

Transitions

BY KENT L. RICHLAND

My last newsletter column – in which I recounted the history of the creation of California’s Courts of Appeal in recognition of their one-hundredth anniversary this year – prompted a letter from former Board of Directors member Judge William A. McKinstry of the Alameda Superior Court. Judge McKinstry reminded me that our appellate judiciary’s passage from one to two tiers was not quite as smooth as my abbreviated historical summary may have suggested.

As recounted in detail in articles by Judge McKinstry and his daughter Bridget in the CSCHS’s August and December 1998 *Newsletter* issues, from 1885 until the Courts of Appeal were established in 1904, California experimented with a controversial solution to the Supreme Court’s burgeoning caseload – the California Commission. Composed first of three and later five “persons of legal learning and personal worth” whose salaries equaled those of the justices of the Supreme Court, the Commission was authorized to “aid and assist” the Court “in the disposition of the numerous cases now pending in said court undetermined.” (1885 *Stats.*, p. 101.) This meant that, in a substantial number of cases, the commissioners reviewed the briefs and record and prepared a written opinion that was sent to the Supreme Court with a recommended disposition.

Although the Supreme Court would sometimes reject the commissioners’ recommendations, frequently the Court would simply adopt their opinions with a notation to that effect. This practice led to criticism that the commissioners were improperly exercising judicial power. (Interestingly, in 1975, a sitting Court of Appeal justice articulated a similar criticism based on what he saw as the appellate courts’ over-reliance on career staff in the preparation of opinions. [Thompson, “One Judge and No Judge Appellate Decisions,” *Cal. State Bar J.* 476 (November/December 1975)].)

After the Indiana Supreme Court held a similar commission arrangement in that state unconstitutional, a challenge was leveled against the California Commission. In *People v. Hayne*, ’83 Cal. 111, 118 (1890), the Supreme Court rejected the claim that the commissioners unconstitutionally wielded judicial powers, assuring the citizens of California that the Commission’s “reports and opinions are neither decisions nor infallible guides, but they are serviceable instrumentalities to aid us in performing our functions.” Of course, as we know, despite surviving the constitutional challenge, the Commission itself survived only until 1904, when the Courts of

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A Twist, a Turn, and Here I Am

BY JIM YOPPOLO

A while ago I received an e-mail from my lifelong friend Dorothy Callaghan. The simple question – “What are you up to these days?” – resulted in my explaining how I came to be associated with the California Supreme Court Historical Society. This is what I told Dorothy.

Nearly three years ago, another friend and I were catching up after losing touch for some time. That friend is Donna Schuele, my co-director at the CSCHS. At the time, I had just returned to Los Angeles after spending over a year with family and friends in Ohio. In another life, my career was rooted in food and wine. I spent several years at Wally’s in West Los Angeles and had become known as “Jim Y.” in the world of food and wine. I then held the position of Culinary Expert at Bloomingdale’s and even gave radio a shot as a restaurant critic on KABC.

In the midst of all this, I started volunteering for nonprofit organizations and discovered a new niche. I became a corporate sponsor at Aid For AIDS. Within a week, they asked if I would join them as an employee in their Development department and I said yes. After a couple of years, I went back to volunteering, this time with LA Shanti. In 1998 I was named “Development Volunteer of the Year” after two years of pro bono work helping grow that organization’s annual wine auction. I found it amazing what you can learn about nonprofits when you plunge into the quagmire known simply as hard work!

Upon my return to Los Angeles, Donna learned that, besides my experience in the food and wine industry, I’d also developed an expertise in the nonprofit sector. She immediately put me to work for the CSCHS. When I first became associated with the Society, I was giving advice, cleaning up databases, organizing receptions, and coordinating mailings for the Society. Donna and I worked part-time from home offices. Things sure have changed!

When, under the guidance of Justice Elwood Lui and Kent Richland, the CSCHS was placed on the California State Bar’s fee statement as a voluntary donation, an immediate need arose for someone to tend to the daily operations of the Society. As time went on, it became clear that the most efficient way to operate the Society was to divide up areas of responsibility. Last spring, the Board of Directors voted to reorganize the management of the Society into a co-directorship.

I was appointed Director of Operations, Finance, and Administration, while

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Foreshadowing *Brown v. Board*

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he supported the internment of Japanese Americans in war camps – a decision he said he “deeply regretted” later in his life.

By the time McCormick ruled in February 1946, many Americans had begun questioning the disparity between the ideals of equality and democracy that Americans trumpeted during wartime and the nation’s practices at home. “There had been a lot of discussion and raised awareness of American values of democracy,” Gross said. “We didn’t want to be like the Germans and separate people arbitrarily by groups. A lot of the rhetoric in the case was that this kind of segregation [in Orange County public schools] creates that feeling.”

As a media-savvy governor, Warren must have been aware of the debate surrounding the *Mendez* case, which made headlines in major newspapers throughout the state. As a lawyer, he closely followed McCormick’s February 1946 decision, legal experts now say. His close ally, California Attorney General Robert Kenney, submitted an amicus brief to the Ninth Circuit, chastising the Westminster school board’s practice of segregation.

Almost immediately after McCormick’s decision, Warren worked to repeal California’s two segregation statutes. The legislative repeal, known as the Anderson Bill, was sent to the state Assembly in January 1947 and approved by lawmakers in June 1947, less than two months after the appellate court upheld the *Mendez* ruling.

Although *Mendez* was not formally cited in *Brown*, it nevertheless had a far-reaching effect on the case. David Marcus turned down an invitation from Marshall to participate in the *Brown* case because of his solo practice in Los Angeles, his granddaughter said. But he sent the NAACP all his files, she said.

Orange County Superior Court Judge Frederick Aguirre said Warren’s opinion in *Brown* closely mirrored many key passages in McCormick’s *Mendez* decision. Both rulings hold that children’s education is hampered by segregation, that segregated facilities are necessarily unequal, and that children must have equal opportunity in education.

But the lasting legacy of *Mendez v. Westminster* is not just its impact on *Brown v. Board of Education*. It illustrates how a group of socially conscious lawyers, judges, and politicians could band together to overturn bad law and bring about social justice, legal experts said.

Observers speculate, however, on whether, with some adjustments, *Mendez* could have been the vehicle to abolish de jure segregation nationwide seven

years before *Brown* put it away for good. “The question always is, would this have been the opportunity for the court to overturn *Plessy*?” Arriola said. “Earl Warren wasn’t in the [U.S. Supreme] Court yet, so maybe not. Maybe it’s a bit too soon. But the bottom line is we will never know.”

Joy C. Shaw is a staff writer for the Los Angeles Daily Journal. This article appeared in the Daily Journal on May 11, 2004, and is reprinted with permission.

KOCE, Orange County’s PBS station, has produced an award-winning documentary on the Mendez case, entitled Mendez v. Westminster: For All the Children/Para Todos Los Ninos, by Sandra Robbie. To order a copy of the documentary, available in VHS or DVD format, contact KOCE at www.koce.org or (888) 246-4585. The cost for either format is \$19.95, plus \$6.45 for shipping.

The CSCSH thanks Anne McIntyre for providing the photograph of her grandfather, David Marcus, for use with this article.

A Twist, a Turn

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Donna became Director of Programs and Publications. This arrangement has allowed Donna to use her skills as a lawyer, scholar, and editor, while I focus on the daily operations of the CSCSH and make use of my background in executive management and nonprofits. Because I was already in the thick of it, we’ve had a smooth transition. Donna will tell you that the reorganization has allowed her to sleep at night once again. Now I am the one waking up at 2:00 a.m., wondering if every “i” has been dotted and “t” crossed!

The Society has received over fifteen thousand donations via the fee statement. The addition of these funds has allowed the CSCSH to grow from a small group that banded together in 1989 into an organization that has become the largest court-based historical society in the United States. Without the CSCSH, much of the history of California’s legal and judicial systems would be lost to future generations. As a non-profit professional, I well understand the limits of government and the private sector to preserve and promote this history, and I am proud to be a part of the Society’s crucial mission.

So now my days of getting calls from *Bon Appetit* for food and wine pairings have been replaced with calls from lawyers, judges, and the public inquiring about the CSCSH. And I love it!

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