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CALIFORNIA LEGAL HISTORY



JOURNAL OF THE
CALIFORNIA SUPREME COURT
HISTORICAL SOCIETY

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EACH WITH AN INTRODUCTION.

ORAL HISTORY
LEON THOMAS DAVID
(1901-1994)



LEON THOMAS DAVID
(1901–1994)

Courtesy Contra Costa County Historical Society

Oral History of
LEON THOMAS DAVID
 (1901–1994)

EDITOR'S NOTE

The oral history of Superior Court Judge Leon Thomas David is one of four oral histories conducted by the former California State Bar Committee on History of Law in California in 1987. These were the final oral histories conducted by the committee, and they are published for the first time in the present volume of *California Legal History* (vol. 6, 2011). Judge David served as chair of the committee in 1977, and he was interviewed by committee member Raymond R. Roberts on January 16, 1987.

The oral history has been reedited for publication. Citations have been verified or provided, and the spelling of names has been corrected wherever possible. Explanatory notations in [square brackets] have been added by the editor. The sound recording and original transcription are available at The Bancroft Library, UC Berkeley. The oral history is published by permission of the State Bar of California.

A biographical sketch of Judge David by Superior Court Judge Roger Alton Pfaff was published in 1962 by the *Los Angeles Daily Journal*. It is reproduced below as a brief introduction to Judge David's life and career.

— SELMA MOIDEL SMITH

LEON T. DAVID¹

Judge Leon T. David has led a busy life since his birth in San Francisco, August 25, 1901. His early years were spent in the Bay Area. He attended Alameda, Berkeley and Vallejo High Schools before entering Stanford University in 1921.

In 1924 he received his A.B., and in 1926 his Juris Doctor from Stanford. Thereafter, he migrated to Southern California where he studied Public Administration at USC, from which institution he received his M.S. degree in 1935 and in 1957 a doctorate in Public Administration.

In 1926 he was admitted to the California Bar and engaged in the private practice of law under the firm name of Malcolm and David. He also accepted an appointment the same year as deputy city attorney and city attorney pro tem for the City of Palo Alto, a position he held until 1931. In 1931 he became assistant professor of law at USC law school. For one year, 1930-31, he was retained as deputy city attorney for the City of Lakeport, California. In 1934 he accepted an appointment as assistant city attorney for Los Angeles, a position he held, except for his absence during World War II, until 1950.

In 1927 he married the talented Henrietta Louise Mellin. The Davids are the proud parents of two children, Mrs. L. Perry Holmes, Jr., of Lafayette, California, and Leon Colby, of Honolulu. They have three grandchildren. Mrs. David majored in music at USC and for many years sang professionally in church. She is a past president of the Women's Auxiliary, Society for Cancer Research at UCLA, and is listed in *Who's Who of American Women*.

While a student at Stanford, Judge David was on the staff of the *Daily Palo Alto* and *Stanford Quad* and actively engaged in intramural athletics, including track and football. In 1921 he was discus champion and record holder of the California DeMolay track and field.

As a student at Stanford, Judge David took ROTC training and was commissioned a 2nd lieutenant, Field Artillery, ORC [Officers' Reserve Corps], in 1924. He maintained his reserve status, and in July, 1941, he was called to active duty by the War Department and thereafter served in a

¹ P.A.R. [Roger Alton Pfaff], "Leon T. David," *Los Angeles Daily Journal*, June 22, 1962, p. 1. Reprinted in *Judicial Profiles of the Superior Court of Los Angeles County, California* (Los Angeles: Los Angeles Daily Journal, 1963), p. 23 (in which articles signed "P.A.R." are credited to Judge Roger Alton Pfaff).

number of command posts, including chief of Special and Morale Services, NATOUSA [North African Theater of Operations, United States Army] on General Eisenhower's Special Staff in Algiers in 1943. He was honorably discharged in 1945 with the rank of colonel, and was retired from the AUS [Army of the United States] as colonel, Artillery, in 1961. Judge David is the recipient of the [U.S.] Legion of Merit; honorary officer [of the Order of the] British Empire; Brazilian Medalha de Guerra; French Médaille d'Honneur; Italian Commander [of the Order of the] Crown of Italy; European Theater Medal and three Battle Stars.

Upon his return from service, he resumed his duties as a senior assistant city attorney for Los Angeles, which he held until 1950 when he was appointed to the municipal court by Governor Earl Warren, who elevated him to the superior court in 1953, a position to which he has been continually reelected.

Throughout Judge David's career, he has engaged in many varied activities, including journalism and teaching, both in Law and Public Administration, at the University of Southern California, and also as an instructor at Command and General Staff School at Fort MacArthur, San Pedro; and the Presidio, San Francisco.

The Davids attend the Westwood Presbyterian Church. Judge David is a member of many professional, fraternal and civic organizations, including the Los Angeles, American, and Westwood Bar Associations, American Judicature Society, Phi Alpha Delta, Order of the Coif, American Legion, Reserve Officers Association, Acacia Club, Masons, and Shrine.

Tracing his ancestry back to early American colonial days, Judge David is a member of the Sons of the Revolution and a vice chancellor of the Society of Colonial Wars for California. He is chairman of the Los Angeles County Bar Association Legal Aid Committee and president of the Kiwanis Club of Los Angeles for 1962. He is a member of the Jonathan Club and numerous civic organizations.

Judge David is an amateur radio operator, holding General License W6QFA, and a student of portrait painting. Other interests are speaking and writing on historic and legal subjects, travel, and the study of foreign languages.

He sums up as one of his philosophical guideposts, the following maxim:

"Time is our priceless commodity which never can be replaced; use it, don't waste it."

Oral History of
LEON THOMAS DAVID
(1901–1994)

Q: I am in the home of Leon T. David, who has graciously consented to reminisce with me on his observations of the history of law in California. Before we go into any of the particular details, he has offered to play a tape that he made of reminiscences that will be by way of introduction to the formal interview.

★ ★ ★

DAVID:¹ As of August 26, 1976, I was in the practice of the law and on the bench for a total of fifty years. Over that period of time, there have been many experiences it may be well to record, particularly as I now serve as chairperson of the State Bar Committee on History of Law in California. I was born on August 25, 1901, in the 300 block of Leavenworth Street in San Francisco, where my parents, Ella Thomas David and Leon Kline David, lived upstairs in Mrs. O'Halloran's flat. My father at that time was a bookkeeper and teller in the old First National Bank. Shortly after my birth, the family moved to Alameda at 1109 Pacific Avenue, down the block from my grandfather's residence, Edward E. David, at 1223 Pacific Avenue.

¹ "The Practice of the Law" by Judge Leon Thomas David, recording on July 31, 1977.

I remember the 1906 earthquake. My crib rolled across the bedroom floor, and struck the opposite wall. Above, the chimney collapsed and the bricks hitting the roof made a fearsome clatter. The green Antikamnia pain pill calendar, with its life-size portrait of the president, Teddy Roosevelt, with his eyeglasses and big-toothed smile, fell on the floor. The little sheet iron stove made a rasping noise as it slid along the floor. My father dashed in to see if I was all right. I think I was more mystified than scared. Our house stayed on its brick foundation, with only the bricks at the top of the chimney to be replaced. When permitted to go out, I saw a house around the corner on Bay Street where the main floor was sitting down on a collapsed basement. I remember my father setting off for San Francisco with a shovel over his shoulder to aid in digging out the remains from the bank.

People displaced by the San Francisco fire came to Alameda, looking for places to stay. Our house was not very large, but mother and father made the rear bedroom available to a homeless couple. They stayed for a year. After they left, mother was scandalized! The couple were not husband and wife.

The following year, of course, there was a panic. There were hard times, and my father found another situation at the Henderson Bank in Elko, Nevada. The family thereupon moved to Elko. It was a frontier town. Indians gathered upon its wide main street. Sheepmen and cattlemen gathered in town — the cattlemen on the one hand, and the sheepmen on the other — keeping discreetly apart, and each patronizing a separate large saloon at opposite ends of the block.

There was an Indian camp about one mile north of the town. There were some Shoshone Indians still living in teepees. Others had built small cabins and cottages. These were said to be the small cabins of Indians who went to Indian school but who had, nevertheless, come back to live the life of their people. The Indian squaws came to town to work in washing and other household chores. The Indian bucks would come in on the weekend to collect their wages. I remember seeing Indian squaws sitting down on the high curbs in the main street, chewing large wads of gum, pulling the gum out a great distance from their mouth, sprinkling it with cheap cologne and then putting it back into their mouths and chewing again. This was a cheap way of getting a jag on, since the sale of liquor to Indians was prohibited.

The street to the school passed the county courthouse, a large structure with a broad stairway leading to the courtroom. My father had not been in town very long before he was summoned for jury duty on a murder trial. The county judge was Judge Brown, who afterwards, I believe, was a justice of the Supreme Court of the State of Nevada. The defendant was found guilty in the murder case, and I remember that my father reported afterwards that he had shaken the hand of the defendant. The defendant had loaned him a horse to ride around and see the country shortly after my father arrived in Elko, Nevada, right after the first of the year 1907.

The bank shortly afterwards was rebuilt. Inside, the cashier and other attachés of the bank served behind the counter. The entire counter was surmounted by a latticework, which was supposed to be bulletproof. Under the teller was a trapdoor, which he could use to drop out of sight in case there happened to be a holdup.

My schooling began in Elko, Nevada. I attended school in the first grade in a little two-story brick schoolhouse in a room presided over by Miss Rose Gardner. Upstairs, Mr. McQuinney, the principal, conducted classes. I made rapid progress in the first grade, thanks, first of all, to the fact that in the family I had been presented with a blackboard with a scroll, which carried all the letters on it. I had learned to read after a fashion from the Sears Roebuck Catalog, where the names of items were given and little pictures were shown of the items themselves. My brother, Persis Anderton David, was born in Elko, Nevada, on December 28, 1907, and my grandmother, Ella Thomas, from Vallejo, was present. When she returned to Vallejo, I accompanied her and was entered in the Jefferson School in Vallejo. Thanks to my reading ability, I was placed in the high second grade. When I returned to Nevada in the fall of 1908, I was placed back in second grade there. As a matter of fact, although this was a pioneer community, Miss Gardner had been using the Montessori system of instruction, particularly in reading, and I was simply keeping pace with the class there.

In the spring of 1909, my father, along with other young men in the community, went prospecting. In doing this, they waded up through icy creeks and he came down with inflammatory rheumatism, rheumatic fever, which he once had before as a boy. This was so severe that he almost died. He ultimately went back to the Alameda hospital in order to fight for

ORAL HISTORY

RUTH CHURCH GUPTA

(1917-2009)



RUTH CHURCH GUPTA
(1917-2009)

Oral History of
RUTH CHURCH GUPTA
 (1917–2009)

EDITOR'S NOTE

The oral history of Ruth Church Gupta is one of four oral histories conducted by the former California State Bar Committee on History of Law in California in 1987. These were the final oral histories conducted by the committee, and they are published for the first time in the present volume of *California Legal History* (vol. 6, 2011). The interview was conducted on September 28, 1987, by committee member Rosalyn Zakheim on behalf of the committee (which she chaired in 1988-89) and the Women Lawyers Association of Los Angeles (of which she was president in 1983-84).

The oral history has been reedited for publication. The spelling of names has been corrected wherever possible, and explanatory notations in [square brackets] have been added by the editor. The sound recording and original transcription are available at The Bancroft Library, UC Berkeley. The oral history is published by permission of the State Bar of California.

Gupta served as president of the Queen's Bench Bar Association in San Francisco in 1953, and Ruth Rymer, who served as president in 1976, agreed to prepare the brief reminiscence of Gupta that appears below.

— SELMA MOIDEL SMITH

RUTH CHURCH GUPTA

RUTH RYMER*

I was admitted to practice in 1971. Everything in law school had been part of a male-oriented paradigm and at first glance the Bar appeared similar. Suddenly, when I joined Queens Bench, I was surrounded by sympathetic sisters-in-the-law and aunts-in-the-law. One of my new aunts was Ruth Church Gupta who had been admitted the year before I graduated from high school. We developed an immediate rapport when we discovered that we had both attended Mills College.

Ruth and her husband, Kamini, had a general practice in the Marina District in San Francisco where they served their clients through decades, if not generations. In one case, Ruth represented a widow who was a life tenant in a condominium. The remaindermen incessantly harassed her to release her interest. Ruth not only restrained the bad guys but obtained damages for the client's psychological trauma.

In the early 1970s, the California Legislature was host to a multitude of new bills which demanded a major change in the way women were treated by the law. Both Ruth and I frequently appeared before its committees to represent organizations in support of this proposed legislation. Chief among the bills was the Equal Rights Amendment. Our opponents insisted that equal rights would prohibit gender-separate toilets. Ruth convinced the Legislature that the concept of privacy would prevent that disaster.

A major women's focus was to eliminate the husband's management and control of community property and his right to "designate any reasonable place and mode of living, and the wife must conform thereto." Until no-fault divorce this statute had often been used by the errant husband who abandoned his wife, demanded she join him in a place where he knew she would not, and then petitioned for divorce on the grounds of desertion. We thought that even after no-fault, the statute should go. It did, partly through Ruth's efforts.

*Ruth Rymer (formerly Miller), JD, PhD, served as chair of the Family Law Advisory Commission to the Board of Legal Specialization, State Bar of California, (1977–1982), and is the author of the historical novel, *Susannah, A Lawyer* (2009).

The male legislators were astonished that there could be such a thing as a woman lawyer, or that she could make logical arguments. Ruth was particularly effective as a lobbyist for women. On one occasion, a legislator asked Ruth an irrelevant question and she, a good actress, replied, “Well, Your Honor . . .” She pretended to be flustered, but Ruth had so charmed him that he voted for our bill.

Ruth was a wonderful mentor to me. It was my privilege to have known her.

★ ★ ★

*Oral History of***RUTH CHURCH GUPTA****(1917 – 2009)**

Q: Thank you very much for allowing us to interview you. We really appreciate it.

GUPTA: I'm certainly glad to be a part of history.

Q: I'd like to start asking you something about your childhood and your background. I think you were born in California, weren't you?

GUPTA: Yes, I'm one of those strange persons that was born in California. So were both my parents in the 1880s, and both my grandfathers in the 1850s.

Q: What part of the state did you grow up in?

GUPTA: I grew up in Northern California. I was born in Orland. Went to school in Yuba City. Then I went to college at Mills College.

Q: Were either of your parents attorneys?

GUPTA: Neither of my parents were attorneys. In fact, neither of them had a college education.

Q: How then were you inspired to go into law?

GUPTA: I had no intention whatever of going into law when I was in college. I was inspired to go to college by my parents who insisted that I have

an education. And I went into the business world out of college. When I married my husband, he was a law student at Hastings. He was drafted and went off into the Army. I was working for a lady who was an attorney in the business world. She inspired me. One day I marched into her office and said, "I quit. I'm going to law school," because I saw there was no future for me in that particular business world and decided to go to law school, just out of the blue.

Q: You said you went to Mills College. That's a women's college, isn't it?

GUPTA: That's correct.

Q: Did you receive any special encouragement for yourself, either in the business world or towards the professions at Mills?

GUPTA: Yes. I give Mills a great deal of credit for inspiring me to do whatever I wanted to do. Many of our class, although we graduated in 1938, which was before the women's revolution, were all encouraged to use our talents to the greatest of our ability. We had a really marvelous inspiration there.

Q: What was your major in college?

GUPTA: I had a double major of math and economics.

Q: Do you think that helped you at all, later on?

GUPTA: I think math is a marvelous preparation for law, because you learn logic and reasoning, the solution of problems, and it's quite similar to the law in many ways.

Q: Have you kept in touch with any of your classmates from Mills or from high school?

GUPTA: I kept in touch with Mills classmates. In fact, we have our fiftieth reunion coming up, and I'm the one who is supposed to be raising the money and organizing it. My college roommate and I have kept in very close touch, although she lives in Washington, D.C.

Q: What did your mother and father think when you decided you wanted to go to law school?

GUPTA: They were very pleased and very proud. When my husband came home from the Army I caught up with him, and we did the last two years

of law school together and graduated together. And when his mother and my parents were at the graduation, they were bursting with pride.

Q: If it isn't too personal, how did you meet your husband?

GUPTA: At a political meeting. We both were active in politics and involved in the Young Democrats.

Q: Once you graduated from law school, did you immediately begin your practice together?

GUPTA: We opened our office right here, where we still are. I continued to work for a few years and spent only part time in the office. My husband was keeping the office going. But we've been here at this same address since January 1949.

Q: For the record, that's 2237 Chestnut Street in San Francisco. Did you have any brothers or sisters?

GUPTA: I had two brothers, both of whom died in their twenties.

Q: Did your mother work outside the home?

GUPTA: Yes, she was a pioneer woman. In fact, she grew up in Mariposa and came down to San Francisco, went to secretarial school, got herself a job up in Quincy in the country, and that's where she met my father. She was very independent, in 1910 or so.

Q: I think we're finding in these interviews that lots of the women had very independent mothers. When you were in school — in grammar school and high school — did you have favorite subjects and things that you thought were especially interesting to you?

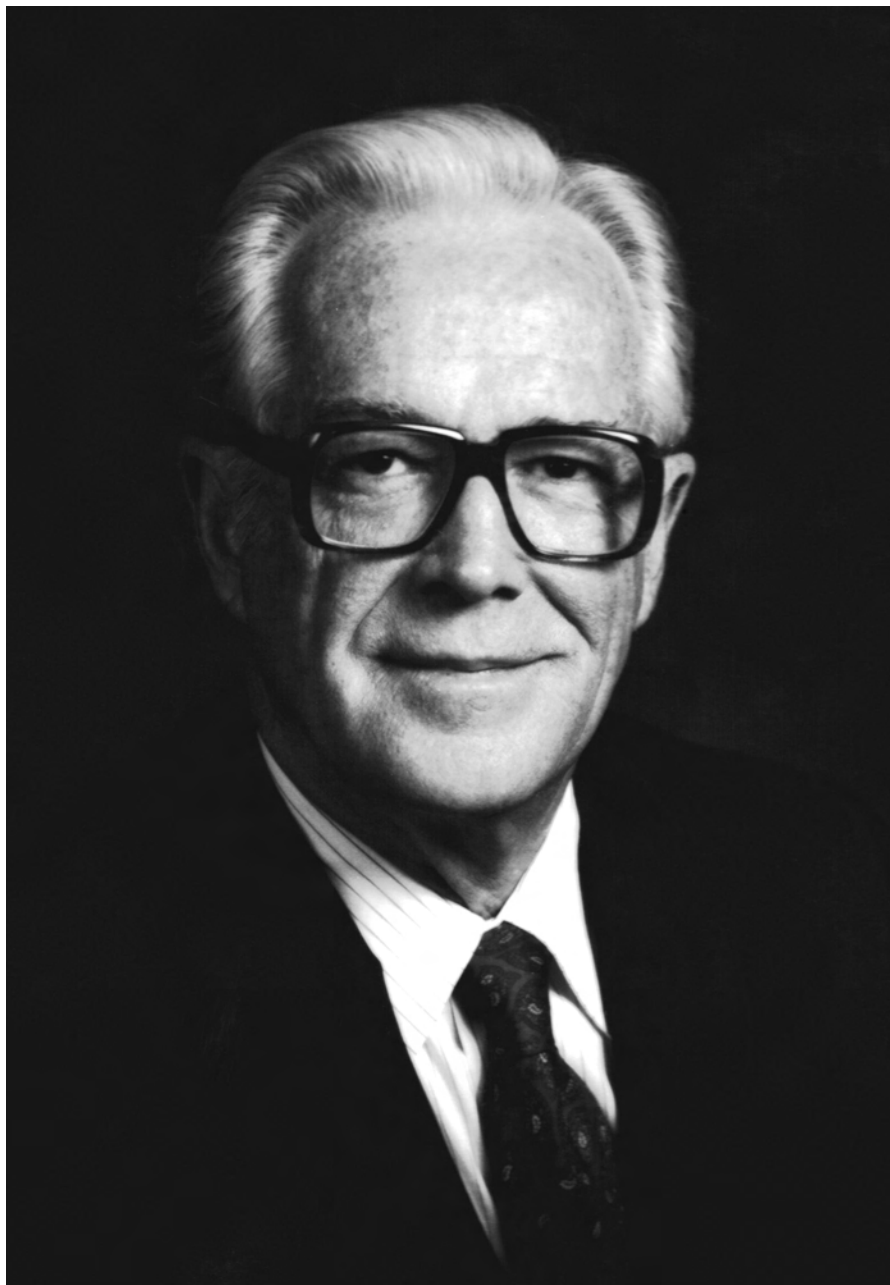
GUPTA: I was generally an A student, valedictorian in high school. I enjoyed Latin, Spanish, geography — everything, I think, was special. I wasn't an officer in any of the student organizations in high school. It was during the Depression and I spent some of my time working, as I did all through college.

Q: What kind of jobs did you have?

GUPTA: Anything I could get — babysitting, hashing, whatever.

Q: What years did you go to law school, and what was it like at that time?

ORAL HISTORY
SHARP WHITMORE
(1918-2001)



SHARP WHITMORE
(1918–2001)

Oral History of
SHARP WHITMORE
 (1918–2001)

EDITOR'S NOTE

The oral history of J. Sharp Whitmore is one of four oral histories conducted by the former California State Bar Committee on History of Law in California in 1987. These were the final oral histories conducted by the committee, and they are published for the first time in the present volume of *California Legal History* (vol. 6, 2011). He was interviewed by committee member Raymond R. Roberts on January 9, 1987.

The oral history has been reedited for publication. Citations have been verified or provided, and the spelling of names has been corrected wherever possible. Explanatory notations in [square brackets] have been added by the editor. The sound recording and original transcription are available at The Bancroft Library, UC Berkeley. The oral history is published by permission of the State Bar of California.

Whitmore was a senior partner at Gibson, Dunn & Crutcher, a member of the State Bar Board of Governors, president of the Los Angeles County Bar Association, and County Bar delegate to the ABA Board of Governors. Two of his fellow partners at Gibson, Dunn agreed to prepare the brief reminiscence of Whitmore that appears below.

— SELMA MOIDEL SMITH

SHARP WHITMORE

KENNETH W. ANDERSON AND WILLARD Z. CARR

Strikingly and elegantly handsome in appearance, with a mellifluous baritone voice. One of our colleagues nicknamed his voice the “golden fog.” Never has a person looked and acted more in consonance with his name — Sharp. His influence in shaping the labor law environment in Southern California, particularly in the region’s most important economic activity at the time — the aerospace industry — was enormous. In an often contentious field, he always had the respect of the “other side,” a value he passed on to all of those who worked in the same area.

When Bill Carr came to Gibson, Dunn & Crutcher in the early 1950s, he joined an established Labor Department. Two of the stalwarts of the Department were J. Sharp Whitmore and William French Smith. Each had the distinction of having served as an officer in the U.S. Navy during the war and joining the firm in early 1946. One of the most appealing elements of Labor Law at that time was the involvement in real time issues affecting the dynamic growth of a postwar economy with all of its messy human aspects. Carr particularly remembers Sharp including the younger lawyers in the dynamics of the practice, meeting with clients, on the picket line, in negotiations and NLRB proceedings as well in court. We feel greatly indebted to Sharp for the substantive start he gave us in our practice.

Moreover, it was not all work and no play. Gibson, Dunn used to send a couple of associates each year to the annual meeting of the State Bar. In one earlier year, both Sharp and Bill Smith were sent. Each, of course, was given a modest personal expense account for the trip and meeting. At the end, Sharp found himself with a tremendous bar tab. The future U.S. attorney general, Bill Smith, had virtually no tab, having signed Sharp’s name for nearly all libations at the meeting, including those consumed by partners who were also attending the convention.

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Oral History of
SHARP WHITMORE
(1918 – 2001)

Q: This is January 9, 1987. I am in the office of Sharp Whitmore of Gibson, Dunn & Crutcher to get his reminiscence and views on his involvement with the State Bar and law in California. Sharp, I'd like you to start with a little bit of your background of where you were born and when. if that's not too embarrassing.

WHITMORE: Well, I was born in Price. Utah. I came with my family to California in 1925 and after a few months in Berkeley moved to Piedmont. I went to grammar school in Oakland, California, high school in Piedmont, California, undergraduate school at Stanford University in Palo Alto and law school at the University of California, Berkeley, Boalt Hall.

Q: When did you go to Stanford?

WHITMORE: I graduated with the class of 1939.

Q: And did you immediately go to Boalt Hall?

WHITMORE: I immediately went to USC law school which I attended for one year.

Q: Why?

WHITMORE: Because I wasn't sure at that stage that I wanted to be a lawyer, and I had a job with the Shell Oil Company, and I knew relatively soon after entering law school that this was what I wanted to do, and the tuition at Boalt Hall was \$17 a semester, so I quickly transferred to Boalt Hall and completed my legal education there.

Q: Were any members of your family involved in law?

WHITMORE: No members of my family were involved in law or ever have been, to my knowledge.

Q: So your firsthand adventure into law or with law was when you went to law school.

WHITMORE: Yes, I think I had met one lawyer. I knew no judges. I think I had met one lawyer before I went to law school.

Q: In '39 you started at USC and lasted there until the Spring of '40 — is that correct?

WHITMORE: Yes, and then in the Fall of '40 went to Berkeley and continued there until March of 1942. I would have continued until the end of May of 1942, but World War II began in December of 1941, and I was very lucky in having at Boalt Hall two others who had commissions at the time, were in the same boat as I, and who had orders to report for active duty in March of 1942. I also had three professors who were very understanding of our situation, who stayed over Christmas vacation in 1941 and gave us our classes for our last semester over Christmas vacation and up until the 6th or 7th of March of 1942, when each of the three of us took our final examinations and completed our legal education and got our degrees and were able to report for active duty at the time our orders prescribed.

Q: Do you remember any of your professors at Boalt?

WHITMORE: I certainly do. Max Radin, for one, was certainly one of my favorites. He was a very approachable professor. Professor [Henry Winthrop] Ballantine.

Q: Let's stay with Max a minute. Do you remember the occasion when Max Radin was nominated by Governor Olson to be on the Supreme Court?

WHITMORE: That occurred while I was at USC Law School.

Q: Oh, right. So it was past history by the time you went to Boalt.

WHITMORE: It was past, and because it was past, I didn't get an opportunity to get to know Roger Traynor then, because it was Roger Traynor, as you remember, who was nominated when Max Radin's name did not clear.

Q: And both of them were teaching at Boalt?

WHITMORE: They both were professors at Boalt the year before I went there, and of course, Roger Traynor was gone when I entered.

Q: What did Max teach?

WHITMORE: I took a course in Jurisprudence from him. He didn't teach any first-year courses, to my knowledge. He taught Jurisprudence, Roman Law, and I'm sure other courses — but Jurisprudence was the only course I took from him.

Q: You mentioned Ballantine?

WHITMORE: Professor Ballantine, in Corporations, yes.

Q: Before he wrote the book [*California Corporation Laws*, 1932] or after?

WHITMORE: After he wrote the book. He was a distinguished and recognized authority on corporation law, particularly California corporation law, when I took the corporation law course from him at Boalt Hall.

Q: Any other professors that you remember?

WHITMORE: "Captain Kidd" [Alexander Marsden Kidd] was the acting dean my last year. He was a Commercial Law, Bills and Notes professor. To a greater extent than anybody else at the law school, he was the Professor Kingsfield type — a most interesting and pleasant, but somewhat unapproachable, individual. Professor [William Warren] Ferrier was the Property professor. I remember Professor Ferrier well. I admired him a great deal, although he was a little more aloof than some of the others I've talked about. Barbara Armstrong.

Q: Before she wrote the book [*California Family Laws*, 1953]?

WHITMORE: After she worked on the Social Security Act, and I guess, before she wrote the book, but her field was family law at that time — at least that was her primary field. She was very approachable and I thought the world of her. She, I thought, was a fine professor.

Q: Did you actually graduate in 1942? Were you given a diploma then?

ORAL HISTORY
GEORGE YONEHIRO
(1922-2001)



GEORGE YONEHIRO
(1922-2001)

Oral History of
GEORGE YONEHIRO
 (1922–2001)

EDITOR'S NOTE

The oral history of George Yonehiro is one of four oral histories conducted by the former California State Bar Committee on History of Law in California in 1987. These were the final oral histories conducted by the committee, and they are published for the first time in the present volume of *California Legal History* (vol. 6, 2011). Yonehiro was interviewed by committee member Raymond R. Roberts on January 21, 1987.

The oral history has been reedited for publication. The spelling of names has been corrected wherever possible, and explanatory notations in [square brackets] have been added by the editor. The sound recording and original transcription are available at The Bancroft Library, UC Berkeley. The oral history is published by permission of the State Bar of California.

As an introduction to Judge Yonehiro's life and career, the obituary published by *The Auburn Journal* at the time of his death in 2001 is reproduced below.¹

— SELMA MOIDEL SMITH

¹ Gus Thomson, "Former Placer County Superior Court Judge passes away," *The Auburn Journal* (March 28, 2001), p. A5.

GEORGE YONEHIRO

Former Placer County Superior Court Judge George Yonehiro is dead at age 78. Yonehiro, who spent 21 years on the municipal and justice court benches before serving as superior court judge from 1985 until his retirement in 1988, died Sunday in Auburn.

A native of Placer County's Gold Hill area, Yonehiro graduated from Roseville High School and what was then Sacramento Junior College.

After the bombing of Pearl Harbor in 1941, Yonehiro and his family joined other Placer County Japanese-Americans who were relocated to Tule Lake, California. During 1942-43, 119,803 men, women and children of Japanese descent were placed behind barbed wire.

In early 1943, the secretary of war announced a decision to form an all-Nisei combat team and Yonehiro enlisted. Yonehiro fought in Italy and France as an infantryman. He served with the all-Japanese 442nd Regimental Combat Team — one of the most decorated American units of the war. Yonehiro was awarded the Bronze Star medal but didn't find out about it until the mid-1980s when he requested a new copy of his discharge papers. By then a colonel in the California State Military Reserve, Yonehiro was presented the award by Gen. Donald Mattson, commander of the California Military Reserve. During the war, Yonehiro also received a Purple Heart medal.

Following the war, Yonehiro entered the John Marshall Law School in Chicago. He practiced law in Chicago for seven years.

Moving back to Placer County, Yonehiro was elected Colfax Justice Court judge in 1964, a position he held until 1980, when he headed both the Auburn and Colfax lower courts. In 1982, he was elected to the newly created municipal court by garnering 23,638 votes to his opponent's 8,674.

When Gov. George Deukmejian appointed then-attorney Jackson Willoughby to a Placer County Superior Court seat in 1984 over Yonehiro, the veteran jurist quickly announced that he would challenge the appointment in the June primary. Yonehiro won easily and was sworn in early the next year at St. Joseph's Parish Center with 300 people present.

Yonehiro is survived by his wife of 47 years, Miyoko; daughters Melissa Yonehiro Caldwell of Sacramento and Alison Dee Miller of Seattle; a son, Marcus Yonehiro [U.S. naval officer on active duty in the port] of Yokosuka, Japan; a sister, May Sagara of Granada Hills; and three grandchildren.

Oral History of
GEORGE YONEHIRO
(1922 – 2001)

Q: It is January 21st, 1987, and I'm in the chambers of Judge George Yonehiro. He has consented to give us a few of his thoughts and reminiscences about the practice of law as it pertains to him. So, let me start off by asking when your earliest ancestor came to the United States or to California.

YONEHIRO: Initially, my dad was a newspaper reporter for an Osaka, Japan, newspaper. He got sent to the Hawaiian Islands to cover the Japanese immigrants there. He so loved the climate and geographic area of the islands, he resigned from the Osaka, Japan, newspaper and took on employment with a Hilo, Hawaii, newspaper.

Q: When was that?

YONEHIRO: This was 1912. He stayed in the Islands for seven years, doing newspaper reporting work. Also, during the course of seven years, he joined the United States Army. In that way, he was one of the few Asiatics who became automatically eligible for naturalization.

Q: When he joined the Army, was that the regular Army or the reserves?

YONEHIRO: The regular Army. He was stationed at Fort Shafter, just before the early part of 1918. He must have got in shortly before the declaration of World War I by the United States. I think that was the early part of 1918. America was involved in the World War for only a short time — a year or less — and during the '19, possibly '17 or '18, period he was with the regular U.S. Army — infantry.

Q: Stationed in Hawaii?

YONEHIRO: Yes, Fort Shafter. After he concluded his service with the U.S. Army — around 1919 — he came to the mainland. While he was in Hawaii, he held a close friendship with a person who had a gambling den. His buddy and he came over in 1919 to the mainland, and he urged him to join in gambling activities in the city of Sacramento. By that time my dad had gotten married. He felt that he couldn't raise a family in a gambling atmosphere, connected with a gambling enterprise, so he decided to become a farmer. He always felt that the rural atmosphere was most conducive to raising children. He was a very poor farmer, always a good newspaper man. He always maintained contacts with various newspapers. During the course of his career, he one time held paid correspondence with five newspapers and he did work for various newspapers until he was seventy years of age.

Q: Where did your mother come from?

YONEHIRO: My mother also came from Japan. During the period my father was in Hawaii he had visited Japan two times. On the second visit, just before he left for the American mainland, he married my mother. They were both from the Honshu Island. There are three major islands in Japan. The middle Island is Honshu. They are both from the Hiroshima area.

Q: And when were they married?

YONEHIRO: They were married in 1917.

Q: So they evidently met in Hawaii?

YONEHIRO: No, sir they did not meet in Hawaii. On one of my dad's visits back to Japan, he met my mother.

Q: I see. And where were they married?

YONEHIRO: In Japan, sir.

SPECIAL BOOK SECTION

PREVIEW OF FORTHCOMING
BOOK CHAPTER

FREEDOM OF EXPRESSION UNDER THE CALIFORNIA CONSTITUTION

JOSEPH R. GRODIN*

Most of us, when we want to refer to constitutional protection for expressive activity, refer to our “First Amendment rights.” But when delegates to the first California constitutional convention gathered in Monterey in 1849 to draft a Declaration of Rights, the First Amendment was not a subject of discussion. Not only had the First Amendment never been interpreted by the U.S. Supreme Court, at that time the federal Bill of

* Associate Justice of the California Supreme Court, 1982–1987; Distinguished Emeritus Professor, University of California, Hastings College of the Law; coauthor with Calvin Massey and Richard Cunningham of *THE CALIFORNIA STATE CONSTITUTION* (Oxford Univ. Press 2011) (1993). The author has published numerous articles on the subject of state constitutions, including *The California Supreme Court and State Constitutional Rights: The Early Years*, 31 *HASTINGS CONST. L.Q.* 141 (2004). For more general treatment, with references to other books and articles about state constitutionalism nationwide, see ROBERT F. WILLIAMS, *THE LAW OF AMERICAN STATE CONSTITUTIONS* (Oxford Univ. Press 2009).

This article is intended to be the first in a series on rights and liberties under the California Constitution, focusing primarily on areas in which the state Constitution has been interpreted, or is subject to being interpreted, as providing greater protection than the federal Constitution. The author appreciates the helpful suggestions he received from readers of the draft, including Ann Brick and Karl Olson, and its excellent editing by his research assistant, Monica Smith.

Rights had no application to the states.¹ Instead, in drafting what became the first article of the Constitution, the delegates chose as models primarily the constitutions of New York and Iowa; and while most state constitutions had similar provisions relating to freedom of speech, it was the New York Constitution of 1846 that provided the text.² Article I, section 9 of California's first constitution read:

Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions on indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libellous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

And section 10 read:

The people shall have the right freely to assemble together, to consult for the common good, to instruct their representatives, and to petition the legislature for redress of grievances.

The language of sections 9 and 10 was incorporated without change into the Constitution of 1879, and has survived with only minor changes. In 1974, section 9 was renumbered as section 2, and in 1980 it became section 2(a), supplemented by a provision creating a newsmen's privilege that became section 2(b).³ Section 2(a) now reads:

¹ *Barron v. Mayor & City Council of Baltimore*, 32 U.S. 243 (1833).

² The language in the 1846 New York Constitution derived in turn from earlier constitutions in New York, and from earlier constitutions in other states. For discussion of the history and its significance to interpretation, see Christian G. Fritz, *More Than Shreds and Patches: California's First Bill of Rights*, 17 HASTINGS CONST. L.Q. 13 (1989); Jennifer Friesen, *Should California's Constitutional Guarantees of Individual Rights Apply Against Private Actors?*, 17 HASTINGS CONST. L.Q. 111 (1989); Margaret C. Crosby, *New Frontiers: Individual Rights Under the California Constitution*, 17 HASTINGS CONST. L.Q. 81 (1989). See also the extensive discussion by the California Supreme Court in *Gerawan Farming, Inc. v. Lyons*, 24 Cal.4th 468 (2000).

³ See *infra* Section VII.

Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press.

Section 10 was renumbered as section 3 in 1974, then as section 3(a) in 2004. It was changed in 1974 to read:

The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.

It was to be expected, notwithstanding the independent origins of the free speech and assembly provisions of the California Constitution, that their interpretation would be influenced over time by the First Amendment and its interpretation by the U.S. Supreme Court. This article's principal undertaking, however, is a description of the ways in which interpretation by California courts of the state constitutional provisions has given rise to a somewhat different jurisprudence, providing protections for expressive activity and association beyond the First Amendment. Toward the end of the article, I will discuss the justification for and methodology of such a distinctive state approach.

I. EARLY CASES

The year was 1893; the place was a courtroom in San José. The case was *Price v. Price*, a hotly contested divorce proceeding, and the evidence (according to the lawyers) “would probably be of a filthy nature.” The trial judge — anxious, he said, to protect decorum and public sensitivity — issued an order closing the courtroom to members of the public and directing that “no public report or publication of any character of the testimony in the case be made.”

Charles Shortridge,⁴ the editor and publisher of the *San Jose Mercury*, promptly violated the court's order by publishing the next day what purported to be the testimony of the witnesses. Appearing in response to an

⁴ Charles was part of an illustrious family that came to California from Iowa and that included his sister, Clara Shortridge Foltz, the first woman lawyer in California, and brother, Samuel Shortridge, who later became U.S. senator from California. See BARBARA BABCOCK, *WOMAN LAWYER: THE TRIALS OF CLARA FOLTZ* (2011).

ARTICLES

“DEVILISHLY UNCOMFORTABLE”:

In the Matter of Sic — *The California Supreme Court Strikes a Balance Between Race, Drugs and Government in 1880s California*

BY MIKELIS BEITIKS*

On the evening of October 22, 1885, some 300 residents of Stockton showed up at the town’s city hall for an “Anti-Chinese Meeting.” The turnout was so large that officials had to relocate the meeting to the nearby Turn-Verein Hall to accommodate the crowd.¹ To read newspaper accounts of this event is to feel as though one is watching the raucous, conflict-establishing closing scene of a play’s first act — a thunderous and irreversible event that will surely lead to something interesting after the intermission.²

Exhibiting a dynamic that had been playing and replaying in West Coast towns for several decades, Stockton’s white residents were pacing, clenching their jaws and cracking their fingers over difficult economic times, and

* [Editor’s note: This article was the winning entry in the California Supreme Court Historical Society’s 2011 Student Writing Competition, written while the author was a third-year student at UC Hastings College of the Law. He is now a member of the California Bar.] The author would like to thank Professors Brian Gray, Reuel Schiller, and Darien Shanske for their support, inspiration and suggestions for this paper.

¹ “The Anti-Chinese Boom,” *The Stockton Daily Evening Mail*, October 23, 1885. (The Turn-Verein Hall was Stockton’s German ethnic hall).

² “They Must Go,” *The Stockton Daily Independent*, October 23, 1885. See also, “The Anti-Chinese Boom,” *The Stockton Daily Evening Mail*, October 23, 1885.

then coming to a consensus that Chinese immigrants were to blame for their hardship.³ Stockton's anti-Chinese meeting was reportedly called to "urge



the necessity of excluding the Chinese from the city,"⁴ but a headline describing the meeting in the *Stockton Mail* the next day captures the gathering's purpose more bluntly: "Law or no Law, John Chinaman Must Go."⁵

In an era of partisan politics, Stockton's anti-Chinese meeting was a collaborative event. Future governor of California, former U.S. congressman and Stockton resident James

Budd was the featured speaker. Budd declared that if "healthy public sentiment" prevailed, every Democrat, Republican, Workingman, Socialist and Sandlotter "would put his shoulder to the wheel, and help to throw the Chinese to the other side of the Mormon slough." He assured those present that there was "no question" that the town could use the law to target the Chinese, and then went further, proclaiming that it was in fact "the duty" of local government to make life "so devilishly uncomfortable," for the Chinese as to make them "glad to leave." Budd informed the crowd that Stockton's City Attorney, Frank Smith, was already drafting ordinances to this effect — sanitary laws targeting the Chinese, similar to ones that had been recently adopted in San Francisco. His speech was followed with great applause.⁶

Stockton's chief of police then stood and spoke in "glowing language of the filth and corruption that met his gaze" in Chinatown, giving details

³ Elmer Clarence Sandmeyer, *The Anti-Chinese Movement in California* (Chicago: University of Illinois Press, 1991), 97. It is noteworthy that this 1885 action by Stockton was one of a series of many momentous anti-Chinese actions that were happening even within that very month in California. Sandmeyer lists over thirty California communities that were taking drastic action against their Chinese during this period of 1885, in a series of actions motivated by dissatisfaction with the implementation of preceding anti-Chinese legislation, and spurred by a murderous anti-Chinese riot in Wyoming.

⁴ "They Must Go," *The Stockton Daily Independent*, October 23, 1885.

⁵ "The Anti-Chinese Boom," *The Stockton Daily Evening Mail*, October 23, 1885.

⁶ *Id.* The Mormon Slough was Stockton's southern border in 1885.

of conditions that could be targeted by sanitary laws. His account was received with “laughter and good-natured applause.”⁷

With the substance and the color of the meeting’s thrust sufficiently established, resolutions were drafted to support only anti-Chinese candidates in the upcoming election and to create a permanent anti-Chinese committee to ensure follow-through. As the resolutions were enthusiastically adopted by those in attendance, there was but one “No” vote cast in the hall — “a single voice, the voice of a woman.”⁸

Mrs. Farrington, a landlord to some of Stockton’s Chinese residents, rose amidst bustle and gavel-raps for order to attempt to speak in defense of the town’s Chinese. She reminded the group that some of Stockton’s Chinese residents had lived in town for three decades — longer than almost any of the whites in attendance — and that the Chinese were undeniably prompt and dutiful in paying their bills and their taxes. She attempted to continue her plea, but before she should say any more, the meeting’s chairman aggressively cut her off, calling Farrington and people of her type a “curse to the city.”⁹

The chairman’s dismissal of Farrington was “drowned in uproarious applause.” He rounded out his scorning by saying that Stockton would be better off if it could be rid of the Farrington-types of the town right along with the Chinese, and then shouted a motion to adjourn over her objection, abruptly closing the meeting.¹⁰

And just like that, with the downswing of the chairman’s gavel, the curtain drops on the first act of the play, the lights go up in the house, and the crew begins to move furiously, re-setting the stage.

In the second act, less than a week after this dramatic meeting, the Stockton City Council would pass local sanitary ordinances “aimed at the Mongolians.” These ordinances set penalties for various aspects of open cooking fires, gambling, operating laundry facilities in town, and opium smoking — penalizing practices unique to the town’s Chinese residents.¹¹

⁷ “They Must Go,” *The Stockton Daily Independent*, October 23, 1885.

⁸ “The Anti-Chinese Boom,” *The Stockton Daily Evening Mail*, October 23, 1885.

⁹ Id.

¹⁰ Id.

¹¹ “John Chinaman Must Go,” *The Stockton Daily Evening Mail*, October 27, 1885.

NINE TREASURES:

California Legal History Research in the Bancroft Library, University of California, Berkeley

BY WILLIAM BENEMANN*

The streets were filled with billows of acrid smoke and dust, and every time a dynamite charge was detonated the earth would tremble and the horses would shy and pull at their reins. For three horrifying days dozens of separate fires raged, consuming block after block of homes and businesses. Over 3,000 people were killed, nearly one hundred times that number were left homeless, and the entire northeast quadrant of San Francisco was reduced to blackened charcoal. Every major library in The City was damaged or utterly destroyed — except for one.

In April 1906, housed safely in a fireproof building at the corner of Valencia and Army Streets and therefore outside the burned zone, sat the newest acquisition of the University of California: the Bancroft Library. The library was the life's work of Hubert Howe Bancroft, who had arrived in San Francisco in 1852 as an eager young man of twenty with a shipment of books to sell. Four years later he opened his own bookstore, eventually assembling a specialized collection of books, manuscripts and pictorial items documenting the entire West Coast from Alaska to Panama, and from the Rockies to

* William Benemann is Archivist for the University of California, Berkeley School of Law, and formerly a librarian at The Bancroft Library.



THE BANCROFT LIBRARY AT 1538 VALENCIA STREET,
SAN FRANCISCO, CIRCA 1890–1900.

*Courtesy of The Bancroft Library, University of California, Berkeley
(call no. BANC PIC 1905.11574–FR).*

the Pacific. At the core of his library was an unparalleled collection of Californiana, telling the story of the State from the very earliest period of its recorded history. Drawing on this superb collection, and augmenting it where needed by firsthand research, Hubert Howe Bancroft and his assistants over time produced a comprehensive thirty-nine volume history of the West.

On November 25, 1905, Bancroft sold his entire library to the University of California for a quarter of a million dollars, \$100,000 of which Bancroft would donate himself. Having narrowly escaped complete destruction in the 1906 Earthquake and Fire, the collection was finally moved out of San Francisco in early May and onto shelves and into cabinets on the third floor of California Hall on the Berkeley campus. The treasures were transported in prosaic moving vans by the Bekins Van Company.

Today the collection is housed in a newly-renovated, state of the art facility at the center of the Berkeley campus, and for over a century now the



HUBERT HOWE BANCROFT

Bancroft Library has carried on Hubert Howe Bancroft's compulsive drive to document the history and culture of the Pacific Coast. Because of this academic obsession, anyone engaged in California legal history research will find a cornucopia of both core documents and unusual ephemera, rare manuscripts and online digital files, vintage photographs and raspy tape recordings, the quirkily odd and the astonishingly unexpected. This article

will focus on nine diverse (and somewhat random) items that demonstrate the variety of riches that await the researcher in the Bancroft Library reading room. It will attempt to place those items in their historical context, to demonstrate why they are significant to the legal history of California, and to suggest similar material for further research in the Bancroft's collections.

1. IGNACIO EZQUER. *MEMORIAS DE COSAS PASADAS EN CALIFORNIA: SAN LUIS OBISPO, CALIFORNIA, APRIL 29, 1878.*¹

Realizing that a large portion of early California history was being lost as the elder *Californios* passed away, Hubert Howe Bancroft and his assistants traveled by carriage, stagecoach and horseback throughout the state conducting approximately 125 oral history interviews with Mexican and Anglo pioneers. The transcriptions of these interviews became known collectively as the Bancroft Dictations (or as the *Testimonios* or *Recuerdos*). While most of the dictations are in English, a few — such as that of Ignacio Ezquer — are in Spanish, and they provide eyewitness accounts of events in early California from the perspective of participants whose contributions would otherwise have been marginalized or entirely lost. They include first person narratives of some of the earliest governmental and legal landmarks in California history.

Ignacio Ezquer emigrated from Mexico in 1833 at the age of fifteen and settled in Alta California, eventually serving as Justice of the Peace in both Monterey and San Luis Obispo. In 1878 he was interviewed by Thomas Savage, one of Bancroft's research assistants. Savage wrote in an introductory statement, "The accompanying pages were taken down by me from [Ezquer's] lips in his own house in San Luis Obispo." Though hastily written as the old man spoke, with some deletions and insertions in the text, the narrative is still quite legible. (Scanned images of most of the Bancroft Dictations may be found on the University of California's website, called Calisphere.)

In his *recuerdo* the elderly Ezquer describes the secularization of the San Juan Capistrano Mission. He narrates in some detail the February 1845 revolt against the Mexican governor, Brigadier General Manuel

¹ Call no.: BANC MSS C-D 77.

THE HISTORY OF LOS ANGELES

As Seen from the City Attorney's Office

BY LEON THOMAS DAVID

EDITOR'S NOTE

The publication of Leon Thomas David's oral history in this volume of *California Legal History* provides the opportunity to present his "History of Los Angeles as seen from the City Attorney's Office," which he completed in 1950. It is one of several works occasioned by his service as an assistant city attorney, a position he held from 1934 until his appointment to the bench in 1950, except for his period of active duty during World War II.

In addition to the legal, academic, and military careers discussed in his oral history, Judge David enjoyed a fourth public career as a pioneering legal historian. In this role, he gave special attention to the legal history of California. His service in the City Attorney's Office led to studies that combined the historical and substantive aspects of that office. For example, one of his earliest and best known works is a series of articles published in 1933–34 that discuss the development of municipal tort liability in California.¹ Many of his works in the field of legal history predate the creation

¹ Leon Thomas David, "Municipal Liability in Tort in California," published in five parts in *Southern California Law Review* 6 and 7 (1933–34); revised and expanded edition published as *Municipal Liability for Tortious Acts and Omissions with Particular Reference to the Laws of the State of California* (Los Angeles: Sterling Press, 1936). A procedural work arising from his city attorney service was *The Administration of Public Tort Liability*

in 1956 of the American Society for Legal History, of which he became an active member. At the time he first recorded his recollections in 1977, he was also the chair of the State Bar Committee on History of Law in California. His final published work is the article titled, "California Cities and the Constitution of 1879," which appeared in 1980.²

Judge David's history of the Los Angeles City Attorney's Office is today both a "history" and a documentary source on the viewpoints and attitudes of a prominent lawyer in mid-twentieth century Los Angeles. It was serialized in the *Los Angeles Bar Bulletin* from April to December, 1950.³ Chapter I, covering the Spanish-Mexican period, reappeared in Judge David's doctoral dissertation of 1957 (a three-volume work of 1470 pages on the role of lawyers in government from William the Conqueror to America of the 1950s).⁴

The complete ten-chapter history of the City Attorney's Office has been reedited for publication here, but without alteration of the content. Comments in [brackets] have been added by the editor. Citations of cases and sources have been checked and expanded. The spelling of names, particularly in Spanish, has been corrected wherever possible. The photographs that accompany the article have been newly obtained for this publication.

— SELMA MOIDEL SMITH

in Los Angeles, 1934–1938, coauthored with John F. Feldmeier, published by the Committee on Public Administration of the Social Science Research Council in 1939.

² Leon Thomas David, "California Cities and the Constitution of 1879: General Laws and Municipal Affairs," *Hastings Constitutional Law Quarterly* 7 (Spring 1980): 643.

³ A verbatim reprint, without indication of publisher, date, or copyright, was distributed by Judge David to selected law libraries in California. The copy in the UCLA Law Library bears a handwritten note indicating that it was received from Judge David on October 4, 1951.

⁴ Leon Thomas David, *The Role of the Lawyer in Public Administration*. Dissertation, University of Southern California, 1957; Chapter IX(M)4, "Spanish-Mexican City Government: Los Angeles," pp. 261–71.

THE HISTORY OF LOS ANGELES

As Seen from the City Attorney's Office

LEON THOMAS DAVID*

The fabric of history is an endless web of cause and effect, but one may choose some bright thread and follow it through the pattern, and note the cyclic recurrences of the pattern itself in the fabric.

The transition of our Spanish-Mexican city to an American metropolis, still in population and interests the second largest Mexican city in the Hemisphere, has involved cyclic recurrences of major problems: organization, housing, land, water, transportation, immigration and integration of the newcomer.

That Los Angeles is the third city of the United States testifies that the community has solved such problems, and in many a major battle, the solution has been due in large measure to the work of the city attorney and his staff.

The office itself dates at least to 1822. In the roster of the thirty-one men who held the office since 1850, and of their deputies and assistants, we

* The original author footnote reads: "Judge, Municipal Court, Los Angeles 1950. A.B., J.D., Stanford University; M.S. in Pub. Adm., U. of So. Calif.; Deputy City Attorney, Palo Alto, 1926-1931; Director, League of California Municipalities, 1931-1932; Faculty, U.S.C. Law School, 1931-1934; Lecturer, School of Government, 1934-1940; Assistant City Attorney, Los Angeles, since 1934; Colonel, F.A., U.S. Army, 1942-1946. Admitted California Bar, 1926."

recognize old friends whose legal careers are well known to the bench and bar. There are others whose tradition should not remain unknown, whose labors antedated the American occupation and conquest. Here we can but note briefly some data, which at a later time may be worthy of more detail, concerning a number of able and interesting men.

In this centennial year [of the State of California], we lawyers who consider these items may feel impelled to consider further, by reading from numerous works readily available. Some of these are indicated in the notes on the sources of the writer's information. Pictures of these leaders of the bar in times past and present are found in a number of works, and in the Los Angeles Public Library.

CHAPTER I

A CONTRACT FOR SETTLEMENT

In the development of California jurisprudence, and the growth of a large and learned bar in the State of California, men's quest for gold did not give rise to the major legal problems which taxed the abilities of lawyer and the patience of litigants for many a year. Land — land and water — these more than gold, were to instigate many a bitter battle in politics and at law.

Philip II of Spain, contemporary of Queen Elizabeth, was known as "the prudent."¹ Master of almost all of the New World, he established the *Leyes de los Reynos de las Indias* for the establishment and government of colonies. Therein it was provided that a pueblo or town might be established by a contract for settlement,² in which ten married men agreed to establish it with their families, within a time therein specified. Dwellings were to be provided for each family, a church established, and a prescribed list of livestock was to be maintained by each settler on the common lands allotted for the settlement. If the conditions had been met, within the time specified, the reward was the official establishment of the town or pueblo and a grant to the settlers in common of four square (Spanish) leagues of

¹ Though the loss of his Armada in 1588 was to start the decline of Spanish power, which culminated in Mexican independence in 1821, [this is not] pertinent to our story.

² *Recopilación de leyes de los Reynos de las Indias, Ordenanzas del Rei Don Felipe II*, Libro IV, título V, leyes VI, X; "Ayuntamiento," in Joaquín Escriche, *Diccionario Razonado de Legislación y Jurisprudencia* (rev. ed., Paris: Librería de Rosa, Bouret y Cia., 1854), 336–38.

land, laid out in a square if topography permitted without infringing upon any other pueblo or Indian town. The pueblo gained political status.

It would be under the eye of the prefect, representing the crown, but with its *alcalde* or mayor, and its *regidores* or councilmen formed into the *ayuntamiento* or council, it would have considerable self-government, and the council would assign and administer the pueblo lands. The waters, minerals and forests likewise were to be so administered.

The *alcalde*, as mayor, exercised the general functions of a justice of the peace, a feature retained in later municipal law in the American regime taking over Spanish-Mexican cities (see 1 Cal. Reports, original ed., appendix).

In October, 1781, Lord Cornwallis surrendered, and English dominion of the Atlantic colonies ceased. Only a month before, on September 4, 1781, twelve unpromising colonists began building rush huts for themselves and families at an Indian village called Yang-Na, to hold the Pacific Coast for Spain. They had come from Sonora and Sinaloa to fulfill their contract of settlement under Philip II's *ordenanzas*, which settlement was blessed as the Pueblo de Nuestra Señora la Reina de los Ángeles de Porciúncula, in ceremonies conducted by the San Gabriel Mission. "Porciúncula," the name given to the present Los Angeles River by Portola, was derived from the Franciscan festival day on which Portola, in 1769, had paused at the spot.

The launching of this settlement, under the laws of the Indies, had involved some legal difficulty. The requirements of the *ordenanzas* of Philip II were not well adapted to this new land. For instance, Law VI required settlers, among other things, to have blooded Castilian livestock, obviously difficult on such a faraway frontier.

A decree was drawn up by Don Filipe de Neve, governor, close to the problem, for the government of Alta California, of which the 14th Title treated of settlements and pueblos on a more realistic basis.³ Promulgated at Monterey, this decree was referred to the King of Spain, who approved the decree on October 24, 1781. De Neve already had given instructions for the establishment of the new settlement, which was well under way before the royal approval was given.

³ A translation appears in John W. Dwinelle, *The Colonial History of the City of San Francisco: being a synthetic argument in the District Court of the United States for the Northern District of California, for four square leagues of land claimed by that city* (San Francisco: Towne & Bacon, 1863), Addenda IV.

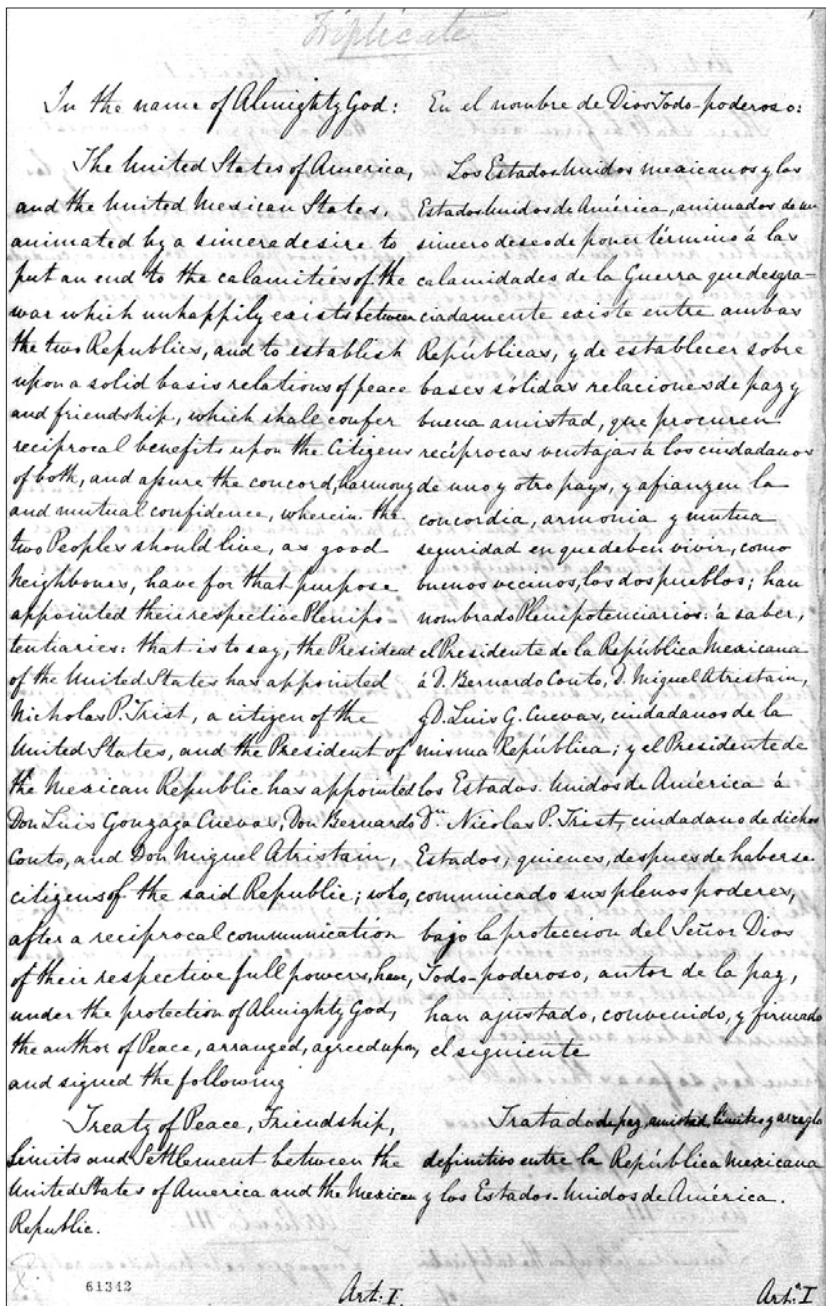
TRANSLATING CALIFORNIA:

Official Spanish Usage in California's Constitutional Conventions and State Legislature, 1848–1894

BY ROSINA A. LOZANO*

Pablo de la Guerra was not an ideal candidate for a conquered man. Educated, landed, and holding great prestige in his community, de la Guerra was a *Californio* who witnessed the transfer of his native land from Mexico to the United States during the Mexican American War. His previous advantages afforded him continued respect in post-1848 California. The Treaty of Guadalupe Hidalgo guaranteed United States citizenship for Mexican citizens living in the newly secured territories. While de la Guerra maintained some of his previous wealth and status, he shared conflicted views about his new “Yankee,” English-speaking identity and the feeling that came from writing in English rather than in his native Spanish. De la

* Rosina A. Lozano recently completed her PhD in History at the University of Southern California. I would like to acknowledge several individuals who made this article possible. Thank you to William Deverell for recommending that I publish this article and to George Sánchez, Félix Gutiérrez, and Mary Dudziak for providing advice, encouragement, and notes on all my work. An early version of this article was presented at the Western History Dissertation Workshop held at Yale University in May 2009. I wish to thank Richard White, Steve Aron, Louis Warren, Adam Aranson, Ryan André Brasseaux, Jay Gitlin, and especially John Mack Faragher for their detailed comments and suggestions on my work.



THE TREATY OF GUADALUPE HIDALGO
 WITH PARALLEL ENGLISH AND SPANISH TEXT, 1848.

Guerra's description of Anglos in a December 14, 1851, letter suggested just how strange he thought his new countrymen to be:

The English (in which I have to write to you) the idiom of birds, I do not know it with such a perfection, as I have neither beak nor wings, things both I believe inherent to every Yankee, and notwithstanding that I am one of them, yet its deficiency in me I think is because I am an unwilling one.¹

This letter not only points out how de la Guerra was forced to write in English to his lawyer, Archibald Peachy, but also suggests that he would never be comfortable in his new role as a Yankee due to his imperfect English. This language deficiency would forever label him as an "unwilling" or conquered American. De la Guerra's feelings of being an outsider in the new system would be underscored as the state moved away from supporting the mother tongue of the *Californios* and in the process began seeing them as foreigners in the land of their birth.

Despite his reluctance to be a Yankee, de la Guerra became a fixture in the American period's political system. He demonstrated a certain acceptance of the new government and was selected to represent his home region of Santa Barbara in the state senate. His English skills must have improved tremendously while in this role: Just two years into the statehood period, he had already begun writing in the language of the conquerors. This gain was impressive considering he needed a translator at the 1849 California Constitutional Convention.² Perhaps due to his own language struggles and the needs of his constituents, de la Guerra was the most adamant supporter in the state senate for proper and timely translations for Spanish speakers. As his brother, Antonio de la Guerra later reminded him, without translations entire regions could not follow the law,

Aquí hemos visto varias leyes de esa legislatura pero a nada hemos hecho caso por no venir de oficio y estar en Yngles . . . no hai quien

¹ Pablo de la Guerra to Archibald Cary Peachy, 14 December 1851, box 9 fol 413, Guerra Family Collection, The Huntington Library, San Marino, California (hereafter cited as GFC).

² California, *Report of the Debates in the Convention of California on the Formation of the State Constitution, in September and October, 1849* (Washington: Printed by J. T. Towers, 1850), 305.

THE LADY IN PURPLE:

The Life and Legal Legacy of Gladys Towles Root

RICHARD F. McFARLANE*

Gladys Towles Root was a Los Angeles lawyer famous for flamboyant clothing, large hats and audacious trial tactics. Root used her legal skills to defend accused sex criminals, murderers, kidnappers, and other unsavory characters. She used the doctrine of legal insanity and aggressive cross-examination to get her clients acquittals or reduced sentences and successfully challenged California's miscegenation law as it applied to Filipinos. Root was as well known to the newspaper's society columnist as she was to the newspaper's crime reporters.

THE HISTORICAL PROBLEM

In their essay, "Women, Legal History, and the American West," John R. Wunder and Paula Petrick observe that

little scholarship has been published concerning western women and criminal law, and, except for divorce, little has been accomplished by way of women and civil law. Likewise, western women's roles in the

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A COURTROOM APPEARANCE BY GLADYS TOWLES ROOT,
LOS ANGELES TIMES, AUGUST 31, 1948, P. 15

Los Angeles Times Photographic Archive, Department of Special Collections,
Charles E. Young Research Library, UCLA.

history of property and probate need more attention. No regional historical study of western law yet exists; similarly no history of women, the law, and the American West has been written.¹

Although there have been some contributions to the literature since Wunder and Petrick wrote in 1994, women in the law remains an under-researched area. The present article is a biography, but one intended to be mindful of the maxim that “a biography to be really worthwhile must relate to something more than the life and activities of an individual.”² Most lawyers’ biographies ignore the contributions of attorneys to jurisprudence. For example, *The Invisible Bar* by Karen Berger Morello³ is a valuable primer on women in the law, but largely ignores the contributions they made other than by just being there. It begins with Margaret Brent, who practiced law in Maryland in 1638, and concludes with the appointment of Sandra Day O’Connor to the U.S. Supreme Court in 1981. Virginia C. Drachman introduces her book, *Sisters in the Law*, stating, “The history of women lawyers is a powerful story of discrimination, integration, and women’s search for equality and autonomy in American society.”⁴ *Sisters in the Law* begins in the 1860s and ends in 1930, the same year Root was admitted to the bar. It is well written, well researched and well documented, but it also ignores the contributions women made to American jurisprudence other than by simply being members of the bar. A notable exception is *America’s First Woman Lawyer: The Biography of Myra Bradwell* by Jane M. Friedman.⁵ This book begins with Bradwell’s quest for membership in the Illinois bar, and goes on to discuss her friendship with Mary Todd Lincoln, her founding and editing the legal newspaper, *Chicago Legal News*, and her contributions to the woman suffrage movement. The book is well written and copiously endnoted to primary sources. Although Bradwell

¹ John R. Wunder and Paula Petrik, “Women, Legal History and the American West,” *Western Legal History* 7 (Summer/Fall 1994): 197.

² Owen C. Coy, “Introduction” in Caroline Walker, Boyle Workman’s *The City That Grew* (Los Angeles: Southland Publishing Co., 1935), vii.

³ Karen Berger Morello, *The Invisible Bar: The Woman Lawyer in America 1638 to the Present* (New York: Random House, 1986).

⁴ Virginia C. Drachman, *Sisters in the Law* (Cambridge: Harvard University Press, 1998), 1.

⁵ Jane M. Friedman, *America’s First Woman Lawyer: The Biography of Myra Bradwell* (Buffalo, N.Y.: Prometheus Books, 1993).

ANTI-CORRUPTION CRUSADE OR “BUSINESSMAN’S REVOLUTION”? —

An Inquiry into the 1856 Vigilance Committee

BY DON WARNER*

INTRODUCTION

In a work published during the year 2000, the noted California historian Doyce B. Nunis stated that “a judicious history” of the 1856 San Francisco Vigilance Committee “has yet to be written.”¹ He had written the same in 1971.² It would appear that no one has publicly disagreed with Professor Nunis’s opinion in the ensuing forty years.

This article is, by necessity, not a complete history of the Vigilance Committee. It will, however, examine in a judicious manner the facts pertaining to one central question concerning the Committee’s existence and operations. That question is whether the Committee’s actions conformed to the ostensible reason for which it was formed: to protect the citizens of

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¹ DOYCE B. NUNIS, JR., ED., *ANOTHER VIEW OF THE SAN FRANCISCO 1856 VIGILANCE COMMITTEE: ROBERT GEORGE BYXBEE’S LETTER TO HIS SISTER, JUNE 1856* (Los Angeles: Zamorano Club [“Keepsake”], (2000), 5.

² DOYCE B. NUNIS, JR., ED., *THE SAN FRANCISCO VIGILANCE COMMITTEE: THREE VIEWS* [BY] WILLIAM T. COLEMAN, WILLIAM T. SHERMAN [AND] JAMES O’MEARA, 1856 (Los Angeles: Los Angeles Westerners, 1971), 9 [hereinafter “THREE VIEWS”].

San Francisco from a situation in which crime was rampant, and murderers were systematically going unpunished.

The methodology for this examination will be to use existing primary source material, produced by the Committee itself, to describe the Committee's actions as they pertain to the question of whether they served its ostensible purpose.

This is an important task because the Second, or Great, San Francisco Vigilance Committee, which controlled the city during the months of May through August 1856, was a major event in the early history of California. It can claim several superlatives. Although not the most deadly of the state's insurrections, it was the best organized, the longest-lived, and the most successful in its resistance to the established governments of the day. It was, and remains, the most controversial.³

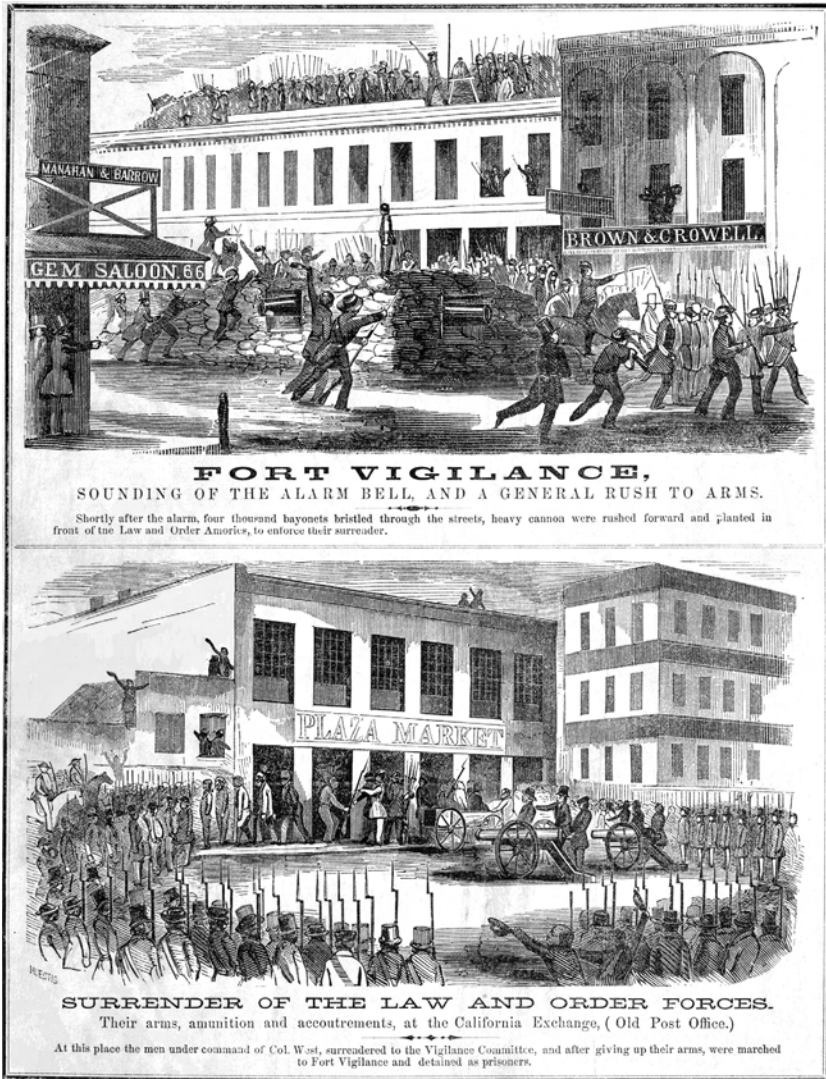
The controversy is not about whether what the Committee did was an insurrection. All would agree — the Committee itself and those who opposed it, called the "Law-and-Order Party," and its defenders and detractors in the years since — that it was an insurrection, an open rebellion against an established government.⁴ They differ, however, on whether the Committee's actions were justified under the circumstances.

It is necessary to disambiguate the term "justified" because there are several possible meanings. Actions may be justified legally, politically, or morally. The Committee's actions in deliberately hanging four men cannot be *legally* justified, under the criminal statutes in effect in California at that time.⁵ Those actions may be justified politically, however, as acts

³ It has also been the subject of a mountain of historical writing. In that vein, please note that this article is not a historiography of the Committee. That was done, well, in Professor Nunis's 1971 introduction to *Three Views*, and updated through 1985 in ROBERT SENKEWICZ, *VIGILANTES IN GOLD RUSH SAN FRANCISCO* (Stanford: Stanford University Press, 1985), 203–31. No additional history of the Committee has appeared since then.

⁴ WEBSTER'S ENCYCLOPEDIA UNABRIDGED DICTIONARY (1989), 738.

⁵ Stats. 1850, Ch. 99. Sec. 13: "Murder is the unlawful killing of a human being with malice aforethought, either express or implied." Sec. 14: "Malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof." Sec. 29: "Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of habitation, property, or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony."



(TOP) “FORT VIGILANCE,
SOUNDING OF THE ALARM BELL, AND A GENERAL RUSH TO ARMS. SHORTLY AFTER THE
ALARM, FOUR THOUSAND BAYONETS BRISTLED THROUGH THE STREETS, HEAVY CANNONS
WERE RUSHED FORWARD AND PLANTED IN FRONT OF THE LAW AND ORDER ARMORIES,
TO ENFORCE THEIR SURRENDER.”

(BOTTOM) “SURRENDER OF THE LAW AND ORDER FORCES.
THEIR ARMS, AMMUNITION, AND ACCOUTREMENTS, AT THE CALIFORNIA EXCHANGE,
(OLD POST OFFICE.) AT THIS PLACE THE MEN UNDER COMMAND OF COL. WEST,
SURRENDERED TO THE VIGILANCE COMMITTEE, AND WERE MARCHED TO FORT
VIGILANCE AND DETAINED AS PRISONERS.”

California Letter Sheets 1850–1871. *Huntington Library*, folder #112, UID: 48771.



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