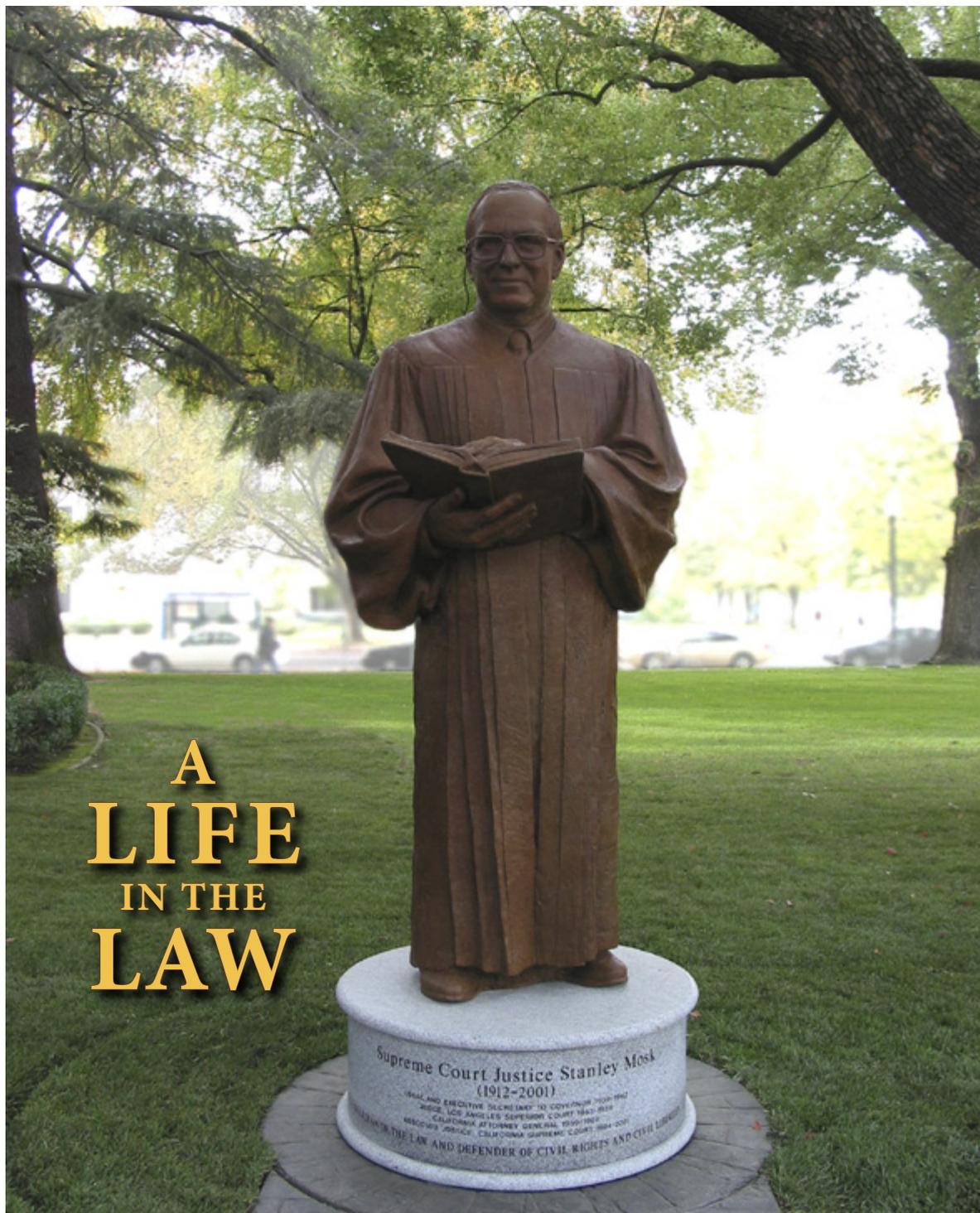




CALIFORNIA SUPREME COURT

Historical Society

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A
LIFE
IN THE
LAW

The Longest-Serving Justice

HIGHLIGHTS FROM A NEW BIOGRAPHY OF JUSTICE STANLEY MOSK

BY JACQUELINE R. BRAITMAN AND GERALD F. UELMEN*

HUNDREDS OF MOURNERS came to Los Angeles' majestic Wilshire Boulevard Temple in June of 2001. The massive, Byzantine-style structure and its hundred-foot-wide dome tower over the bustling mid-city corridor leading to the downtown hub of financial and corporate skyscrapers. Built in 1929, the historic synagogue symbolizes the burgeoning pre-Depression prominence and wealth of the region's Jewish Reform congregants, including Hollywood moguls and business leaders. Filing into the rows of seats in the cavernous sanctuary were two generations of movers and shakers of post-World War II California politics, who helped to shape the course of history. Sitting among less recognizable faces were current and former governors and elected and appointed officials in the local, state, and national arena. Framed by the grandeur of the dais, family members, friends, and colleagues sat in ornate, stately chairs, and then each took to the podium to share their version of the essence of the life of California Supreme Court Justice Stanley Mosk. Together, their testimony established that there were few people who could rival the 70 years of influence Stanley Mosk had on the evolution of California law, the administration of justice, politics, and social policy. The City of Los Angeles, the State of California, indeed the United States of America, had all been changed by his life, in ways both subtle and dramatic.

IN THE GOVERNOR'S OFFICE

Although Mosk started out [after the 1938 election of Culbert Olson as California's first Democratic governor since 1899] as number three in a three-man office, he moved up to principal executive secretary within a year, in charge of managing the office, and handling extradition, clemency, and other legal matters.

His service with Governor Olson taught Stanley Mosk that demonizing political enemies was not smart politics; you never know when you might need them as

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future allies. With rare exceptions, Mosk maintained cordial relations with political opponents throughout his lengthy career.

On one of his final days in office, Olson called Mosk into his office and told him to prepare commissions to appoint Harold Jeffries, Harold Landreth, and Dwight Stephenson to the Superior Court, and Eugene Fay and



Morey Stanley Mosk, circa 1934

PHOTOS: CALIFORNIA
JUDICIAL CENTER LIBRARY

Mosk himself to the Municipal Court. Mosk thanked the governor profusely. The commissions were prepared and the governor signed them, but by then it was too late to file them. The secretary of state's office was closed, so Mosk locked the commissions in his desk and went home, intending to file them early the next morning. In the middle of the night, the governor called to inquire if the commissions had been filed yet. When Mosk explained they had not, the governor said, "Good. I cannot leave Bob Clifton off. Put him in your place on the Municipal Court, and you take Dwight Stephenson's place on the Superior Court." Thus, at the age of 30, Mosk became the youngest Superior Court judge in the history of California. He later noted with pride, "There can never be one younger. A subse-

quent law requires 10 years of law practice before such an appointment can be made. I had been a member of the bar only seven years at that time."

JUDGE OF THE SUPERIOR COURT

In January of 1943, Justice Jesse W. Carter of the California Supreme Court administered the oath to swear in Stanley Mosk as a judge of the Superior Court for Los Angeles County. As the youngest judge in the county's court system, Stanley Mosk became the darling of the Southland's Jewish community, and a favorite of the Hollywood film colony. But first, he had to adjust to the seniority system that governed (and still governs) assignments within Los Angeles' huge court structure, and survive a formidable election challenge.

When a very youthful and inexperienced Judge Stanley Mosk reported for duty, the presiding judge of the Los Angeles Superior Court refused to assign him to a courtroom. He thought Mosk was "too young." Mosk

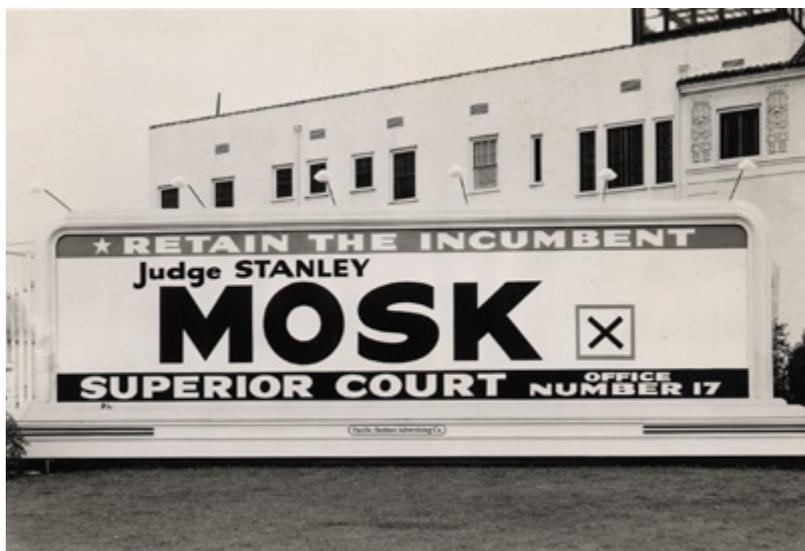
remained available for temporary assignments, however, and soon Judge Alfred Paonessa requested Mosk's service for six months in the city of Long Beach. Because of wartime personnel shortages, Judge Mosk helped the court catch up on its probate and divorce dockets. The Long Beach press covered the arrival of the precocious and charming new judge, and the local legal community warmly welcomed him. A quick study, he learned on the bench, having little courtroom or litigation experience under his belt.

Everything Judge Stanley Mosk did received press coverage, including his induction into the armed services. Unbeknownst to him, his love affair with publicity now inspired both the Army and the FBI to initiate investigations into the background of the new doughboy. The military records at Fort MacArthur refer to the subversive files of the Los Angeles Police Department, which at that time provided scant evidence of Mosk's activities. Most of what the LAPD file included was taken from published accounts of Mosk's appearance at public events, including a *Los Angeles Daily News* article indicating Morey Stanley Mosk was chairman of the Citizen's Committee for Industrial Justice. It reported that the following year Mosk acted as an attorney for the California Federation for Political Unity and Labor's Non-Partisan League. The report noted Mosk's service as Culbert Olson's executive secretary.

PUTTING HIS WORDS INTO ACTION

As a matter of California state law, racial restrictive covenants had been upheld in decisions of the California Supreme Court going back to 1919. The Court ruled that although sale of property to Negroes could not be restricted because that would be a restraint on alienation, restrictions on occupancy of the premises could be enforced.

Now, as a judge on the Superior Court, Stanley Mosk had an opportunity to put his words into action. Activist lawyers and reformers sought test cases to transform Los Angeles into an open, upwardly mobile society for all of its residents. The case of *Wright v. Drye* came before Judge Mosk in 1947, involving a fight by three families against the injustice of racial covenants and the demeaning methods used to enforce them. The defendants included three African-American families who had purchased homes in the tony Hancock Park neighbor-



MOSK WON EVERY POLITICAL RACE HE ENTERED. HIS FIRST CAMPAIGN IN NOVEMBER 1944 WAS TO RETAIN HIS JUDGESHIP.

hood of West Los Angeles. The lead defendant was Frank Lloyd Drye, a talented musician who moved his wife and five children from Alabama to their "dream house."

The deed to the Drye home included a racial restrictive covenant making their occupancy of the home they purchased unlawful. Two months after they moved in, nine white neighbors, led by Pastor Clarence Wright of the Wilshire Presbyterian Church, filed a suit to enforce the covenant by evicting the Dryes, as well as two other black families, the Stricklands and the Stewards, who had also purchased houses in the neighborhood.

Following the precedent established by the California Supreme Court would have required Judge Mosk to enforce the covenants and evict the Dryes, Stricklands, and Stewards from their homes. Mosk simply refused to do so. He courageously ruled that restrictive covenants were unconstitutional.

ATTORNEY GENERAL STANLEY MOSK

The 1958 election of Governor Pat Brown and Attorney General Stanley Mosk also brought a Democratic majority to the state legislature.

Most of the country's 50 heads of State Departments of Justice are traditionally addressed as "General," as is the Attorney General of the United States. Having never risen above Private First Class during his brief stint in the U.S. Army, California's new Attorney General loved being called "General" Mosk. On one occasion, however, he found it somewhat embarrassing. While attending a dinner hosted by Alfred Hart, the Los Angeles banker who served as his campaign finance chair, Hart introduced Mosk to his guests, saying, "General Mosk, meet



“DESPITE HIS PRONOUNCEMENTS, THE RECORD OF STANLEY MOSK DOES NOT SUPPORT THE CONCLUSION THAT HE WILL TURN FROM A CIVIL LIBERTARIAN TO AN AGGRESSIVE CRIMINAL PROSECUTOR SIMPLY AS A RESULT OF HIS ELECTION AS ATTORNEY GENERAL.”

— FROM MOSK’S FBI SURVEILLANCE FILE

so-and-so.” Then, Hart approached an imposing figure and said, “General Mosk, meet Omar Bradley.” As General Bradley reached out his hand, he asked the startled Mosk, “What outfit were you in, General?” Chagrined, Stanley Mosk mumbled something about the transportation corps and beat a hasty retreat.

A “CAUCASIAN CLAUSE” FOR GOLFERS

In September of 1959, Stanley Mosk was playing golf at the Hillcrest Country Club, a prestigious gathering place for golf, weddings, and gala affairs known for its predominantly Jewish membership, which had historically been banned from the city’s elite gentile clubs. Hillcrest was the only country club in Los Angeles that welcomed players of diverse race and ethnicity. Singer Billy Eckstine introduced Stanley Mosk to Charlie Sifford, one of the earliest and most successful black professional golfers. Mosk was incredulous when Sifford told him he was not allowed to play in tournaments sponsored by the Professional Golfers Association because of a “Caucasian clause” in their constitution. “You mean to tell me they actually have that in their organizational bylaws?” he asked.

The next time Sifford visited Hillcrest, he brought a copy of the PGA constitution and left it for Mosk. Mosk

contacted the PGA and verified that they continued to discriminate against non-Caucasians in admitting golfers to membership. In response to a protest from Mosk, the PGA informed Sifford it would make him an “approved tournament player,” which would allow him to join the tour, but it would not make Sifford a PGA member. He would still face discrimination at golf courses where PGA tournaments were held. The Caucasian clause remained on the books.

When Stanley Mosk learned that the 1962 PGA Championship was scheduled to take place at the Brentwood Country Club, he notified the PGA that a lawsuit would be brought to compel them to allow Sifford to play. He issued a public statement, announcing, “We intend to take every step available to us, both in and out of the courts, to force the

PGA either to eliminate this obnoxious restriction or to cease all activity of any kind within our state.” The PGA responded by announcing it would move the tournament out of California, to a private golf course near Philadelphia. Mosk responded by contacting his fellow attorneys general in other states, and encouraging them to keep the pressure on the PGA to change their constitution. The NAACP also joined in condemning the PGA, labeling the PGA Championship an “ugly tournament.” The PGA finally relented and the “Caucasian clause” was repealed. Charlie Sifford was admitted to full PGA membership in 1964.

“LITTLE OLD LADIES IN TENNIS SHOES”

Attorney General Stanley Mosk issued a widely publicized report examining the activity of secret right-wing extremist groups in California in 1961. In describing the John Birch Society, the report characterized the society’s membership as “wealthy businessmen, retired military officers, and little old ladies in tennis shoes.” The line got a huge play in the press after *The New York Times* picked up on it. One columnist warned, “The next time you see Attorney General Stanley Mosk, don’t sound off with ‘Anyone for tennis?’ With all those tennis shoes he

has been receiving in Sacramento re his remarks about the John Birch Society . . . [it] caused him to remark that ‘I hope the shoes will not be for the right foot only. We prefer well balanced people, both at home and abroad.’” Although the actual author of the report was Howard Jewel, he had heard his boss use the expression on many occasions. The term has since achieved a life of its own.

A FRIEND OF THE KENNEDYS

In the 1960 presidential race between Nixon and Kennedy, California was a key battleground state, although it was Nixon’s home turf. Not having a high opinion of Governor Brown, the Kennedy campaign staff looked to Mosk and Assembly Speaker Jess Unruh for guidance. Kennedy frequently visited California, and whenever he came, he was accompanied on the campaign trail by the state’s National Committeeman Stanley Mosk. The Mosks held fundraisers for their candidate, and Stanley Mosk, always attractive to women, held his own in the presence of the handsome and charismatic Kennedy.

President John F. Kennedy’s inauguration in January 1961 was an historic event. Stanley and Edna Mosk proudly watched the inaugural parade in 26-degree weather, and then hosted a gala celebration in the Congressional Room of D.C.’s Statler Hotel.

Just after President Kennedy’s inauguration, the FBI noted that because Stanley Mosk had been very active in the recent presidential campaign he was “evidently aiming” for an appointment to the Ninth Circuit Court of Appeals as an interim position until he could be appointed to the next opening on the United States Supreme Court. The possibility of an appointment was very real, but it was not to be. California Supreme Court Justice Jesse Carter and Senator Henry M. “Scoop” Jackson endorsed Mosk for the Ninth Circuit post. By February 1, however, Bobby Kennedy acknowledged that Mosk was staying in his present position.

Another topic of discussion with the Kennedys was Mosk’s political future. Mosk had declined an opportunity to serve in JFK’s administration, either as General Counsel for the Defense Department or the FCC. He thought his prospects for political advancement could best be cultivated by remaining in California. One journalist suggested that the “most important accomplishment” of President Kennedy’s trips to California was “the chance to meet and appraise” Attorney General Mosk, who, in the event Bobby Kennedy moved out of the U.S. Attorney General spot, could succeed him.

U.S. SENATOR STANLEY MOSK?

Even before JFK’s assassination in Dallas, Bobby Kennedy had urged Stanley Mosk to make a run for the Senate. Mosk had been urged to run against Senator Thomas Kuchel in 1962, but wisely declined. Kuchel was overwhelmingly reelected to his second term.

In 1963, it began to appear as though another Senate seat would soon be up for grabs. Senator Clair Engle was elected to succeed William F. Knowland in the 1958 Democratic sweep. Tragically, in 1963 he was stricken with brain cancer.

The Kennedy administration was pressuring Governor Brown to appoint a replacement, and on October 9, 1963, six weeks before President Kennedy’s assassination, a headline in the *San Francisco Examiner* announced, “JFK for Mosk If Engle Out.” A Field poll among Democratic voters showed Mosk with a substantial lead as a potential candidate for the U.S. Senate. This put Governor Pat Brown in a very awkward position, because he had already promised his support to Alan Cranston.

Governor Brown believed a divisive and expensive Senate primary fight in California would jeopardize the party’s chances in the November general elections, and even affect Lyndon Johnson’s hopes to carry California. Behind the scenes, Brown decided he had to convince Stanley Mosk not to announce his candidacy.

THE SMOKING GUN

Suddenly, Governor Pat Brown pulled out the “smoking gun”: a file of surveillance reports and photographs documenting that the Attorney General had been leading a “double life.” The official report of the Los Angeles Police Department surveillance of Stanley Mosk began in December 1958, when, one month before



Mosk, with Robert and Edward Kennedy in 1960, was an early supporter of their brother, John F. Kennedy.



“ARE WE GOING TO GIVE COLORADO RIVER WATER TO PEOPLE OF CALIFORNIA TO DRINK OR TO ARIZONA FOR ASPARAGUS?”

— MOSK, ARGUING *ARIZONA v. CALIFORNIA* BEFORE THE U.S. SUPREME COURT

taking office as Attorney General, his 1957 De Soto was observed parked at the West Hollywood home of a convicted bookmaker. Mosk's was not the only car seen parked in front of the house. When the police tracked the license plates of the other cars, they came up with a rogue's list of individuals who had been convicted as major marijuana suppliers, heroin peddlers, burglars, pimps, prostitutes, forgers, and smugglers, along with “sex degenerates” and “advocates of the Communist Conspiracy.” The police characterized the gathering as a “freak party.” What was the newly elected Attorney General of California doing partying with the low-life of Los Angeles?

The answer to this question lies buried in a mix of humanity known as the “counterculture” of Los Angeles. In the late 1950s and early 1960s, the once glamorous Sunset Strip, the stretch of unincorporated

land that passes through West Hollywood, became a favorite gathering spot for hippies, musicians and their groupies, and Hollywood hangers-on. The scene naturally attracted drug dealers, pimps, and prostitutes as well. It was eclectic and it was exciting, a magnet for tourists and locals looking for “action.” A number of the era's major rock bands emerged from this milieu, and the bars and nightclubs were popular watering holes for celebrities on the prowl. Stanley Mosk was apparently attracted by the excitement of the Sunset Strip counterculture, but the main attraction soon became a beautiful young woman. Her name was Sabrina Jourdan.

LAPD intelligence officers, who were well known for their interest in the comings and goings of elected officials, took a keen interest in the relationship between Stanley Mosk and Sabrina Jourdan. On July 15, 1963, Stanley Mosk flew from Los Angeles to Mexico City to participate in a drug law enforcement conference arranged by the Kennedy administration. The LAPD Intelligence File reports that Mosk met Sabrina at the airport, and once on the plane she was upgraded from tourist to first class to join him on the flight. The file also contained photos taken of the couple through a hotel window, although there was no explanation of who took the photos or why. The photos have disappeared, but several who saw them describe them as depicting Sabrina disrobing in Stanley's presence. The photos became the “smoking gun” used to derail the Attorney General's political ambitions.

Stanley Mosk as Attorney General and later as a Justice of the California Supreme Court was a bold defender of the constitutional right of privacy and a longstanding foe of intrusive and illegal police surveillance. Whether his legal and judicial views on these issues emanated from having himself been a victim of police surveillance makes for interesting speculation.

JUSTICE MOSK, NOT CHIEF JUSTICE

On August 10, 1964, Chief Justice Phil Gibson announced his retirement from the Supreme Court. Governor Pat Brown hailed him as one of the giants of American law, and then promptly appointed another giant to replace him, Associate Justice Roger Traynor. He also announced the appointment of Attorney General Stanley Mosk to take Traynor's place. Almost immediately, suspicion was voiced that Brown was delivering the inducement that got Mosk out of the Senate race. Both Brown and Mosk vehemently denied it, but neither of them were very credible in doing so. When the question of a “deal” was raised at the time Mosk announced his withdrawal from the Senate race, Mosk said he resented such a notion. He characterized it as “a disservice to a truly great court when we keep this rumor handy to bring out in a political sense.”

Furthermore, he added, at that time “there was no vacancy on the court and there’s no arrangement for a future vacancy.” Governor Brown later conceded the Supreme Court had been discussed prior to Mosk’s withdrawal, explaining that he was careful not to make Mosk a firm offer, but instead pointed out that “since Cranston was not an attorney, it would not be possible to appoint him to the Court.”

It is quite likely that both Brown and Mosk knew of Gibson’s retirement plans by March of 1964, when Mosk was forced out of the Senate race. Gibson would not have sprung a surprise retirement on Governor Brown. Stanley Mosk apparently expected that he would be appointed Chief Justice, to replace Gibson, which lends strong credence to the rumors that a deal had been cut. If so, Mosk would have thought the deal was that he would get the next appointment to the Court, and the next appointment to the Court was the Chief Justice. Earl Warren had experienced a similar situation, when President Eisenhower tried to backtrack on the promise to give him a spot on the Supreme Court, after the “next spot” turned out to be the position of Chief Justice. Mosk was actually angry when Governor Brown announced the elevation of Traynor to be Chief Justice at the same time he appointed Mosk as an Associate Justice. He confronted Governor Brown about renegeing on his promise, and stormed out of Brown’s office after a loud argument.

ON THE CALIFORNIA SUPREME COURT

On September 1, 1964, at the age of 52, Stanley Mosk was sworn in as the 86th Justice to serve on the Supreme Court of California. Mosk took over the seat previously occupied by Associate Justice Roger J. Traynor, the same seat that Justice Gibson had occupied years before, prior to his elevation to serve as Chief Justice. Traynor was that same day sworn in as the 23rd Chief Justice of the California Supreme Court. Thus, two prior occupants of the seat Mosk assumed had gone on to serve as Chief Justice, a tradition Mosk often thought he was destined to maintain.

Stanley Mosk hit the ground running as a new Justice of the California Supreme Court. His first majority opinion appeared only nine weeks after he was sworn in, and by the end of the year he had published 14 majority opinions and one dissent. During his 16 years on the Superior Court, he had closely followed the work of the Supreme Court and on occasion he had sat as a pro tem Justice of the California Court of Appeal. His six years of service as Attorney General provided invaluable familiarity with the workings of the Court and the personalities of its members. His editing and issuance of 2,000 formal opinions as Attorney General gave him insight into supervising staff and polishing their work product. Most impor-

tant, he recruited an outstanding lineup of judicial staff attorneys to assist him.

Justice Mosk relied upon Peter Belton and Olga Murray to draft his calendar memos and majority opinions. Belton developed an amazing capacity to assimilate and anticipate Justice Mosk’s views. As fellow Justice Joseph Grodin observed, “They were intellectual, symbiotic twins. Peter knew what Stanley’s view was about everything. I had the impression that all Stanley had to do was nod, and Peter would set out to write the opinion which he was sure that Stanley would want to have written.” More often than not, Mosk drafted his own dissenting and concurring opinions, sitting at his desk and pecking away at an old manual typewriter. He was efficient, finishing his work in less time than it took his fellow Justices.

When Justice Mosk assumed the role of a Justice of the California Supreme Court, observers anticipated he would become a reliable fifth vote for the Traynor Court majority. He never did. The Court divided in a 4–3 split in 21 of its decisions, and in most such cases the majority consisted of the Chief Justice joined by Justices Peters, Tobriner and Sullivan, with the dissenters including Justices Mosk, Burke and McComb. Justice Mosk’s rate of disagreement with the Chief Justice was 12.6 percent. Mosk was positioned slightly to the right side of



Mosk kept himself physically fit with frequent games of tennis, regularly beating his law clerks on the tennis courts.

a left-leaning court. Although Chief Justice Traynor led from the middle, the tilt was to his left.

THE MOSK DOCTRINE

In California, the practice of relying upon the state constitution to provide more expansive protection of individual rights than required by the Federal Constitution became known to many as “The Mosk Doctrine.” Mosk gained renown for his consistent rulings that sought to guarantee individual liberties contained in the California Constitution independent from the Constitution of the United States. The most important of these rulings came in a series of cases regarding the freedom of speech in privately owned shopping malls, which were open to the public.

THE DEATH PENALTY

On April 21, 1992, California conducted its first execution under the death penalty law enacted in 1978. Robert Alton Harris’ execution was originally scheduled for

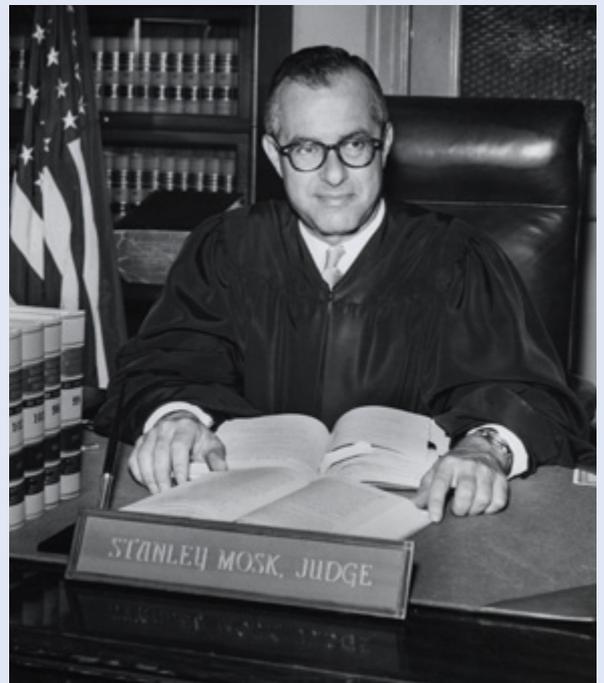
12:01 a.m. on the morning of April 21, 1992. Pursuant to the Court’s protocol, the Justices gathered in the chambers of Chief Justice Malcolm Lucas to respond to any last minute challenges to the execution, with an open line to the execution chamber. A series of four stays issued by individual federal judges delayed the execution until just after 6 a.m. In its order vacating the fourth stay of execution, the U.S. Supreme Court stated, “No further stays of Robert Alton Harris’s execution shall be entered by the Federal courts except upon order of this Court.” All of the California Supreme Court Justices spent over six hours of sleepless waiting. Halfway through this ordeal, Chief Justice Lucas noticed Stanley Mosk [then nearly 80] frequently checking his watch. He suggested Stanley go home and get some sleep, promising they would summon him if anything happened. Mosk replied, “I’m not worried about getting sleep. I have a 6:30 a.m. tennis match scheduled, and I’m concerned I may have to cancel it.” After the execution was finally carried out and Robert Harris was declared dead at 6:21 a.m., Justice Mosk went

His Only Death Sentence

JUDGE STANLEY MOSK sentenced only one man to death throughout his two decades on the Superior Court. Mosk described the trial as “one of the most dramatic cases I heard as a trial judge. . . . The case had all the overtones of intrigue, love, sex, hate, rejection, frustration, and finally violence.”

Newspaper readers followed the details of the case of John Crooker, who was accused of the first-degree murder of Mrs. Norma McCauley, an attractive, wealthy divorcee and mother of three who lived in the fashionable Bel-Air section of West Los Angeles. During his first appearance before Judge Mosk, “The law student and former house boy stood silently . . . until prodded into action by a slip of the tongue on the part of his attorney,” who waived reading of the complaint saying, “There were several facets of the case requiring study before a plea of ‘guilty’ is entered.” The lawyer corrected herself after “Crooker leaned over and whispered hurriedly,” saying that she meant “not guilty.” Another attorney represented Crooker for the remainder of the case.

Ten years before the United States Supreme Court decision of *Miranda v. Arizona*, Crooker’s new lawyer argued that during Crooker’s interrogation the police failed to warn him of his right to an attorney, and therefore his written confession should be excluded from evidence. Crooker also claimed he wrote out a confession to the murder in order to escape a police beating. Crooker



During his 16 years on the Superior Court bench, Stanley Mosk engaged in the trial and disposition of thousands of cases, but sentenced only one person to death.

said he had been hit three times and threatened with more violence and, as a result, he said he “would say anything they wanted me to say if they then would leave me alone.” Although Mosk was well aware of such police practices, he credited the denials by police witnesses and admitted the confession in evidence.

directly to his tennis match, then returned to the Court to put in a full day's work.

The interpretation and application of the California death penalty law would occupy the California Supreme Court throughout the remainder of Justice Mosk's tenure. Recognizing that the death penalty would continue to be a subject of discussion, he offered his perspective. "At the risk of appearing immodest, I claim to be particularly equipped to enter into this discussion because I have been on all sides of the issue — not, I hasten to explain, because of unconcern or ambivalence." Mosk proceeded to briefly chronicle at which stages of his life he considered the issue of capital punishment:

First, as an idealistic young man, I debated for abolition of the death penalty. Then, as executive secretary to the Governor of California, I had the duty of actually interviewing, in prison, men — and one woman — under sentence of death and making a report to the Governor. . . . Next, I became a

When Crooker was convicted, the jury recommended the death penalty. Upon Crooker's appeal, the California Supreme Court, with Justice Jesse W. Carter dissenting, affirmed Judge Mosk's ruling and Crooker's death sentence. On January 24, 1957, Judge Mosk set the date of execution for April 12. He later confessed to his discomfort in doing it. "If we truly believe that only God renders such irrevocable decisions as life and death, then the judge who makes the pronouncement of the ultimate penalty is in fact playing God. He is ordering the elimination of a human being."

Judge Mosk's ruling and Crooker's death sentence were affirmed by a 5-4 ruling of the United States Supreme Court, with Chief Justice Earl Warren joining the dissenters. The Supreme Court majority concluded that Crooker needed no warning of his right to counsel, since he had already completed a year of law school.

As Crooker's execution approached, Pat Brown had become governor and Stanley Mosk had become Attorney General. Crooker's petition for commutation of his death sentence was the first one heard by the newly elected governor. In explaining his decision to grant the commutation, he wrote:

I listened carefully to all they had to say, but what really made up my mind was a note from Stanley Mosk in the report, stating that as the trial judge he would not object to a commutation of Crooker's sentence from death to life imprisonment. "This defendant's crime arose out of a relationship with the deceased under a set of circum-

stances that would not likely happen again," Mosk wrote. "He is an intelligent young man of some cultural attainment, and if personality defects could be cured or contained, he could in the distant future become rehabilitated and become a constructive member of society."

Eight years later, after receiving numerous reports of Crooker's rehabilitation, Governor Brown again commuted his sentence from life without parole to life with parole, and Crooker was paroled and released from prison in 1972. Shortly thereafter, then-Justice Stanley Mosk received an invitation to John Crooker's wedding. He did not attend, but sent him a note to wish him well. Thereafter, every year without fail, he received a Christmas card from Crooker and his wife, updating him on how they were doing. Justice Mosk found one note particularly poignant:

I thought you would be pleased to know that Valerie and I have bought a house. It is the first home I have ever owned. I have been promoted by my employer in the bay area and am now earning a guarantee of \$25,000 per year. Things are really going well for us. I wish you continued success in your career.

Justice Mosk reflected that the rehabilitation of John Crooker to become a law-abiding member of society "would not have been possible were it not for the compassion of a Governor. Pat Brown — the original Governor Brown — was that type of human being." ☆

THE BAKKE DECISION

Probably no single decision rendered by the California Supreme Court during the 37 years of Justice Stanley Mosk's tenure engendered greater controversy than the case of *Bakke v. Regents of the University of California*. The preparation of the conference memo for the *Bakke* case was randomly assigned to Justice Stanley Mosk, and after the Court granted a hearing, he was assigned to author the Court's decision to strike down the special admissions program and order the admission of Allan Bakke to the medical school of the University of California at Davis.

Some of Justice Mosk's good friends and colleagues politely disagreed with his *Bakke* opinion. Others were not as civil. Justice Mosk's majority opinion subjected him to a barrage of liberal invective, which he took very personally. He liked to quote a remark by Los Angeles criminal defense attorney Marvin Part: "The difference between Stanley and the other type of mosque is that you don't have to remove your shoes before stepping all over Stanley Mosk."

Justice Mosk always took great pride in Allan Bakke's success in medical school and subsequent career as a physician. He later recalled that "for four years, I was



Edna Mosk was heavily invested in her husband's political fortunes. Her talent as a major fundraiser left no arm untwisted in Beverly Hills, and her indefatigable energy was legendary.

scared to death that Bakke would flunk out of medical school, and make our opinion look bad. But he graduated with honors." Bakke invited Justice Mosk to his medical school graduation party with a personal note of thanks, but Mosk did not attend.

A FRIENDSHIP WITH JUSTICE CLARK

Ronald Reagan labeled his appointment of Donald Wright to be California's Chief Justice as his "biggest mistake," echoing the regret President Dwight D. Eisenhower expressed over his appointment of Chief Justice Earl Warren to the U.S. Supreme Court. Reagan was determined not to make a similar mistake when the next court vacancy occurred with the sudden death of Justice Raymond E. Peters on January 2, 1973. Now the governor had an opportunity to replace the most liberal judge on the Court with a real conservative. He already knew who he wanted, and announced his appointment the day after Justice Peters' funeral. William P. Clark was a small-town real estate lawyer who became an eager and early supporter of Ronald Reagan's political ambitions.

Chief Justice Donald Wright was not impressed. Although Clark was a congenial and likable man, his presence on the California Supreme Court was embarrassing for Chief Justice Wright, and he was viewed with awkward suspicion by most of the other Justices. Nevertheless, he and Stanley Mosk became close friends.

That friendship says a great deal about Mosk. While Mosk's failure to recognize Southwestern University School of Law as his alma mater revealed his own elitist tendencies, rather than looking down his nose at Clark's scholastic deficiencies, he admired his ambition and persistence in overcoming them. Clark's career path bore a striking resemblance to that of Stanley Mosk. Clark viewed Stanley Mosk as a role model of sorts. Although he and Clark were usually on opposing sides in the decisions that divided the Court, Justice Mosk rarely let rancor in the conference room affect his working or personal relationships with his fellow Justices. He welcomed Clark to the Court with warmth and genuine affection, and Justice Clark gratefully reciprocated. Their close friendship continued long after Clark's departure from the Court.

HIS GREATEST DISAPPOINTMENT

The issue of retirement was one frequently raised throughout the later years of Mosk's tenure on the Court. For Mosk, the appropriate time to retire was when one could no longer competently handle the crushing workload. Stanley Mosk lived to work. As a seasoned Justice, having already served 10 years on the Court, he was at the peak of his productivity. He amply demonstrated his judicial independence and his elevated competence

in mastering the job description of an Associate Justice. What's more, his convivial personality nurtured congenial relationships with his fellow Justices. Most of the friendships and political alliances he had established as Attorney General remained strong, and his administrative skills were exceptional.

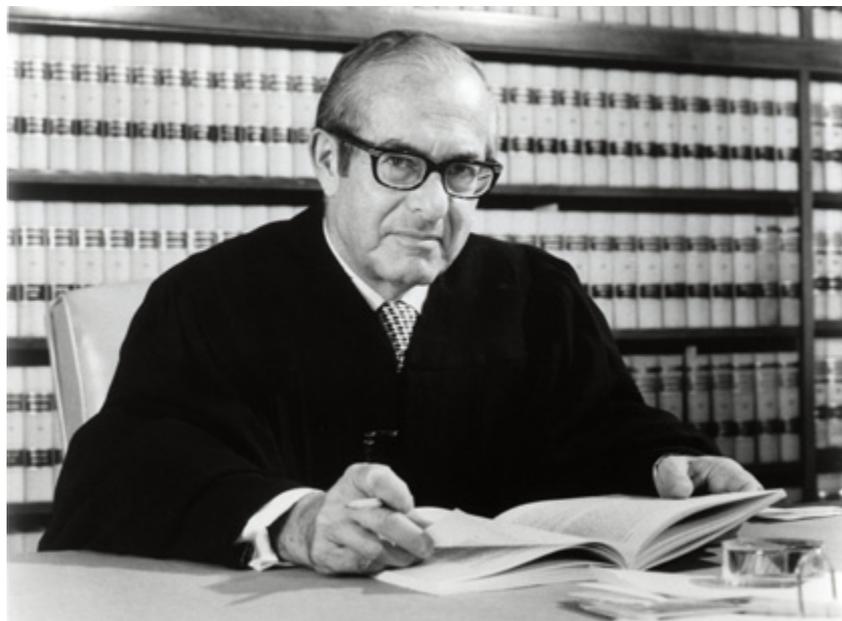
While Mosk gracefully aged, however, the winds of political change arrived in the Golden State in January 1975, when the youthful Jerry Brown took his oath of office for what would become two highly charged terms as governor of California.

When it came to making appointments to the massive state judiciary, Brown was at first slow to fill vacancies. During the first five months of 1977, Jerry Brown faced the challenge head-on when he needed to fill, in rapid succession, three judicial vacancies on the state's Supreme Court. Initially, Justice Raymond L. Sullivan retired from the Court on January 19. Then, less than two weeks later, on February 1, Chief Justice Donald R. Wright stepped down. Inherently, the most formidable challenge came with filling this second vacancy. No matter what choices Brown made, this moment in his administration could influence the course of judicial history for decades to come as well as the contours of his own legacy for historic statecraft. Finally, just three months later, on May 2, Justice Marshall McComb was forced to retire.

To most followers of the Court, it seemed obvious that to fill the position of Chief Justice, Brown should turn to either Justices Mathew Tobriner or Stanley Mosk. Both were esteemed figures and both had been appointed by Brown's father, Pat Brown, but that could have just as easily worked against them, given Jerry Brown's penchant to distance himself from the elder Brown's generational world-view and approach to governing.

Without any public revelation, Justice Tobriner took himself out of the running. He confided to a close friend that when Governor Brown offered him the Chief Justice seat, he declined to accept the honor. A broad spectrum of Mosk supporters chimed in on his behalf.

It soon became apparent that Jerry Brown was eager to make history by appointing the first woman to the state Supreme Court. Rose Bird's name quickly moved to the top of the short list. Brown thought placing Bird



FOR HIS FIRST SIX YEARS MOSK SAT AS A MEMBER OF THE TRAYNOR COURT, A JUDICIAL ERA STILL RECALLED IN REVERENTIAL TERMS.

at the head of the Court would send a clear message he was "shaking up" California government from top to bottom, rejecting the "old boy" politics of his father.

On February 12, 1977, Governor Brown announced his selection of Rose Elizabeth Bird to serve as Chief Justice of California and Wiley Manuel, the first black appointed to the Court, to serve as an Associate Justice.

Being rejected for the appointment as Chief Justice was perhaps Stanley Mosk's greatest disappointment, a wound that cut deep and seemed to never quite heal. He was fully justified in feeling that he was the most qualified person in California to assume leadership of the Court. Governor Brown's failure to offer even a semblance of personal and professional courtesy by broaching the subject with Mosk left Mosk to speculate as to what had contributed to this outcome. Some have assumed, including Mosk, that Brown passed over his name because of the *Bakke* decision, which was profoundly anathema to Brown's sensibilities. Jerry Brown denies the *Bakke* claim, and he may have had very good reasons to pass over Justice Mosk, but his handling of the process left Mosk with a bitter taste in his mouth. After Jerry Brown announced the appointment of Rose Bird as Chief Justice, Stanley Mosk never spoke to Jerry Brown again. Thus, Jerry Brown stands out as a rare exception to Mosk's incredible ability to "kiss and make up" with political enemies.

The festive swearing in of Chief Justice Rose Bird was held on March 28, 1977, in the newly restored

original courtroom of the California Supreme Court in Old Sacramento. In a departure from long-standing tradition that new Justices were sworn in by another member of the Court, Governor Jerry Brown insisted upon swearing her in himself. Stanley Mosk did not attend the ceremony. When Bird arrived at the Court's headquarters in San Francisco, Mosk informed the new Chief Justice, "I certainly cannot blame you for being here, but I blame Jerry Brown for putting you here." From that point on, it's not surprising that their relationship was a frosty, guarded one. "Rose Bird never let me forget that statement," Mosk recounted, explaining how their relationship devolved into one of distrust and suspicion. The version of Mosk's greeting remembered by Rose Bird was even more chilling. She confided to a close friend that Justice Mosk concluded his "welcome" by saying, "You will rue the day you came."

THE WHEELER DECISION

Among the most influential majority opinions Justice Mosk authored during his four decades on the Court was the ruling in *People v. Wheeler*. Justice Mosk broke new ground when the Court ruled that during jury selection for a trial, attorneys who exercised peremptory challenges in a discriminatory manner were required to explain their reasons for removing minority jurors. Although *Wheeler* was based upon Mosk's interpretation of California's state constitution, when the United States Supreme Court decided the same issue eight years later, it construed the U.S. Constitution to achieve the same result.

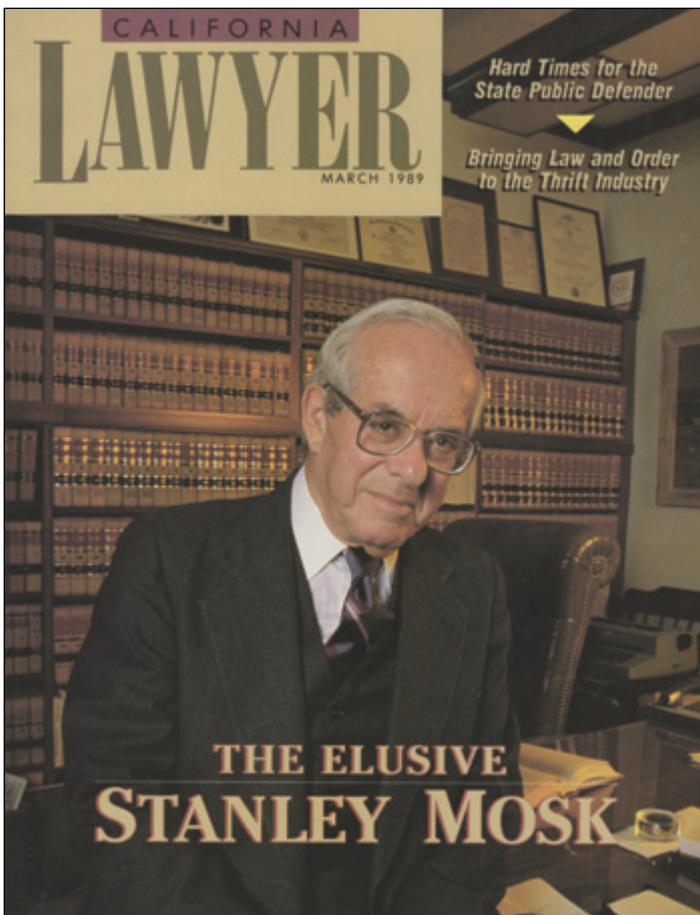
A SHOPPING LIST

Within a period of one year, death claimed both Justice Mosk's wife, Edna, and his mother, Minna Perl Mosk. On May 22, 1981, Edna passed away at the age of 65 after a particularly painful final battle with cancer. She had kept up a busy schedule despite chemotherapy treatments, blood transfusions, appointments with three or four different specialists, and the need to take more than a dozen pills a day. She utilized medicinal marijuana baked in brownies to alleviate her pain and the side effects of frequent chemotherapy during the final year of her illness. At the time, the use of medical marijuana was illegal in California, so the arrangements for her use of it had to be carefully concealed. Tucked inside a flap in Stanley Mosk's calendar for 1980 was a note in his distinctive handwriting. It read "¼ oz. Columbian Pot." It was a shopping list.

THE 1986 RETENTION ELECTION

The governor's use of death penalty votes as a criterion in selecting his targets underlined an irony that is essential to an understanding of what happened to the Court in 1986. The targeted Justices were subjected to a well-funded campaign to remove them from office. The chief contributors to that campaign were corporations and insurance companies who believed Governor George Deukmejian would appoint replacements who were friendlier to their business interests. The entire campaign, however, was focused on the Justices' voting record in death penalty cases.

In some quarters, the suggestion has been heard that Justice Mosk saved his neck in 1986 by strategically voting to dissent from the reversal of selected death penalty cases only when he was certain there were suffi-



A probing interview by Philip Carrizosa, a lawyer-journalist who closely followed the work of the California Supreme Court, challenged Justice Mosk in 1989 to explain his reversing field in his death penalty decisions. Mosk replied with a litany of his most important decisions. "The test is whether today I would write Bakke, Wheeler, Friends of Mammoth, Hawkins, the public trust doctrine cases, Marriage of Carney, and some 600 other opinions in the same manner. The answer is emphatically yes."

cient votes available to reverse the death sentence. As long as there were enough Justices available to achieve the result he really wanted, he would let them take the heat and join the dissenters. Although his vote would not make a difference in the outcome of the case, it would make a huge difference in persuading the governor, and ultimately the voters, not to target him for defeat. There is strong evidence to support this claim. Among the 59 death cases counted by the governor, Mosk cast a vote for death in only one case where his vote actually made a difference.

The pattern was remarkable enough to arouse the suspicion of Mosk's fellow Justices. At one point, Justice Grodin asked Peter Belton whether Mosk's votes to dissent from death reversals indicated a change in Mosk's longtime opposition to the death penalty. Belton replied that Mosk would not vote to affirm a death penalty judgment when his vote would make a difference in the outcome.

The 1986 campaign clearly demonstrated Stanley Mosk had lost none of the political savvy responsible for his previous overwhelming election victories. Mosk never lost an election in his life. Justice Mosk deliberately delayed announcing he would seek retention until the deadline. Meanwhile, Mosk granted media interviews that emphasized the distinctions between himself and Rose Bird.

Speculation that he might retire worked to his advantage, and if he had announced early, there would have been enormous pressure for him to join forces with the challenged Justices. Thus, he waited until the last possible moment to announce his plans to seek another term. Then, he dramatically revealed he would not form a campaign committee or mount a campaign. "I expect neither to solicit nor to accept campaign contributions. My expenditures, to be assumed personally, will include the filing fee (\$1,989.78) and 22 cents for a stamp to mail my declaration to the Secretary of State." His announcement inspired numerous friends to send him a 22-cent postage stamp. But at the last moment, he feared his paperwork might not make it to Sacramento on time. Stanley's papers were delivered by overnight mail at a cost of \$10.25.



MORE OFTEN THAN NOT, MOSK DRAFTED HIS OWN DISSENTING AND CONCURRING OPINIONS, SITTING AT HIS DESK AND PECKING AWAY AT A TYPEWRITER.

In the November election, Chief Justice Bird was rejected, winning approval of only 33.8 percent of the voters. Justices Cruz Reynoso and Joseph Grodin were also removed, respectively winning 39.8 percent and 43.4 percent of the vote. Justices Stanley Mosk, Malcolm Lucas, and Edward Panelli were retained with comfortable margins. Mosk won the support of 73.6 percent of the voters.

JUSTICE MOSK DISSENTS

The dramatic shift in the death penalty rulings was the most immediate and obvious consequence of the change in the Court's composition. From March of 1987 through March of 1989, the Supreme Court of California reviewed 71 judgments of death. Fifty-one of them, or 71.8 percent, were affirmed. In two short years, the California affirmance rate for state Supreme Court review of death penalty judgments moved from the third lowest in the United States to the eighth highest. Most of the affirmances were unanimous, with Justice Stanley Mosk joining in.

Stanley Mosk enjoyed a cordial relationship with the new Justices, but was quickly disenchanted with their "judicial activism" in overruling or limiting Bird Court precedents. The departure of Justice Allen Broussard left Justice Mosk as the only dissenter in many of the



MOSK POSSESSED A UNIQUE COMBINATION OF POLITICAL SAVVY, PERSONAL CHARM, AND SHARP INTELLIGENCE.

Lucas Court opinions, and his dissent rate rose sharply. He dissented from 40 percent of the Lucas Court opinions in 1992, and racked up the highest dissent rate of his career, 47 percent, for the cases decided in 1993 and 1994. Producing dissenting or concurring opinions for nearly half of the Court's output was a daunting task, and the five years of the Lucas Court from 1991 to 1996 were the most productive years of Justice Mosk's entire tenure. During those five years, he produced 60 majority opinions, 68 concurring opinions, and 140 dissenting opinions.

BACK ON THE WINNING SIDE

The appointment of Ronald George as Chief Justice signaled a remarkable realignment of the Justices that dramatically transformed the role of Justice Stanley Mosk. Throughout the 10-year reign of Chief Justice Malcolm Lucas, there was a solid conservative phalanx of five votes, with Mosk as the old "liberal" war-horse who frequently dissented.

From 1993 to 1997, Chief Justice George's rate of agreement with Justice Mosk crept steadily upwards, from 60 percent to 75 percent. For Justice Mosk, this

meant he was back on the winning side in more and more of the Court's landmark decisions, and had the opportunity to again write important majority decisions. His dissent rate steadily declined, falling below 20 percent. In 1997, he led the Court in production of majority opinions, authoring 21 of them.

LONGEST SERVING AND MOST PRODUCTIVE

On Sunday, December 26, 1999, Justice Mosk broke the record as the longest-serving Justice in the history of the California Supreme Court. Mosk holds the record as not only the longest-serving Justice; he also holds the record for being the most productive. He enjoyed the satisfaction of seeing many of his opinions embraced by judges of the appellate courts of other states. A recent study established that the California Supreme Court remains the "most followed" Supreme Court in the nation, in terms of its rulings being cited and followed by the courts of other states. The study identified 160 opinions authored by 33 different Justices as the "most influential," followed three or more times. Justice Mosk authored 27 of those decisions, more than any other Justice who ever sat on the California Supreme Court.

AND THEN HE WAS GONE

On Monday, June 18, 2001, Justice Mosk put in a full day at his Supreme Court chambers. His driver delivered him to his Nob Hill condo. When he walked through the door, he kissed [his third wife, Kaygey Kash Mosk] on the cheek and said he was going to lie down for a few minutes before dinner. As she walked with him down the hallway, she asked him if he was feeling all right. "Yes, yes, dear," he replied with the same words he had used to reassure her so many times before. She watched him walk down the hall with a feeling of dread streaming through her body. He usually came home with so much energy, more than for a man half his age. She prepared for their usual evening cocktail before stepping out to one of their favorite restaurants. She removed her apron and lit the candles on the counter. She walked down the hall toward the bedroom. She sat down on the bed next to her husband, and when he did not stir, she realized he was gone. She realized she had probably felt him fading away when he kissed her on the cheek. She held him tightly, as if trying to reverse the last moments in time, and she cried deep, mournful tears. She truly loved Stanley Mosk.

When she noticed something sticking out of his shirt pocket, she opened the folded paper and read the letter of resignation and his expression of gratitude to the people of California for giving him the opportunity to serve. He had intended to personally deliver it to the governor on the morning of the following day. ☆

A House for Equal Justice

THE LOS ANGELES COUNTY COURTHOUSE AND ARCHITECT PAUL WILLIAMS

BY JUDGE ELIZABETH R. FEFFER*

JUST BEFORE 6 p.m. on March 10, 1933, the Long Beach earthquake struck Southern California. The 6.4 magnitude temblor killed 120 people and remains California's second-deadliest earthquake. Downtown Los Angeles suffered little devastation compared to the southeast area of the county. A notable exception was the Los Angeles County Courthouse, called the Red Sandstone Courthouse because of its exterior masonry, which sustained such heavy damage it could no longer be used.

Begun in 1888 and opened in 1891, the grand county courthouse was located at Temple and Broadway, where the Foltz Criminal Justice Center now stands. It was the county's first true courthouse; previous buildings had been converted from other uses.

Even before the Long Beach earthquake, the Red Sandstone Courthouse — once called “the jewel of Los Angeles” — was dramatically and rapidly deteriorating. In February 1932 a section of stone from the courthouse clock tower broke off and crashed through the roof of Judge Joseph Sproul's office. The accident fortuitously occurred at 6:25 a.m., so no one was hurt. The structure was so compromised that within a few weeks the clock tower and other ornamentation were removed and a new roof installed.

A year later, the Long Beach earthquake dealt the courthouse its final blow. Dismantling the building was such a large undertaking that demolition was not

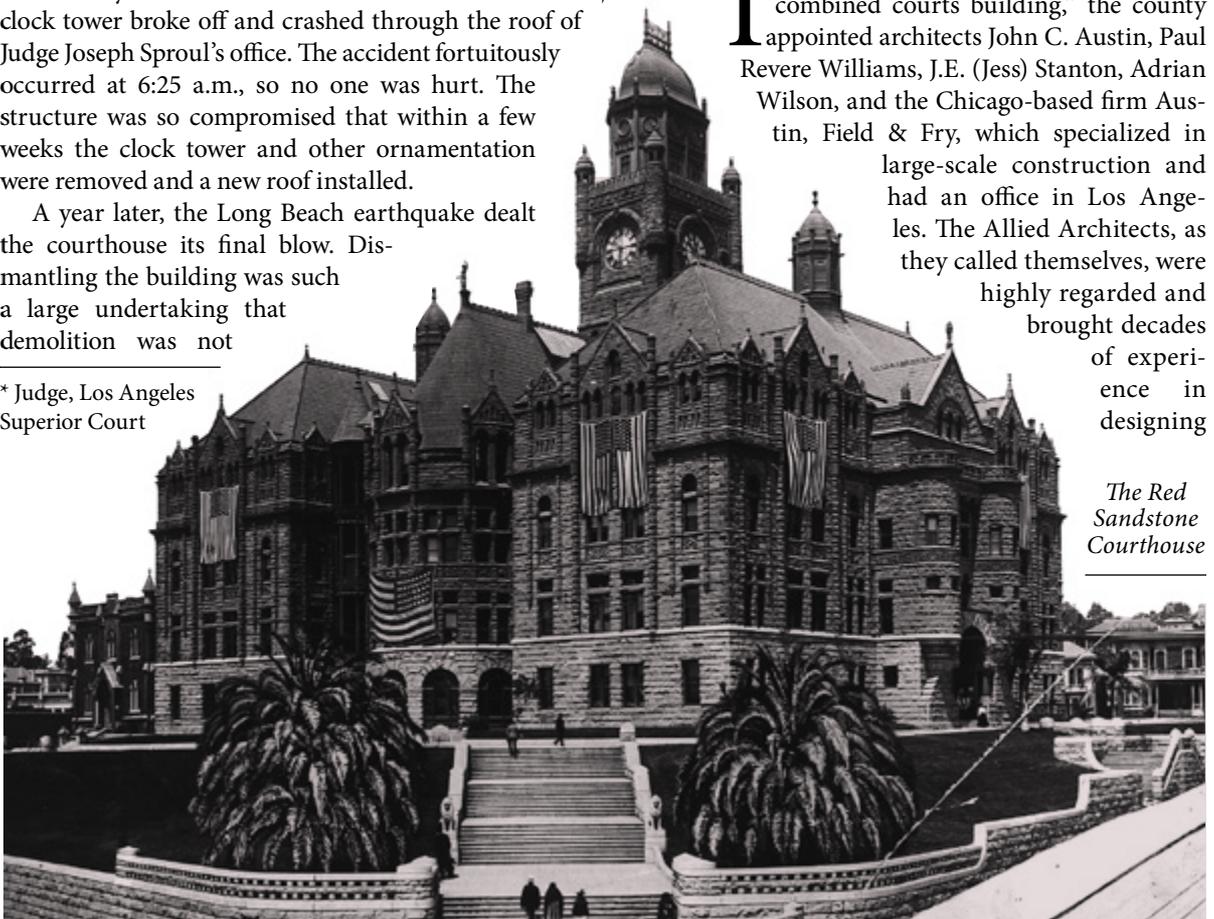
completed until 1936. For the next 25 years, the county's judges used makeshift accommodations at multiple locations downtown, including the old Hall of Records.

Meanwhile, Los Angeles had experienced unforeseen population growth. When the Red Sandstone Courthouse opened in 1891, the county's population was 108,336. When it closed in 1933, the population had surged to 2.38 million, and was expected to increase to around 5.25 million by 1970.

After World War II, the county purchased land for a new courthouse at the intersection of Grand Avenue and Temple Street. Despite the clear need for a permanent courthouse, the site was not greeted with enthusiasm. It was considered inconvenient to the downtown law offices and there was an 80-foot hill on Hill Street. Bunker Hill and the proposed courthouse site would require considerable costly grading.

IN 1951, to design what was described as a “combined courts building,” the county appointed architects John C. Austin, Paul Revere Williams, J.E. (Jess) Stanton, Adrian Wilson, and the Chicago-based firm Austin, Field & Fry, which specialized in large-scale construction and had an office in Los Angeles. The Allied Architects, as they called themselves, were highly regarded and brought decades of experience in designing

The Red Sandstone Courthouse



* Judge, Los Angeles Superior Court

LOS ANGELES COUNTY and its trial court system are remarkable for two very different reasons. The first is their immense size. The second is the surprising continuity of the county courthouse's location. Through more than 150 years the county has used at least eight buildings as its county courthouse. All have been situated within a mile of each other in downtown Los Angeles south of the original plaza in what has for the past 80 years been called the Civic Center.

The massive courthouse that now serves 10 million people a year is within a 10-minute walk of the site of the first county courthouse, the adobe Bella Union Hotel, where court was held in rented rooms from 1850 to 1852. The six other buildings used as the county courthouse were situated within the same precinct:

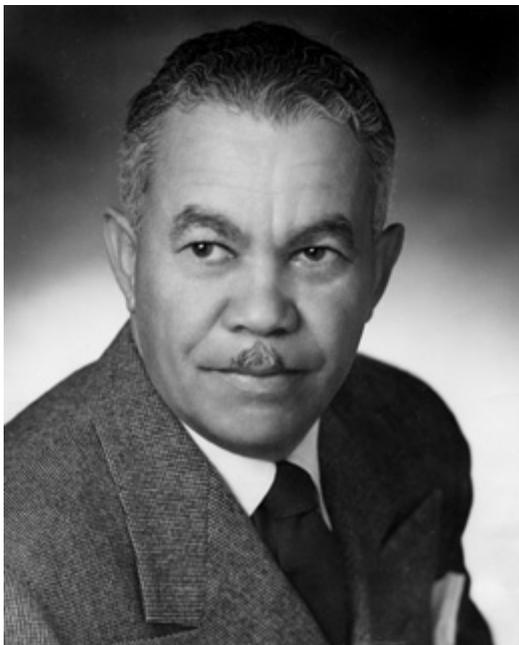


- ◆ From January 1852 until November 1853, the county rented the home of county attorney (and later judge) Benjamin Hayes on Main Street.
- ◆ The Roche (or Rocha) House, an adobe on the corner of Spring and Court Streets, which the county and city jointly purchased from Jonathan “Don

Juan” Temple, was used from November 1853 to March 1860.

- ◆ From 1860 to 1861 the county rented a building, probably a two-story brick house on Main Street, from John Nichols, former mayor of Los Angeles.
- ◆ The Temple Market Block — where City Hall now stands — was rented by the county in May 1861, purchased in 1867 and used until 1891. This was the Clocktower Courthouse, known for its rectangular tower with a clock on all four sides.
- ◆ The Red Sandstone Courthouse on Pound Cake Hill, completed in 1891, was damaged beyond repair by the Long Beach earthquake of 1933 and demolished in 1936. It is now the site of the Foltz Criminal Justice Center, constructed in 1972.
- ◆ The Hall of Records, built next door to the Red Sandstone Courthouse in 1911, was used along with other buildings as the courthouse from 1934 until 1959, when the current courthouse was occupied. It was demolished in 1973.

TEXT & PHOTOS from *Courthouses of California*, Ray McDevitt, editor (2001)



“I HAD HEARD OF ONLY ONE NEGRO ARCHITECT IN AMERICA AND I WAS SURE THIS COUNTRY COULD USE AT LEAST ONE OR TWO MORE.”

— PAUL WILLIAMS

public and private projects. One of the architects, Paul Revere Williams, had by then built a 30-year, well-deserved reputation for excellence and was considered one of the finest architects in Los Angeles.

Williams was born in Los Angeles on February 18, 1894, to parents who had recently relocated from Memphis, Tennessee. Both parents had died by the time he was four, and he and an older brother were placed in separate foster homes.

Los Angeles in the 1890s was a vibrant, multi-ethnic environment in which young Williams thrived. In elementary school, Williams was known as the class artist and spent endless hours drawing. He enrolled in architecture classes in high school. When an advisor questioned his ambition to pursue a career in architecture, Williams recalled later that he had responded, “I had heard of only one Negro architect in America [Booker T. Washington’s son-in-law, William S. Pittman] and I was sure this country could use at least one or two more.”

Williams studied architecture at the Los Angeles School of Art and at the Beaux-Arts Institute of Design. When he was 20, he won a prestigious design award. As he continued to excel in competitions, other architects took notice. In 1916, Williams was hired by noted architect Reginald D. Johnson. Then in 1919 he was hired by another prominent Los Angeles architect, John C.



A CLOCK ON THREE COURTHOUSES

The clock on its eastern facade links the current courthouse to its predecessors. The hands and numerals of the clock were also on the Clocktower Courthouse (ABOVE LEFT), which was used from 1861 to 1891, and the Red Sandstone Courthouse (ABOVE RIGHT), in use from 1891 to 1933. When the Red Sandstone Courthouse was demolished, the clock was preserved and later incorporated into the current courthouse (LEFT), which opened in 1959.

Austin, his future collaborator on the county courthouse. Austin's firm provided Williams with valuable experience and allowed him to design large-scale projects and work in a wider range of architectural styles.

Williams obtained his architect's license in 1921, struck out on his own in 1922, and became the first black member of the American Institute of Architects in 1923. Williams earned a reputation for never settling for less than perfection in his work and for dignity in his relationships with clients and colleagues.

Although quite successful, Williams remained mindful he had to overcome racial prejudice and "devote as much thought and ingenuity to winning an adequate first hearing as to the execution of the detailed drawings." He spent hours learning to draw upside-down as he sat across the table from prospective clients. Williams later wrote that in his early years of practice he was determined to "force white people to consider me as an individual rather than as a member of a race." He added: "Occasionally, I encountered irreconcilables who simply refused to give me a hearing, but, on the whole, I have been treated with an amazing fairness."

HE BECAME AN architect to the stars, with clients including Tyrone Power, Barbara Stanwyck, Lon Chaney, Lucille Ball, and many

others. But the project that propelled Williams into the category of elite architects was Cordhaven, the Beverly Hills estate he designed in 1933 for automobile magnate E.L. Cord. Although Cord lacked formal higher education, he knew and appreciated quality of workmanship and design. Automotive enthusiasts consider the 1936 Cord to be among the most beautiful automobiles ever made.

Williams recalled that Cord telephoned and asked Williams to meet him immediately at a site in Beverly Hills to discuss building a new home. Williams tried to defer the appointment to the following day, but Cord insisted, and they met later that day at the site. Cord told Williams he had already discussed plans with a number of other architects and demanded to know how soon Williams could submit preliminary drawings.

Sensing that Cord valued prompt action, Williams answered, "By four o'clock tomorrow afternoon." Cord thought that was impossible, since every other architect had asked for two or three weeks, but he gave Williams the go-ahead. Williams delivered the preliminary plans as promised. He did not tell Cord he had worked for 22 hours without sleeping or eating. Williams was hired and created Cordhaven, a 32,000-square-foot home with 16 bedrooms and 22 bathrooms. In the 1960s, Cordhaven was torn down



The “symbolic embellishment” that ultimately graced the Grand Avenue and Hill Street elevations of the County Courthouse consists of terra cotta creations by two noted artists. Albert Stewart created the three “Foundations of the Law” figures (ABOVE) on the Grand Avenue side, to represent the legal traditions upon which America was founded. Donal Hood designed the “Justice” sculpture on the Hill Street facade (ABOVE RIGHT). The terra cotta work was manufactured by Gladding McBean at its Lincoln, California, factory.

PHOTOS: LOS ANGELES SUPERIOR COURT



80-foot hill was leveled. Construction of the building began in 1956.

The \$24 million Los Angeles County Courthouse was dedicated on October 31, 1958, and opened for public business at 9 a.m. on January 5, 1959. With 850,000 square feet of space, it was the largest courthouse in the United States. Its entrances featured mosaic tile columns. The marble floors were quarried in Italy and polished in Vermont. White oak paneling lined the 110 courtrooms.

The courthouse included eight large courtrooms, with prominent slabs of Tennessee Rosemont marble on the walls behind each bench. These courtrooms would accommodate cases of great public interest — this was Los Angeles, after all — as well as the presiding judge’s courtroom and chambers and the headquarters of the various court departments.

In 2002 the courthouse was named for California Supreme Court Justice Stanley Mosk. It remains, more than a half century after it opened, the largest courthouse in the United States. ☆

and the property subdivided into 13 parcels. It is now a cul-de-sac called Cord Circle.

By the time of the Los Angeles County Courthouse project two decades later, Williams’ portfolio included noted residential, commercial, and public buildings. Williams was involved with approximately 3,000 projects during his career, which spanned from the 1920s through the 1970s. As one of the designers of the Los Angeles International Airport, with its iconic space-age LAX Theme Building, Williams helped shape the growth and look of Los Angeles. He retired in 1973 and died in 1980 at the age of 85.

WILLIAMS BELIEVED PUBLIC buildings should be conservative in design. He and his colleagues adhered to that principle when designing the Los Angeles County Courthouse. When the architects submitted the preliminary plans in October 1952, they described the courthouse design as a “conservative version of contemporary architecture.” The approaches and entrances were designed in “a manner expressing the dignity requisite in a courthouse, the principal embellishment consisting of symbolic structure.”

Chief Justice Earl Warren was the honored guest at the groundbreaking ceremony on March 26, 1954, at the once-controversial site. The formidable grading and excavation project commenced and, ultimately, the

SOURCES

The Paul Revere Williams Project, Art Museum at the University of Memphis, Tennessee.

Karen E. Hudson (with David Gebhard), *Paul R. Williams, Architect* (1993).

Paul R. Williams, “I Am a Negro,” in *The American Magazine* (July 1937).

Paul R. Williams, “If I Were Young Today,” in *Ebony* (Aug. 1963).

Succession in the California Supreme Court

FROM 1880, WHEN THE SEVEN-MEMBER COURT FIRST CONVENEED, TO PRESENT

BY FRANCES M. JONES*

WITH HER RETIREMENT on April 5, 2014, Justice Joyce L. Kennard became the 83rd member to leave the California Supreme Court since 1880, when the seven-member court first convened.¹ Of those justices, 26 retired, 16 resigned, 21 died in office, and 20 left at the expiration of their terms, either by choice or because of the outcome of an election.²

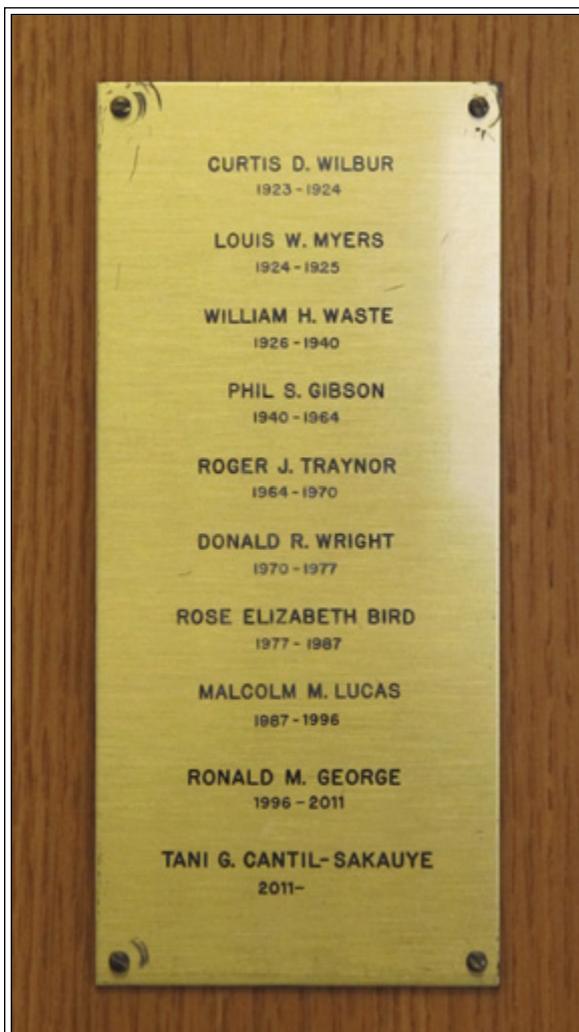
In the chambers formerly occupied by Justice Kennard and in the chambers occupied by the six sitting justices, brass plaques commemorate succession in occupancy, listing the occupants of each chambers since 1923, when what is now the Earl Warren Building in San Francisco became the Supreme Court's headquarters.

Succession in occupancy and succession in office, although similar, are not identical, except for the office of the Chief Justice. Succession in office and in occupancy of Chief Justices is detailed in the table below.

TABLE 1: CALIFORNIA'S CHIEF JUSTICES, 1880 TO PRESENT

ROBERT F. MORRISON ³	NOVEMBER 1879 – MARCH 1887
NILES SEARLS	APRIL 1887 – JANUARY 1889
WILLIAM H. BEATTY	JANUARY 1889 – AUGUST 1914
MATT I. SULLIVAN	AUGUST 1914 – JANUARY 1915
FRANK M. ANGELLOTTI ⁴	JANUARY 1915 – NOVEMBER 1921
LUCIEN SHAW	NOVEMBER 1921 – JANUARY 1923
CURTIS D. WILBUR ⁵	JANUARY 1923 – MARCH 1924
LOUIS W. MYERS	MARCH 1924 – DECEMBER 1925
WILLIAM H. WASTE	JANUARY 1926 – JUNE 1940
PHIL S. GIBSON ⁶	JUNE 1940 – AUGUST 1964
ROGER J. TRAYNOR	SEPTEMBER 1964 – FEBRUARY 1970
DONALD R. WRIGHT	APRIL 1970 – FEBRUARY 1977
ROSE ELIZABETH BIRD	MARCH 1977 – JANUARY 1987
MALCOLM M. LUCAS	FEBRUARY 1987 – APRIL 1996
RONALD M. GEORGE	MAY 1996 – JANUARY 2011
TANI G. CANTIL-SAKAUYE	JANUARY 2011 – PRESENT

* Director, Library Services, California Judicial Center Library. Martha R. Noble and Noah D. Pollaczek provided invaluable assistance in the preparation of this article.



Succession of Chief Justices since 1923, when the Court occupied its San Francisco headquarters, is detailed on a plaque in the chambers of the Chief Justice.

PHOTO: CALIFORNIA JUDICIAL CENTER LIBRARY

Tracing the succession of Associate Justices since 1880 produces similar lists. For most years since 1880, volumes of *California Reports* provide clear and reliable data for determining succession in office. Some volumes of the First Series do not provide succession data, perhaps because the *California Blue Books* of the period recited succession in considerable detail in chapters about the judiciary.⁷

Tables 2–7 illustrate succession in office, beginning with Justice E. W. McKinstry (TABLE 2), the only one of

the seven justices on the 1880 court who held the office before the 1879 election.⁸

TABLE 2

E. W. MCKINSTRY	JANUARY 1880 – OCTOBER 1888
JOHN D. WORKS	OCTOBER 1888 – JANUARY 1891
RALPH C. HARRISON	JANUARY 1891 – JANUARY 1903
FRANK M. ANGELLOTTI ⁹	JANUARY 1903 – JANUARY 1915
WILLIAM P. LAWLOR	JANUARY 1915 – JULY 1926
JEREMIAH F. SULLIVAN	NOVEMBER 1926 – JANUARY 1927
WILLIAM H. LANGDON	JANUARY 1927 – AUGUST 1939
PHIL S. GIBSON	SEPTEMBER 1939 – JUNE 1940
ROGER J. TRAYNOR	AUGUST 1940 – SEPTEMBER 1964
STANLEY MOSK	SEPTEMBER 1964 – JUNE 2001
CARLOS R. MORENO	OCTOBER 2001 – FEBRUARY 2011
GOODWIN LIU	SEPTEMBER 2011 – PRESENT

Justices Milton H. Myrick and Samuel Bell McKee left office at the close of their eight-year terms. Justice Myrick did not seek re-election and Justice McKee failed to win the Democratic Party nomination to succeed himself.¹⁰ It is reported that Justices A. Van R. Paterson and Thomas B. McFarland “succeeded Hon. S. B. McKee and Hon. M. H. Myrick, whose terms of office expired January 3, 1887.”¹¹ Based on this ordering, Justice Paterson follows Justice McKee (TABLE 3) and Justice McFarland follows Justice Myrick (TABLE 4) in the orders of succession.

TABLE 3

SAMUEL BELL MCKEE	JANUARY 1880 – DECEMBER 1887
A. VAN R. PATERSON	JANUARY 1887 – APRIL 1894
W. C. VAN FLEET	APRIL 1894 – JANUARY 1899
WALTER VAN DYKE	JANUARY 1899 – DECEMBER 1905
M. C. SLOSS	FEBRUARY 1906 – FEBRUARY 1919
WARREN OLNEY, JR.	MARCH 1919 – JULY 1921
CHARLES A. SHURTLEFF	JULY 1921 – DECEMBER 1922
TERRY W. WARD	DECEMBER 1922 – JANUARY 1923
EMMET SEAWELL	JANUARY 1923 – JULY 1939
JESSE W. CARTER	SEPTEMBER 1939 – MARCH 1959
RAYMOND E. PETERS	MARCH 1959 – JANUARY 1973
WILLIAM P. CLARK, JR.	MARCH 1973 – MARCH 1981
ALLEN E. BROUSSARD	JULY 1981 – AUGUST 1991
RONALD M. GEORGE ¹²	SEPTEMBER 1991 – MAY 1996
JANICE R. BROWN	MAY 1996 – JUNE 2005
CAROL A. CORRIGAN	JANUARY 2006 – PRESENT

TABLE 4

MILTON H. MYRICK	JANUARY 1880 – JANUARY 1887
THOMAS B. MCFARLAND	JANUARY 1887 – SEPTEMBER 1908
HENRY A. MELVIN	SEPTEMBER 1908 – APRIL 1920
WILLIAM A. SLOANE	MAY 1920 – DECEMBER 1922
FRANK H. KERRIGAN	JANUARY 1923 – FEBRUARY 1924
JOHN E. RICHARDS	FEBRUARY 1924 – JUNE 1932
IRA F. THOMPSON	DECEMBER 1932 – AUGUST 1937
FREDERICK W. HOUSER	SEPTEMBER 1937 – OCTOBER 1942
B. REY SCHAUER	DECEMBER 1942 – SEPTEMBER 1964
LOUIS H. BURKE	NOVEMBER 1964 – NOVEMBER 1974
FRANK K. RICHARDSON	DECEMBER 1974 – DECEMBER 1983
MALCOLM M. LUCAS ¹³	APRIL 1984 – FEBRUARY 1987
JOHN A. ARGUELLES	MARCH 1987 – MARCH 1989
JOYCE L. KENNARD	APRIL 1989 – APRIL 2014

The order of succession for Justice Ross (TABLE 5) is clearly stated in *California Reports*.

TABLE 5

ERSKINE M. ROSS	JANUARY 1880 – OCTOBER 1886
JACKSON TEMPLE	DECEMBER 1886 – JUNE 1889
CHARLES N. FOX	JUNE 1889 – JANUARY 1891
JOHN J. DE HAVEN	JANUARY 1891 – JANUARY 1895
FREDERICK W. HENSHAW	JANUARY 1895 – JANUARY 1918
CURTIS D. WILBUR ¹⁴	JANUARY 1918 – JANUARY 1923
LOUIS W. MYERS ¹⁵	JANUARY 1923 – MARCH 1924
JOHN W. SHENK	APRIL 1924 – AUGUST 1959
THOMAS P. WHITE	AUGUST 1959 – OCTOBER 1962
PAUL PEEK	DECEMBER 1962 – DECEMBER 1966
RAYMOND L. SULLIVAN	DECEMBER 1966 – JANUARY 1977
WILEY W. MANUEL	MARCH 1977 – JANUARY 1981
OTTO M. KAUS	JULY 1981 – OCTOBER 1985
EDWARD A. PANELLI	DECEMBER 1985 – JANUARY 1994
KATHRYN M. WERDEGAR	JUNE 1994 – PRESENT

For the seats beginning with Justices John R. Sharpstein (TABLE 6) and James D. Thornton (TABLE 7), as well as Chief Justice Robert F. Morrison, the order of succession includes members of the court whose terms ended because they were not retained in the 1986 election: Chief Justice Rose Elizabeth Bird and Justices Joseph R. Grodin and Cruz Reynoso. On March 18, 1987, oaths of office were administered to three new members of the court. Justice John A. Arguelles

succeeded Justice Malcolm M. Lucas on his elevation to Chief Justice; Justice David N. Eagleson succeeded Justice Grodin; and Justice Marcus M. Kaufman succeeded Justice Reynoso. Their order of succession was determined by lot.¹⁶

TABLE 6

JOHN R. SHARPSTEIN	JANUARY 1880 – DECEMBER 1892
WILLIAM F. FITZGERALD	JANUARY 1893 – JANUARY 1895
JACKSON TEMPLE	JANUARY 1895 – DECEMBER 1902
WILLIAM G. LORIGAN	JANUARY 1903 – JANUARY 1919
THOMAS J. LENNON	JANUARY 1919 – AUGUST 1926
FRANK G. FINLAYSON	OCTOBER 1926 – DECEMBER 1926
JOHN W. PRESTON	DECEMBER 1926 – OCTOBER 1935
NATHANIEL P. CONREY	OCTOBER 1935 – NOVEMBER 1936
DOUGLAS L. EDMONDS	NOVEMBER 1936 – DECEMBER 1955
MARSHALL F. McCOMB	JANUARY 1956 – MAY 1977
FRANK C. NEWMAN	JULY 1977 – DECEMBER 1982
JOSEPH R. GRODIN	DECEMBER 1982 – JANUARY 1987
DAVID N. EAGLESON	MARCH 1987 – JANUARY 1991
MARVIN R. BAXTER	JANUARY 1991 – PRESENT

TABLE 7

JAMES D. THORNTON	JANUARY 1880 – JANUARY 1891
CHARLES H. GAROUTTE	JANUARY 1891 – JANUARY 1903
LUCIEN SHAW	JANUARY 1903 – NOVEMBER 1921
WILLIAM H. WASTE	NOVEMBER 1921 – JANUARY 1926
JESSE W. CURTIS	JANUARY 1926 – JANUARY 1945
HOMER R. SPENCE	JANUARY 1945 – JUNE 1960
MAURICE T. DOOLING, JR.	JUNE 1960 – JUNE 1962
MATHEW O. TOBRINER	JULY 1962 – JANUARY 1982
CRUZ REYNOSO	FEBRUARY 1982 – JANUARY 1987
MARCUS M. KAUFMAN	MARCH 1987 – JANUARY 1990
ARMAND ARABIAN	MARCH 1990 – FEBRUARY 1996
MING W. CHIN	MARCH 1996 – PRESENT

Differences in order of succession and order of occupancy occur for each of the Associate Justices. The differences occur from 1923 to 1966, suggesting that justices appointed after 1966 may have consistently occupied the chambers of their immediate predecessors. It is also possible that justices moved from one chambers to another. Justice Paul Peek, for example, is listed on two plaques, those in chambers currently occupied by Justice Kathryn M. Werdegar and formerly occupied by Justice Kennard.

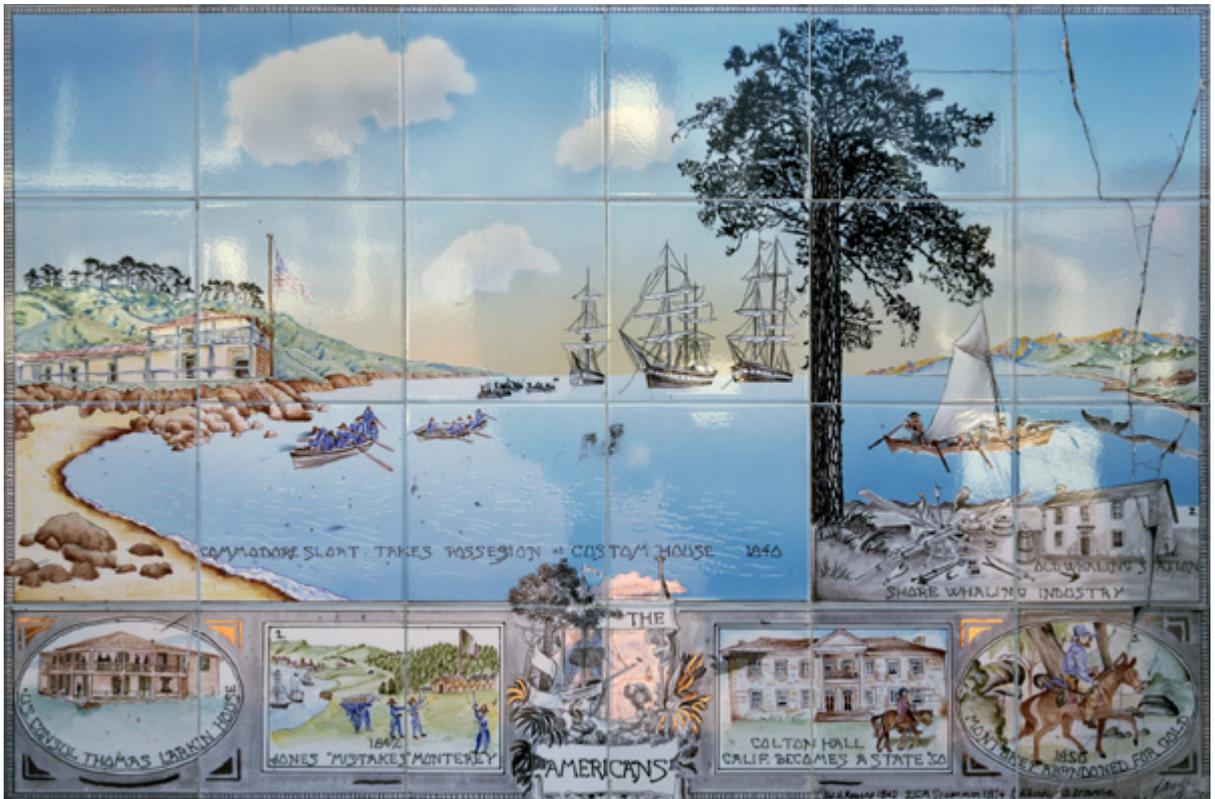
In *Chief*, his recently published oral history, former Chief Justice Ronald M. George commented:

Even aside from the advent of a new chief, there is something about a change in the composition of a Supreme Court — just the change in one position — that changes in a perhaps inchoate way the dynamics, the chemistry, the atmosphere at the court. If you take one of the seven parts and change it, even with what might be a like-minded part, it's a different court.¹⁷

When Justice Kennard's successor is sworn in, the name of the court's newest justice — its 115th — will be added to the plaque in his or her chambers and the roll call of California's judicial history will continue. ★

ENDNOTES

1. Between 1850, when the California Supreme Court was created, and the beginning of the seven-member court in 1880, 25 justices served, first in panels of three; then, as of 1864, in panels of five. *California Blue Book*, 1913-1915, p. 432. Succession prior to 1880 requires additional research.
2. Justice Jackson Temple resigned in 1889, then was appointed for another term that began in 1895 and ended with his death in 1902; only his death is included in these totals. For the majority of justices, bound volumes of *California Reports* and various editions of the *California Blue Book* supply appointment or oath of office dates and dates of resignation, retirement, or death. Dates were aggregated and analyzed to provide background for this article.
3. 54 Cal., p. iii; 68 Cal., p. iii.
4. 187 Cal., p. iii.
5. 190 Cal., p. iii; 193 Cal., p. iii.
6. 15 Cal.2d, p. iii; 61 Cal.2d, p. iii.
7. See, e.g., *California Blue Book, 1913-1915, supra*, pp. 431-435.
8. *Id.* at p. 433.
9. Edward J. Johnson, *History of the Supreme Court Justices of California, 1850-1950* (1963), vol. II, p. 5.
10. *Id.*, vol. I, p. 138.
11. *California Blue Book, supra*, p. 434.
12. 13 Cal.4th, p. iii.
13. 43 Cal.3d, p. iii.
14. 177 Cal., p. iii; 190 Cal., p. iii.
15. 190 Cal., p. iii; 193 Cal., p. iii.
16. Jacqueline R. Braitman & Gerald F. Uelmen, *Justice Stanley Mosk: A Life at the Center of California Politics and Justice* (2013), p. 224.
17. Ronald M. George, *Chief: The Quest for Justice in California* (2013), p. 334.



A tile mural in the Custom House Plaza in Monterey depicts events in the city's early history.
 PHOTO: LIBRARY OF CONGRESS, PRINTS AND PHOTOGRAPHS DIVISION, CAROL M. HIGHSMITH ARCHIVE

The First Jury Trial in California

IN 1846 IN MONTEREY, A VERY PUBLIC DISPLAY OF AMERICAN JUSTICE

BY JUDGE BARRY GOODE*

SOMETIMES SEEMINGLY BANAL events can give rise to cases of historic importance. So it was with the first jury trial in California.**

It was a simple case of conversion. The plaintiff, Isaac Graham, claimed that the defendant, Charles Roussillon, sold some of Graham's lumber and pocketed the cash. But there was nothing simple about the heated, historic context in which the case was heard on September 4, 1846.

On July 7, 1846, U.S. Navy troops landed in Monterey and seized the town, commencing the Mexican War in Alta California. Expatriate English, American, Scot,

and French — as well as the Mexicans and Californios in the Monterey Bay area — were not entirely surprised. They had been discussing for some time which of the naval powers would take Alta California from the weak and divided government in Mexico City. Many looked forward to a new regime that would bring greater security to commerce and a proper legal system for dealing with commercial disputes.

Commodore John Drake Sloat originally asked the two Mexican alcaldes of Monterey to remain in their positions, but they declined. So he appointed two navy officers — a surgeon and a purser — to the posts. About a week later, Commodore Robert F. Stockton arrived on the *Congress*. Because Sloat was ready to retire, Stockton assumed command. He proclaimed martial law.

Stockton was preparing to sail south to chase the Mexican army. He needed the surgeon, and possibly the purser, so he looked around and decided that his chaplain was suitable for the post of alcalde. He put the minister, Walter Colton, ashore with instructions to run the town.

* Presiding Judge, Contra Costa Superior Court

** Historians cite this as the first jury trial, but the full story is more complex — and more interesting. See “The American Conquest of Alta California and the Instinct for Justice: The ‘First’ Jury Trial in California” in the 2013 issue of *California History*. (http://www.californiahistoricalsociety.org/publications/pdf/California_History_vol90_no2.pdf).

Colton was at a serious disadvantage. He was a Congregationalist cleric in a profoundly Catholic community. He spoke no Spanish and knew nothing of the local customs. Yet he became the face of the new government the elite of Monterey had been awaiting.

Immediately he was confronted with two tests. The first was the case brought by Isaac Graham, one of the nastiest men in Alta California. Graham was a fur trapper and hunter who deserted his family in Tennessee and came to California in the mid-1830s. He settled in a small community north of what is now Salinas and opened a distillery, which soon became a gathering spot for deserters and rough-hewn men living hand to mouth. He meddled in Mexican politics, and in 1840 was arrested and sent to Mexico City. Acquitted of the charges by a central government unfriendly to the local Alta California authorities who arrested Graham, he returned and settled in the Santa Cruz Mountains, where he established the first water-powered sawmill. He produced boards and shingles he carted down to the beach for sale to passing ships.

His neighbor was Carlos Roussillon, a Frenchman, who was also his competitor in the lumber trade. Both men laid their inventory on the Santa Cruz beach about 20 yards apart. Roussillon twice sold Graham's lumber, Graham charged — once in 1845 and again in 1846 — and kept the proceeds. As Colton explained their dispute: "The case was one involving property on the one side, and integrity of character on the other. Its merits had been pretty widely discussed, and had called forth unusual interest." Graham was concerned with his alleged property, Roussillon

felt his good name had been besmirched, and everyone in the community was aware of the case. It was a hot potato.

Now that the Americans had taken Monterey, Graham was determined to put the new authorities to the test: Had the navy really brought American justice with it?

Colton's other problem was of Stockton's making. After Colton had been alcalde for about three weeks, Stockton thought he had subdued the Mexican army in Southern California and, in a burst of democratic spirit, ordered that elections be held in Monterey for the position of alcalde. It seems likely that he had previously told Colton that he would do that at some point, and that Colton should do what he could to win the election.

Here then was Colton, a stranger in a new town, trying to figure out how to maintain order, facing a controversial case and an election in which he was to

seek office. In addition, the elite of the community were watching closely to see just what American justice was all about. Would it really be different from the system of mediation and conciliation that had characterized Mexican dispute resolution?

Colton was up to both tests. He set the case for trial and decided to empanel a jury, making jurors of most of the men who were running against him for the position of alcalde. With that masterstroke, he would not have to render a decision by himself, nor would he be the only candidate to suffer the political consequences of the outcome of the case.

The trial took the better part of the day. When it was over, the jury rendered a verdict that tracked Roussillon's position exactly. Although Graham recovered a small verdict, it was in the amount that Roussillon had already agreed was owed due to offsetting mistakes made by both sides in the handling of the lumber. Graham was assessed costs; as a result, he was a net loser. Roussillon's reputation was vindicated.

Colton summarized the proceedings: "The inhabitants who witnessed the trial said it was what they liked — that there could be no bribery in it — that the opinion of 12 honest men should set the case forever at rest. . . . If there is anything on earth beside religion for which I would die, it is the right of trial by jury."

The election was held three days later. Although Colton received only 68 votes out of 368 cast, he won by three votes, narrowly edging out the only candidate who was not on the jury. The candidates who served on the jury split a total of 165 votes.

Colton went on to serve as alcalde, with considerable distinction, for three years. However, his statement declaring his devotion to trial by jury equal to his religious commitment was a bit of an exaggeration. For the next 16 months, he seems not to have convened another jury even as he tried many alleged horse thieves, cattle rustlers, drunks, and other miscreants.

Still, *Graham v. Roussillon* was an early, very public display of American justice. Although no one was sure what law governed in the newly conquered territory, *Graham* pointed the way to the future. It gave the residents of Alta California hope that liberty — as Americans saw it — would become the organizing principle of their community. Real change was coming, even though statehood and a constitutional right to a jury were still four years in the future. ★



**"I EMPANELLED TODAY
THE FIRST JURY
EVER SUMMONED IN
CALIFORNIA."**

— WALTER COLTON
SEPTEMBER 4, 1846

Trademarks and Washing Powder in Old San Francisco

CALIFORNIA LAW WAS THE FIRST TO ALLOW REGISTRATION OF TRADEMARKS

BY SEBASTIAN A. NELSON*

FOR 150 YEARS, California law has allowed for the registration of trademarks. Chapter 129 of the 1863 Statutes allows individuals to register trademarks with the Secretary of State, who “shall keep a record of all trade marks or names filed in his office, with the date when filed, and the name of claimant, for public examination.” This was not the first law concerning trademarks in the United States, or even in California. It was, however, the first law anywhere in the country allowing for the registration of trademarks, preceding all other states and even the federal government, which did not begin trademark registration until 1870.¹ The 1863 law also provides that any person using a “trade mark or name of another which has been filed . . . with the intent to deceive or defraud . . . shall be guilty of a misdemeanor.”

Several years after the law was enacted, the California Supreme Court dealt with trademarks in the case of *Falkinburg v. Lucy*. Plaintiffs A. B. Falkinburg and R. P. Thomas operated the Standard Soap Company in San Francisco selling “concentrated erasive washing powder.” A trademark for their washing powder was registered with the Secretary of State in 1865 by Thomas and J. P. Cogswell. Falkinburg bought out Cogswell’s interest in the company the following year. Their trademark consisted of a label featuring an image of laundresses with the words “washing powder” and “saves labor and time,” along with directions for preparation and washing and a guarantee not to rot or injure clothes. According to the court:

The plaintiffs’ label commences with a highly colored picture, representing a washing-room, with tubs, baskets, clothes-lines, etc. There are two tubs painted yellow, at each of which stands a female of remarkably muscular development, with arms uncovered, and clad in a red dress, which is tucked up at the sides, exposing to view a red petticoat

with three black stripes running around it near the lower extremity. Each is apparently actively engaged in washing, and clouds of steam are gracefully rolling up from the tubs and dispersing along the ceiling. In the background is extended across the room a clothes-line, upon which are suspended stockings and other undergarments, which have evidently just been put to use in testing the cleansing properties of the plaintiffs’ washing powder. To

the left of the washerwomen stands a lady in a yellow bonnet, red dress, green Congress gaiters, and hoops of ample circumference; upon her left arm is suspended a yellow basket; and in her left hand, which is encased in a red glove, is held a red parasol; while the right hand, which is encased in a green glove, is gracefully extended towards the nearest washerwoman in an attitude of earnest entreaty. . . . The design



Detail of Exhibit A, *Falkinburg v. Lucy*

IMAGE: CALIFORNIA STATE ARCHIVES

is good, for it is eminently suggestive of the character of the plaintiffs’ goods.²

The plaintiffs alleged that defendants George R. Lucy and Charles Hymes in 1866 began selling an inferior brand of washing powder in San Francisco featuring a label intended to imitate their own trademark. They filed a complaint against Lucy and Hymes in the District Court of the Twelfth Judicial District. The label used by the defendants to advertise and sell their own “excelsior washing powder” features an image of a mountain climber with the words “washing powder” and “saves labor and time,” along with directions for preparation and washing and a guarantee not to rot or injure clothes. The court described the mountain climber as:

an enthusiastic young man, with head uncovered, and hair blown out behind by what one, judging of causes by their effects, might suppose to be a strong breeze. He is dressed in a blouse, tights and top-boots; in his right hand he bears a banner,

* Court Records Archivist, California State Archives

upon whose folds, as they flutter in the breeze, appears, in large type, the word “Excelsior.” His left arm is extended upward and pointing toward the summit of a high and precipitous mountain, which towers in front of him, and which, as his bearing indicates, he proposes to climb.³

The two rivals’ labels both included the words “washing powder” and “saves labor and time,” plus a guarantee not to rot or injure clothes and identical directions for preparation and use. They differed, however, in their graphics, the names of the products and the businesses’ street addresses. The District Court agreed with the plaintiffs, and on September 8, 1866, the court issued an injunction against Lucy and Hymes ordering them to refrain and desist from selling their product.

The decision was appealed to the California Supreme Court. Lucy and Hymes argued in their defense that their brand of washing powder was superior to that of the plaintiffs, rather than being a poor imitation, and that they had been manufacturing it longer. They denied that their label was intended to mislead anyone into thinking that they were actually purchasing the competition’s washing powder. They further argued that “by no strained construction can

‘excelsior’ be tortured into ‘concentrated, erasive’ or ‘Lucy and Hymes’ into ‘Standard Soap Company’; and it would take a poet’s eye, rolling in a phrensy sufficiently fine to qualify him for Stockton [the state’s hospital for the insane], to find one of the plaintiffs’ washerwomen.”⁴ Falkinburg and Thomas’s argument rested in part on the similarities between the written portions of the two labels, including the directions for preparation and washing. They claimed that washerwomen in mid-19th century America were just literate enough to be misled by these similarities and into thinking that both brands were one and the same.

The class of people — laundresses and the like — who form the bulk of the consumers of the plaintiffs’ compound are not supposed to possess more than the most slender rudiments of knowledge in the matter of labels. There was a time, within the century, when one could safely predicate of them as a mass, an absence of knowledge of reading . . . the advance of book knowledge has destroyed, to a

certain extent, the vivid force of hieroglyphic distinctions . . . the washerwoman of to-day has some slight hold upon the world of letters; or if she has not in person, her ignorance is helped by the child at her side . . . the indirect effect of this intellectual acquisition is, that the eye loses its readiness to seize on the minutiae of pictures and colors.⁵

Ultimately the Supreme Court decided for defendants, Lucy and Hymes, and ordered that the injunction be dissolved. Justice Silas Sanderson held in the majority opinion that a label is not entitled to the same protection as a trademark. He also wrote:

No one could mistake the defendants’ young man in a blouse and tights, climbing a mountain with a banner in his hand, for the plaintiffs’ washer-women in red petticoats, with their arms in a washtub and their heads enveloped in clouds of steam . . . or at least only such persons as no amount of legislative care could protect from blunders and mistakes.⁶

These trademarks and labels admitted as exhibits at trial, as well as thousands of other trademarks filed with the Secretary of State, survive today as part of the collections of the California State Archives, a division of the Secretary

of State’s Office. Many of these historic trademarks and labels are currently being featured in a free exhibit in the State Archives building in Sacramento. Visit <http://www.sos.ca.gov/archives/exhibits> for more information. ★



Detail of Exhibit B, *Falkinburg v. Lucy*

IMAGE: CALIFORNIA STATE ARCHIVES

ENDNOTES

1. Paul Duguid et al., “Reading Registrations: An Overview of 100 Years of Trademark Registrations in France, the United Kingdom, and the United States” in *Trademarks, Brands, and Competitiveness*, (New York: Routledge, 2010), p. 12.
2. *Falkinburg v. Lucy* (1868) 35 Cal. 52 at pp. 61–62.
3. *Id.* at p. 63.
4. Appellants’ Brief, *Falkinburg v. Lucy*, WPA No. 16385, Supreme Court of California Records, California State Archives, Office of the Secretary of State, Sacramento.
5. Respondents’ Brief, *Ibid.*
6. *Falkinburg v. Lucy* at pp. 66–67.

Historic Photographs in the Corridors of the Supreme Court

DORMITORY BARRACKS IN THE SAN FRANCISCO CIVIC CENTER DURING WORLD WAR II

THE SHADOWS OF war descended on San Francisco and by spring of 1941 the newspapers reported daily disasters from Europe and the Pacific. Although San Franciscans carried on in the light-hearted spirit of the previous two years, the military bases in the Bay Area were preparing for the possibility of war, with some 100,000 servicemen on active duty in northern California. Colonel Charles C. Commandy, commander of the 30th Infantry Division stationed at the Presidio, suggested to W. R. Hearst,

publisher of the *San Francisco Examiner*, that a hospitality center was needed in San Francisco to assist and entertain servicemen on leave. Hearst had the *Examiner* take on this project as its cause and contacted Mayor Angelo Rossi, who pledged the Larkin Street side of Marshall Square at Civic Center for the project. The USO Hospitality House officially opened on August 9, 1941.

To accommodate the thousands of servicemen visiting the city and the Hospitality House, it was suggested that dormitory barracks be constructed in Civic Center Plaza. Robert McCarthy, a local home builder, offered to construct two-story prefabricated dormitory buildings, which he assembled in two days in 1943. A total of nine of these buildings were constructed in Civic Center Plaza, offering 1,600 dormitory beds for 50 cents each per night. Hospitality House was closed at the end of 1946. The dormitory buildings were removed as well, and the plaza returned to its previous configuration and use.

— JAMES W. HASS, “Civic Center in the Post-War Years,” in *The Argonaut* (Spring 2012). ☆



CIVIC CENTER, 1924, AFTER THE STATE BUILDING OPENED



CIVIC CENTER, JANUARY 1944 — DORMITORY BARRACKS

The seagulls and pigeons have never left. 350 McAllister Street, housing the California Supreme Court, is in the background.

PHOTOS: SAN FRANCISCO HISTORY CENTER, SAN FRANCISCO PUBLIC LIBRARY



DORMITORY BARRACKS IN CIVIC CENTER PLAZA, SEPTEMBER 1943



CIVIC CENTER, DECEMBER 1946 — REMOVAL OF DORMITORY BARRACKS
With 350 McAllister Street, housing the California Supreme Court, in the background.

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COVER: STATUE OF JUSTICE STANLEY MOSK
AT THE STANLEY MOSK LIBRARY & COURTS
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PHOTO: CALIFORNIA JUDICIAL CENTER LIBRARY

The Longest-Serving Justice
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