court in this state for at least 10 years. One Chief Justice and six associate justices are:

- appointed by the Governor;
- confirmed by the Commission on Judicial Appointments; and
- confirmed by the public at the next general election and at the end of his or her 12-year term.

Established by a constitutional amendment in 1904, the Courts of Appeal are California's intermediate courts of review. The state is divided into six appellate districts, with three of the districts subdivided into divisions. Each district or division has a presiding justice and two or more associate justices. The same rules that govern the selection of Supreme Court justices apply to those serving on the Courts of Appeal.

\* Deceased

*One of several display panels prepared for the exhibit by the Administrative Office of the Courts, highlighting the three African-American justices who have served on the California Supreme Court: Wiley Manuel; Allen Broussard; and Janice Rogers Brown.*



Standing with framed Concurrent Resolution of the California State Senate and Assembly displayed at exhibit's presentation at the University of Southern California Gould School of Law are: David McFadden, Immediate Past President of CSCHS; Selma Moidel Smith, CSCHS board member; and Dan Grunfeld, current CSCHS President.

PHOTO: MARTHA NOBLE, CALIFORNIA JUDICIAL CENTER LIBRARY

American students to pursue careers in the legal profession.”<sup>4</sup>

“... And Justice for All” commemorates and reflects the Judicial Branch’s continuing commitment to embracing judicial diversity. Because it honors the dedicated service of seventeen outstanding California appellate jurists and their past and present achievements, it offers encouragement to California’s young people and the gift of inspiration to all.

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## *African-American Justices Who Have Served on California Appellate Courts*

### CALIFORNIA SUPREME COURT JUSTICES

The first appointment of an African American to the California Supreme Court occurred two years after Justice Jefferson’s retirement from the Second Appellate District. In 1977 the Hon. Wiley W. Manuel was appointed to the Court, where he served until 1981. He was followed in office by the Hon. Allen E. Broussard, who served from 1981 until 1991. Five years later, in May 1996, the Hon. Janice Rogers Brown was elevated to

the Court from the Third Appellate District, where her service had begun in November 1994. Justice Brown’s nomination to the U.S. Court of Appeals for the District of Columbia Circuit was confirmed in June 2005, and she continues her service there today.

### FIRST APPELLATE DISTRICT JUSTICES

Four African-American justices have served in the First Appellate District. The Hon. Clinton W. White, Presiding Justice, joined Division Three in June 1978 and continued there until his retirement in 1994. In December 1978, the Hon. John J. Miller began his term in Division Two, where he served until his death in 1985. Justice Miller was also a member of the California State Assembly, where he served from 1967 until 1978. He was Assembly Minority Leader, 1970–1971, and a member of the Judicial Council from 1974 until 1978.

Current members of the First Appellate District are the Hon. Henry E. Needham, Jr. and the Hon. Martin J. Jenkins, serving in the Divisions Five and Three, respectively. Justice Needham’s appointment was confirmed in January 2007 and Justice Jenkins’s appointment was confirmed in April 2008.

### SECOND APPELLATE DISTRICT JUSTICES

As noted above, the Hon. Edwin Jefferson was the first African-American to serve on the Court of Appeal. His brother, the Hon. Bernard S. Jefferson, distinguished

author of a leading legal treatise,<sup>5</sup> began his service in Division One of the Second Appellate District in 1975, shortly after his brother's retirement. He became Presiding Justice of the division and served until his own retirement in 1980.

The Hon. Arleigh Maddox Woods was the first African-American woman appointed to the Court of Appeal. Joining Division Four in March 1980, she was appointed Presiding Justice in May 1982, and served in that capacity until her retirement in December 1995. The Hon. Vaino Spencer was appointed Presiding Justice, Division One, in August 1980 and served until her retirement in August 2007.

The Hon. Leon Thompson was appointed in December 1982 and served in Division Seven until his death in May 1988.

The Hon. Candace D. Cooper, appointed Presiding Justice of Division Eight in November 2001, served until December 2008. The Hon. Jeffrey W. Johnson assumed office as an Associate Justice in Division One in August 2009 and continues in office.

#### THIRD APPELLATE DISTRICT JUSTICES

As noted above, the Hon. Janice Rogers Brown served on the Third Appellate District from November 1994 until May 1996 before elevation to the State Supreme Court and subsequent appointment to the U.S. Court of Appeals for the District of Columbia Circuit.

The Hon. Vance W. Raye took his oath of office as Associate Justice in January 1991, and was confirmed as Presiding Justice of the Third Appellate District on December 10, 2010. The appointment of the Hon. William J. Murray, Jr. also was confirmed on December 10, 2010.

#### FOURTH APPELLATE DISTRICT JUSTICE

The Hon. Carol D. Codrington currently serves in Division Two. Her appointment was confirmed in January 2011. ★

#### ENDNOTES

1. Mary McLeod Bethune, *Mary McLeod Bethune: Building a Better World: Essays and Selected Documents*, eds. Audrey Thomas McCluskey and Elaine M. Smith (Bloomington: Indiana University Press, 1999), 61.
2. Senior Governmental Affairs Analyst, Office of Governmental Affairs, Administrative Office of the Courts.
3. Hon. Patricia J. Titus, in communication with the author, October 25, 2011.
4. Michael L. Thompson, remarks at the opening ceremony honoring "... And Justice for All," Ronald M. George State Office Complex, Hiram Johnson State Building, San Francisco, California (July 7, 2011).
5. Bernard S. Jefferson, *California Evidence Benchbook* (Berkeley, California: Continuing Education of the Bar, 4th ed., 2009).



*Susan Jefferson, daughter of the late Associate Justice Edwin L. Jefferson, standing next to exhibit panel honoring her father, the first African-American to serve as a trial court judge and as an appellate court justice in California.*



*Dan Grunfeld, CSCHS President, speaks at the exhibit presentation at University of Southern California Gould School of Law in October 2011. Justice Jefferson was a graduate of USC's Law School.*



*CSCHS President Dan Grunfeld and Susan Jefferson at USC Gould School of Law.*

PHOTOS ABOVE & PG 2: MIKEL HEALEY PHOTOGRAPHY

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## Chief Justice Ronald M. George Records Comprehensive Oral History

LAURA McCREERY\*

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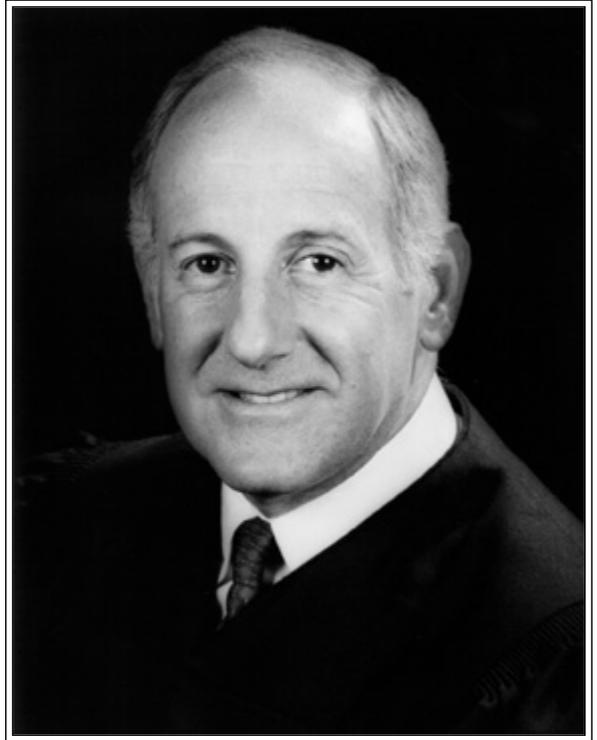
Embracing retirement with the same vigor he brought to nearly four decades on the bench, Chief Justice Ronald M. George devoted substantial time in 2011 to documenting his career in an extensive series of oral history interviews. Recorded over six months by the Institute of Governmental Studies, UC Berkeley's premier research center on politics and government, the project is part of the ongoing *California Supreme Court Oral History Project* (see Fall/Winter 2008 issue).

In eighteen collaborative interview sessions recorded over dozens of hours, Chief Justice George looked back on his family origins, education, early appellate advocacy, and service at every level of the California judiciary. The conversations explored personal views, philosophies, and methods, delving also into his liaison with courts throughout the state and with all branches of California government. The following biographical summary, which will appear in expanded form as part of the forthcoming oral history in late 2012, conveys the project's broad scope and valuable contributions to the historical record.

★ ★ ★

CHIEF JUSTICE RONALD M. GEORGE was born in Los Angeles in 1940. Although he and his younger sister were educated in the Beverly Hills public schools, in the 1950s they twice spent a full school year abroad at the International School in Geneva, Switzerland, receiving all instruction in French. After graduating from Beverly Hills High School, Ronald M. George took a bachelor's degree at Princeton's Woodrow Wilson School of Public and International Affairs and — disillusioned with his intended career of State Department diplomat — returned to California to pursue a law degree at Stanford.

Hired out of law school by Attorney General Stanley Mosk in 1964, he became a deputy attorney general in Los Angeles, specializing in representing the State of California in criminal matters on appeal. He appeared before the U.S. Supreme Court in six oral arguments, including the initial lead case on the constitutionality of the death penalty (*Aikens v. California*, 1972, mooted by *People v. Anderson* and replaced by *Furman v. Georgia* as lead case). He argued before the Califor-



RONALD M. GEORGE,  
CHIEF JUSTICE OF CALIFORNIA, 1996–2011

nia Supreme Court in eleven cases, including *People v. Anderson* and *People v. Sirhan Sirhan*, both in 1972. He also handled more than 100 appeals and writs before the U. S. Court of Appeals for the Ninth Circuit.

In 1972 Governor Ronald Reagan appointed him to the Los Angeles Municipal Court, where he later served as supervising judge of the West Los Angeles branch and of the criminal courts division, an assignment interrupted in 1977 when Governor Jerry Brown elevated him to the Los Angeles Superior Court. There Judge George presided over the notorious Hillside Strangler case, rejecting District Attorney John Van de Kamp's motion to drop charges against the defendant, Angelo Buono. After a trial lasting a record-breaking two years and two days, Buono was convicted of nine murders.

In 1983, while serving as president of the California Judges Association concurrent with the Hillside Strangler trial, Judge George was named supervising judge of the superior court's criminal division, serving also as

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\*Project Director, Institute of Governmental Studies at UC Berkeley.

ex officio on the court's executive committee. In 1985 he requested and was granted reassignment to the civil division, where he tried cases and served on the mandatory settlement panel.

In 1987, Governor George Deukmejian nominated Judge George to succeed Associate Justice John Arguelles on the California Court of Appeal for the Second Appellate District, and in 1991 Governor Pete Wilson elevated him to associate justice of the California Supreme Court. Upon the retirement of Chief Justice Malcolm M. Lucas in 1996, Governor Wilson again turned to Justice George, nominating him as the twenty-seventh Chief Justice of California.

Just two weeks after taking the oath of his new office, Chief Justice George announced in his first State of the Judiciary address to the legislature that he would visit court facilities in each of California's fifty-eight counties, which he did in a single year. Those visits, completed in August 1997, had both immediate and lasting effects on Chief Justice George's views of, and advocacy for, a fully independent co-equal judicial branch of California government. Within the California Supreme Court, throughout the state judiciary, and in the executive and legislative branches in Sacramento, he expounded on the principle that full access to justice must, under the state Constitution, extend to all Californians, not only in name but in practice.

Walking the halls of the Capitol so often that Senate President Pro tem John Burton quipped that he should register as a lobbyist, Chief Justice George worked with all branches of government and with a wide array of "justice system partners" — the State Bar, counties, judicial organizations, civil plaintiffs' and defense groups, as well as prosecution and defense counsel groups — to pursue major reforms: the Trial Court Funding Act of 1997; voluntary unification of municipal and superior courts in each county (effectuated by constitutional amendment in 1998); and the Trial Court Facilities Act of 2002, which transferred more than 500 county court facilities to state ownership and management, an undertaking eventually supplemented by a separately won \$5 billion revenue bond to enable the construction and renovation of court facilities.

Coordinating all efforts with the Judicial Council and its Administrative Office of the Courts, Chief Justice George also pressed for jury reforms, obtained funding to increase judicial salaries, and worked to establish new judgeships and uniform filing fees. Through it all, he carried his one-seventh load of cases on the California Supreme Court itself, steadfastly insisting that his judicial duties, including the writing of opinions, were his favorite part of the job. Indeed, his judicial robe — a gift from his colleagues in the attorney general's office when he first took the bench

in 1972 — always hung in full view in his chambers unless he was wearing it.

Although the decisions of the George Court did not consistently attract ideological labels or yield predictable voting patterns, Chief Justice George himself often held the center of the seven-member panel, authoring and casting deciding votes in such key cases as the 1997 rehearing of *American Academy of Pediatrics v. Lungren*, which reversed, on the basis of privacy provisions of the state Constitution, the California Supreme Court's own prior ruling requiring parental consent for minors seeking abortions.

In the most closely watched decision of his tenure, Chief Justice George in 2008 authored and carried the 4-3 vote on *In re Marriage Cases*, which reversed a court of appeal decision to hold that Family Code provisions defining marriage as "between a man and a woman" violated the constitutional right of all Californians to marry. Known as a conservative jurist on criminal matters and a moderate on civil issues, he assigned the *Marriage Cases* and certain others to himself on the grounds that, as Chief Justice, he should have the "broad shoulders" to withstand criticism of the court for rulings on controversial issues.

Ever mindful of judicial ethics and discretion, Chief Justice George nonetheless spoke publicly about matters that in his view stymied the California Supreme Court's ability to uphold its constitutional responsibilities. Citing the backlog, inefficiencies, delays, and spiraling costs of administering capital punishment, he famously told the *New York Times* in 2004 that a death row inmate in California was more likely to die of old age than by execution. He came to favor amending the state Constitution to modify the automatic appeal of death cases to the California Supreme Court by sending a limited number of those cases instead to the courts of appeal. This proposal and others championed by the Commission on the Fair Administration of Justice (2005–2008) have not thus far swayed the legislative and executive branches to enact significant reforms.

Concerned by a sharp decline in civics education, Chief Justice George initiated annual special sessions of California Supreme Court proceedings in varying locations around the state, often arranging for high school, college, and law students to observe oral argument and ask questions of the justices. He spoke publicly about the importance of civics knowledge for all Californians, who are called upon to decide statewide ballot initiatives. He served on the steering committee of the "Sandra Day O'Connor Project on State of the Judiciary" at Georgetown University, a three-year public education effort addressing civics and judicial independence.

Chief Justice George announced in July 2010 that he would step down six months hence rather than seek retention for another twelve-year term. After tending to myriad administrative and judicial matters in his final months, he was succeeded in the first days of 2011 by Chief Justice Tani Cantil-Sakauye, who was nominated by Governor Arnold Schwarzenegger for elevation from the California Court of Appeal for the Third Appellate District and approved by voters in the November 2010 general election.

Although Chief Justice George won dozens of awards and honors throughout his career, including induction into the American Academy of Arts and Sciences, he was traveling in Antarctica in December 2010 and did not immediately learn of one of the finest tributes of all: Governor Arnold Schwarzenegger's executive order that San Francisco's Civic Center State Building Complex would henceforth be known as the Ronald M. George State Office Complex in honor of "a superbly effective leader." The complex (the Hiram M. Johnson State Office Building and the Earl Warren Building, both of which retain their individual names) houses the California Supreme Court, the Court of Appeal for the First Appellate District, the state Judicial Council, and the Administrative Office of the Courts, as well as various executive and legislative branch offices.

Although Chief Justice George spent the early months of his retirement traveling, reading, attending cultural events, and visiting with friends, often in the company of his wife Barbara George — former chair of the California Arts Council — and their sons and granddaughters, he also has retained ties with former colleagues from all branches of California government and the U.S. Supreme Court. He continues to promote

civics education and government reforms, both independently and as a member of the Think Long Committee for California. ★

*(Excerpted from the forthcoming oral history of Chief Justice Ronald M. George, © 2012 by The Regents of the University of California.)*

#### ACKNOWLEDGMENTS

The oral history of Chief Justice Ronald M. George was made possible by generous institutional support from the California Supreme Court Historical Society and the "Administration of Justice Fund" of the Administrative Office of the Courts.

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All project supporters will be acknowledged in the forthcoming oral history. Firms and individuals wishing to join this roster may send tax-deductible gifts payable to "UC Regents" to Marc Levin, Associate Director, Institute of Governmental Studies, 109 Moses Hall #2370, University of California, Berkeley; Berkeley, CA 94720-2370, specifying "an unrestricted research gift in support of the oral history of Chief Justice Ronald M. George for the *California Supreme Court Oral History Project* at UC Berkeley's Institute of Governmental Studies."

The project gratefully acknowledges immeasurable assistance at the California Supreme Court from Jake Dear, Chief Supervising Attorney; Beth J. Jay, Principal Attorney to the Chief Justice; and Harold Cohen, judicial staff attorney; and at UC Berkeley from Jack Citrin, director, and the administrative and library staffs of the Institute of Governmental Studies.

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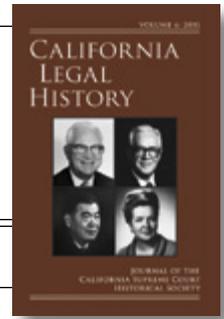
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## 2011 STUDENT WRITING COMPETITION WINNERS ANNOUNCED

*First-place winner Mikelis Beitiks (CENTER) is congratulated by Chief Justice Tani Cantil-Sakauye (SECOND FROM RIGHT), Associate Justice Kathryn Mickle Werdegar (RIGHT), Society President Dan Grunfeld (LEFT), and Society board member Selma Moidel Smith, who initiated and conducted the competition — at the California Supreme Court, San Francisco, October 24, 2011.*

PHOTO BY WILLIAM A. PORTER

(PUBLISHED IN THE SAN FRANCISCO AND LOS ANGELES EDITIONS OF THE DAILY JOURNAL ON DECEMBER 2, 2011)

The California Supreme Court Historical Society is pleased to announce the winners of its 2011 Student Writing Competition.

First place was won by Mike Beitiks of UC Hastings College of the Law, for “‘Devilishly Uncomfortable’: *In the Matter of Sic* — The California Supreme Court Strikes a Balance Between Race, Drugs and Government in 1880s California.” He receives a prize of \$2,500 and publication of his paper in the 2011 volume of the Society’s annual journal, *California Legal History*. His paper traces the origins and fate of an ordinance adopted in 1885 by the city of Stockton, the underlying purpose of which was to force the exit of local Chinese residents. (He passed the July 2011 bar exam.)

Second place was awarded to Jaime Massar of Loyola Law School, Los Angeles, for “The Taco Truck Rush: Regulating the Commons in Boom Times.” (Photo not available.) Her paper proposes parallels between the use of public space by miners of the Gold Rush era and taco truck operators of present-day Los Angeles. (She passed the July 2011 bar exam.)

The third place winner is Pantea Rahbar of University of West Los Angeles School of Law, for “Federal Government Exceeds its Power to Regulate California’s



*Third-place winner  
Pantea Rahbar*

State-Authorized Medical Marijuana under the Guise of the Commerce Clause.” Her paper discusses California’s marijuana laws in the context of federal regulation. (She will graduate in Spring 2012.)

The three distinguished judges, all of whom are American legal historians, were: Ariela Gross, Professor of Law and History, USC School of Law; Laura Kalman, Professor of History, UC Santa Barbara; and Chris Waldrep, Professor of History, San Francisco State University.

The competition was open to law students and to graduate students in history, political science, government, and related fields. Student papers may address any aspect of California legal history, ranging from the decisions and justices of the Supreme Court itself to local events of legal and historical importance, at any time from 1846 to the present. The winning papers are available on the Society’s website, [www.cschs.org](http://www.cschs.org) (at “History of the California Courts”). ☆

GEORGE ABELE was elected a Fellow of the College of Labor and Employment Lawyers in the Class of 2011. The College is comprised of leading attorneys in this field of law nationwide, including management lawyers, union lawyers, attorneys representing individual employees, and neutrals (primarily government officials, arbitrators, and scholars). He also was selected as one of the outstanding labor and employment lawyers nationally in the 2011 edition of Best Lawyers in America.



Mr. Abele, a graduate of the University of Virginia and the UCLA School of Law, is a partner in the Employment Law Department of Paul Hastings, LLP. He represents employers in wage/hour class actions and in employment discrimination litigation, at both the trial and appellate levels. He has been a member of the board of directors of the Society since 2010 and serves on its Publications Committee.

JOHN F. BURNS, a historian who has served on the Society board since 2005, recently published an essay entitled "Education and the State Constitution" in *Remaking California: Reclaiming the Public Good*, by R. Jeffrey Lustig, et al. (2010). A former naval officer who fought in Vietnam, he is currently working on a book highlighting the little-known role of combat support by Navy amphibious ships in that war.



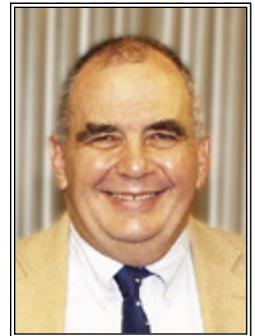
Previous publications include *Taming the Elephant: Politics, Government and Law in Pioneer California*, co-editor, with Richard J. Orsi (2003); *Sacramento: Gold Rush Legacy, Metropolitan Destiny*, editor (1999); chapters in *Courthouses of California*, by Ray McDevitt (2001) and *What's Going On? California and the Vietnam Era*, Marcia A. Eymann & Charles Wollenberg, eds. (2004); as well as numerous articles and reviews on history, education and archives.

Now retired from California state service, for many years he was State Archivist of California, oversaw the planning and construction of the new Archives/Museum complex, and subsequently became an administrator with the California Department of Education, as well as a university lecturer. Currently,

he directs and teaches a history professional development institute aboard the USS Midway Museum and is president of the non-profit Friends of California Archives.

As a Society board member, he serves on the Grants and Sponsored Projects Committee and previously chaired the committee on public programs, publications and grants. He also is a member of the editorial board for the Society's journal, *California Legal History*.

JOHN S. CARAGOZIAN has been an active participant in the ongoing public discussion of the problems besetting California government and possible solutions to them. Most recently he and Society board member Bob Wolfe organized the Society's participation in the October 2011 symposium, jointly sponsored with the



League of Women Voters and Zócalo-Public Square, concerning California's experience with direct democracy. (See article at pages 3–7.) He played a leading role in Loyola of Los Angeles Law School's September 2010 symposium, also co-sponsored by the Society, entitled "Rebooting California: Initiatives, Conventions and Government Reform." His scholarly analysis of two recent books addressing the challenges faced by California, "From Crisis to Solution: California's Problems in Two Books" recently was published in 44 *Loyola Law Review* 687 (2011). (The books reviewed are *Remaking California: Reclaiming the Public Good*, by R. Jeffrey Lustig, et al. (Heyday Books 2010); and *California Crackup*, by Joe Mathews and Mark Paul (University of California Press 2010).) His article on term limits and their unforeseen consequences, "The California Quagmire," appeared in the *Los Angeles Times* on May 24, 2010.

Caragozian is the Corporate Secretary and Counsel at Sunkist Growers, Inc., an agricultural cooperative owned by California and Arizona citrus growers. He is an adjunct professor at Loyola Law School, where he teaches a course on California legal history. He also volunteers as legal counsel to the nonprofit Friends of Los Feliz Library, a branch of the Los Angeles public library system. He has been a member of the Society's board since 2010 and serves as co-chair of the Public Programs Committee.

*continued on page 18*

HARRY SCHEIBER continued his scholarly contributions, during 2011, to several fields including the international law of the sea, American legal history, and comparative law. Among other accomplishments,



- He authored a chapter, “Economic Uses of the Oceans and the Impacts on Marine Environments: Past Trends and Challenges Ahead,” in Davor Vidas & Peter Johan Schei, eds., *The World Ocean in Globalization* (Nijhoff Publishers, 2011);

- His article, “Taking Legal Realism Offshore: The Contributions of Joseph Walter Bingham to American Jurisprudence and the Reform of Modern Ocean Law,” was published in *Law, Society and History*, Robert W. Gordon & Morton J. Horwitz, eds. (Cambridge University Press, 2011);

- He presented the plenary address, “Contested Visions of Ocean Governance and International Law,” at the first-ever meeting of the international law societies of China, Japan, and South Korea, held in Seoul in June 2011;

- He was a coauthor of an article, “Hawaii’s Kibei under Martial Law: A Hidden Chapter in the History of World War II,” published in the current issue (Vol. 22) of *Western Legal History*, with Jane L. Scheiber and Benjamin Jones. Material for this article was drawn from research by Harry and Jane Scheiber for a forthcoming book on the history of martial law in Hawaii and legal challenges to Army rule in the Islands during the Second World War;

- As director of the Sho Sato Program in Japanese and US Law at the UC Berkeley School of Law, he co-organized a conference on “The Japanese Legal System in an Era of Transition,” held at Boalt Hall in February 2011;

- Finally, he will chair a session on the history of water law at the annual national meeting of the American Society for Legal History (of which he is a past president) to be held in Atlanta, Georgia.

Scheiber is the Stefan A. Reisenfeld Professor of Law and History at the UC Berkeley School of Law. He is a board member of the Society.

KAREN R. SMITH, Professor of Law at Southwestern Law School, has received the 2011 Excellence in Teaching Award, marking the fifth time since 1997 that she has been so honored. In several previous years, Professor Smith has been recognized for her academic accomplishments and administrative/service contributions through awards conferred by the Dean and Board of Trustees. The students themselves select the professor chosen for the Excellence in Teaching Award.



In addition to her interests in the history of the California Supreme Court, Professor Smith has recently become involved in efforts to preserve and promote appreciation of the United States Courthouse at Temple and Spring Streets in downtown Los Angeles. The courthouse, completed in 1940, is an important example of Art Moderne architecture, which was characteristic of WPA and other federal buildings constructed during the 1930s. Recently added to the National Register of Historic Places, it has been the venue for a number of notable trials, including the 1973 federal prosecution of Daniel Ellsberg for leaking the “Pentagon Papers.” The Court Historical Project Committee was formed in 2009 and is composed of, in addition to Professor Smith, two federal judges from the Central District, an assistant U. S. Attorney, the District Court Executive, the Chief District Architect, representatives from the General Services Administration, courthouse staff, the director of the Ninth Circuit Historical Society, and lawyers. The Committee has been working to locate murals originally installed in the courthouse that have been mislaid or are missing as well as photographs showing the interior of the building in earlier decades. The Committee also is creating signage to identify the artists who created the historically important sculptures and paintings displayed in the lobbies, and to provide background information concerning the work of those artists.

Smith began her career as an appellate attorney in the Criminal Division of the California Attorney General’s Office. She later served in the then-newly-formed California Public Defender’s Office and, subsequently, as a trial attorney in the Federal Public Defender’s Office. She is a board member of the Society. ★

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