



THE CALIFORNIA SUPREME COURT

# Historical Society

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LEFT TO RIGHT: California Supreme Court Associate Justice Carol A. Corrigan, Associate Justice Kathryn M. Werdegar, Associate Justice Joyce L. Kennard, Chief Justice Tani Cantil-Sakauye, Associate Justice Marvin R. Baxter, Associate Justice Ming W. Chin, and Associate Justice Goodwin Liu at USF School of Law.  
(SEE A SALUTE TO THE WOMEN JUSTICES ON PAGE 2, AND SPECIAL OUTREACH SESSIONS ON PAGE 8.)

PHOTO BY SHAWN P. CALHOUN / UNIVERSITY OF SAN FRANCISCO

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LEFT TO RIGHT: *Associate Justice Carol A. Corrigan, Associate Justice Joyce L. Kennard, Associate Justice Kathryn M. Werdegar, Chief Justice Tani Cantil-Sakauye, Associate Justice Ming W. Chin, Associate Justice Marvin R. Baxter and Associate Justice Goodwin Liu.*

COURTESY OF THE SUPREME COURT OF CALIFORNIA / PHOTO BY WAYNE WOODS

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## *A Salute to the Women Justices of the California Supreme Court*

BY RAY McDEVITT\* & MAUREEN B. DEAR\*\*

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In 1969, the year your editor graduated from law school, he was fortunate enough to have had the opportunity to serve as a law clerk for the late Justice Raymond L. Sullivan of the California Supreme Court. At that time all seven of the justices on the Court were men. That had been the case for the preceding 120 years, as was evident to anyone walking down the main corridor of the Court, its walls lined with the photographs of the justices, all male, who had served on the Court. This state of affairs would continue for another seven years, until the controversial appointment of Rose Bird as Chief Justice in 1977. When she was voted out of office in 1986, the Court once again was comprised only of men, until the appointment of Justice Joyce Kennard in 1989.

Fewer than 25 years later, much had changed. In 2012, the ABA Commission on Women in the Profession conferred the prestigious Margaret Brent Women Lawyers of Achievement Award on California's newly-

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\*\* Maureen B. Dear provides research, drafting and related services for JAMS and works with several nonprofit organizations on issues affecting the structure and operation of government in California. She practiced business and estate planning law before serving for many years as a judicial staff attorney, including for Justices Werdegar and Corrigan when they were on the First District Court of Appeal. She is a graduate of UCLA, *Phi Beta Kappa*, and the UC Davis School of Law, where she was a classmate of Chief Justice Tani Cantil-Sakauye.

appointed Chief Justice Tani Cantil-Sakauye. At the presentation ceremony the Chief Justice, in accepting the award, announced that she was “proud that the California Supreme Court now has a majority of women.”

At some point in the future, there will have been so many women justices, of so many differing personal characteristics and judicial philosophies, that an article discussing a state Supreme Court comprised of a majority of women would no longer be newsworthy. But at this particular moment it does seem appropriate to take note of, and applaud, this welcome change in the composition of our esteemed High Court.

An integral element of this article is a series of profiles of each of the six women who have served, or are currently serving, as justices on the Court. These profiles recount the basic educational attainments, legal/judicial accomplishments, and community service contributions of the individual justices, considered as individuals. Here we attempt to present some more general observations, noting in particular those attributes and experiences that all, or many, of the justices have in common. Whether viewed individually or collectively it is readily apparent that this is an extraordinary group of highly intelligent, extremely hard-working, fiercely independent lawyers who are blessed with astonishing reserves of stamina.

All are, or were, pioneers simply by virtue of having chosen the law as their career path at times when the

profession was male-dominated and frequently not welcoming to women. Each also was a trailblazer in more dramatic ways. Rose Bird was the first woman appointed to the California Supreme Court and the first to serve as Chief Justice. Kathryn Werdegar, one of only two women in her law school class at Boalt Hall, UC Berkeley, was the first woman elected as Editor-in-Chief of the *California Law Review*. Carol Corrigan was among the first women to serve in the Alameda County District Attorney's Office. Others blazed trails by virtue of their ethnic heritage. Joyce Kennard was the first Asian American, as well as the second woman, appointed to the Court. Janice Rogers Brown was the first African-American woman appointed to the Court. Just two years ago Tani Cantil-Sakauye became the first Filipina American appointed to the Court, the first Asian American to serve as the Chief Justice of the Court (or, indeed, of any state high court in the continental United States), and only the second woman to serve as Chief Justice of California.

All began their legal careers, and worked for most of the time before their appointment to the bench, as government lawyers. This may in part reflect the more limited opportunities for women lawyers available in private-sector law firms during the 1950s and 1960s. However, it also reflects their common inclination toward public service, which has continued throughout their careers.

All of the justices currently on the Court commit time and energy to the public good, over and above the long hours they devote to the demands of their office. The Chief Justice, in addition to the expansive administrative and budgetary tasks with which she must constantly grapple, frequently takes time to meet with high school and community college students throughout the state to provide insight into the courts and to encourage them to work hard toward their goals. Justice Werdegar continually speaks to a wide array of audiences on timely legal topics, including those specifically pertaining to women lawyers. She also serves as an active member of the California Supreme Court Historical Society's Board of Directors, and recently authored an article for this publication, and for the Society's scholarly journal, *California Legal History*. Justice Corrigan has served for many years on the board of directors of her *alma mater*, Holy Names University, and on the governing board of St. Vincent's Day Home in Oakland. Justice Kennard takes care in mentoring her student externs, encouraging them to become familiar with the classic handbook, *Elements of Style*, and reviewing with them her editorial changes to each draft they prepare. She participates in seminar classes at Hastings, and meets with student externs from the Court of Appeal in her chambers. Many of the externs are Asian-American, and she encourages them to persevere in working to achieve their ambitions, and to remain mindful of the freedoms available to them in the United States.

Finally, many of these justices faced obstacles to success even more formidable than having come of age at a time when the legal profession was overwhelmingly male, and female students in law schools were rare. Chief Justice Bird's parents were chicken farmers. Her father died when she was only five and her mother worked in a factory to support the family. Justice Brown was born in Alabama to parents who were sharecroppers. As a child she attended racially segregated schools. Chief Justice Cantil-Sakauye's parents both worked in the fields, her father on plantations in Hawaii. She had no thought of becoming a lawyer until she participated in speech and debate classes at a nearby community college. She worked as a waitress throughout college and law school. Justice Kennard was born in Indonesia during WWII. Her father died in a Japanese concentration camp when she was one year old. After the war, she and her mother lived with four other families in a Quonset hut that had no kitchen, indoor plumbing, or refrigeration. She learned English at a tiny missionary school and by listening to Australian radio broadcasts of American popular songs. Justice Werdegar lost her mother at age four and one-half and spent much of her young life living apart from her family. At a time when it was much less common to do so, she juggled the demands of family life (raising two sons) and a legal career.

This article does not attempt to address the effect, if any, that having women on the Court may have made to the Court's opinions. The jury is still out on whether women bring some inherently distinctive quality to judicial decision-making. Former US Supreme Court Justice Sandra Day O'Connor, the first woman to serve on that Court, rejects the notion of gender-specific jurisprudence, stating "I think the important thing about my appointment is not that I will decide cases as a woman, but that I am a woman who will get to decide cases." To our knowledge, none of the women who have served, or are now serving, on the California High Court disagrees with Justice O'Connor's viewpoint. They recognize as well that women, by virtue of differing life experiences, can bring a uniquely diverse perspective to the Court. They also endorse the sentiment behind another of Justice O'Connor's observations about women justices. Last year, when asked to explain the value of having women judges, she replied: "Maybe you haven't noticed but I think about 51 or 52 percent of the population is female. I think they notice when their public bodies are dominated by one sex. Women care about this and they should."

All Californians should be proud of the four extraordinary, admirable women currently serving on the Court, together with their two pioneering former colleagues. Each of these women did take notice, and did care, and their vision and courage in pursuing a legal career has undoubtedly inspired others to take notice and care as well.

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FORMER CHIEF JUSTICE  
ROSE ELIZABETH BIRD



PHOTO BY MOULIN STUDIOS

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Chief Justice Bird was appointed to the California Supreme Court by Governor Edmund G. (Jerry) Brown, Jr. in February 1977. She was the first woman to be appointed to the California Supreme Court, as well as the Court's first female Chief Justice. She served for 10 challenging years as the 25th Chief Justice; during her tenure the Court was confronted with several highly-charged issues including Proposition 13, new and stricter criminal laws, and, of course, the death penalty cases. In 1986, after an organized, well-funded statewide political campaign (to which she essentially did not respond) she was removed from that office by California voters, many of whom were dissatisfied with what was perceived as her opposition to the death penalty.

She graduated from Long Island University, *magna cum laude*, and from Boalt Hall School of Law at the University of California, Berkeley, with academic distinction and awards for best oral advocacy and brief writing.

After law school she held a succession of path-breaking jobs. She was the first female law clerk for the Supreme Court of Nevada, the first female deputy public defender in Santa Clara County, and the first woman to hold a cabinet-level job in California (as Secretary of Agriculture). During the early to mid 1970s, she taught courses in criminal procedure and consumer protection law as a clinical professor at Stanford Law School.

In a 1986 interview Bird stated: "I've always said when you're the first of your sex or race in a position, three things apply to you. One, you're always placed under a microscope. Two, you're allowed no margin for error. And three, the assumption is always made that you achieved your position based on something other than merit."

Some considered her headstrong and stubborn and relations were, from time to time, strained with some of her colleagues. Yet, she showed a charming personal side in many ways: by bringing home-made baked goods to the regular Wednesday petition conferences held in her chambers; by remembering birthdays and anniversaries of her staff with a personal card or gift or a specially composed piece of poetry; and by sending a warm welcoming note to a newly-appointed justice, shortly after her own defeat at the polls.

The former Chief Justice died in December 1999, at the age of 63, from complications of breast cancer, which she had fought since 1976. The California Public Defender's Association established an award in her honor, as did the California Women Lawyers. Justice Joyce Kennard remarked at a special memorial session of the Court held after Chief Justice Bird's death:

"This woman of intellectual brilliance, extraordinary courage, compassion and grace has forever left her imprint on California's history . . . she was a woman of substance, a woman of character. Her friendship enriched my life."

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ASSOCIATE JUSTICE  
JOYCE L. KENNARD



PHOTO BY MOULIN STUDIOS

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Justice Kennard was appointed to the California Supreme Court by Governor George Deukmejian in April 1989. Previously, she served as an Associate Justice on the California Court of Appeal (Second District) in Los Angeles, as a judge on the Los Angeles County Superior Court, and as a judge on the Los Angeles County Municipal Court. Prior to her initial appointment to the bench, she worked as an attorney for 12 years, first as a Deputy Attorney General in Los Angeles and later as a senior staff attorney for the state Court of Appeal.

She graduated from the University of Southern California in 1971, receiving her BA degree in German *magna cum laude*. As an undergraduate, she also was elected to Phi Beta Kappa and awarded academic scholarships, while working 20 hours a week. In 1974, she graduated from USC's Gould School of Law, and at the same time received a Master of Public Administration degree from USC's School of Public Administration.

Justice Kennard's judicial career has been replete with awards and honors including, most recently, the 2012 Judicial Achievement Award from the Asian American Bar Association of the Greater Bay Area. In 2011, she was recognized by the legal newspaper, *The Recorder*, as one of 20 "Women Leaders in the Law." She received the first Justice Rose Bird Memorial Award from the California Women Lawyers in 2001. And in 1993 she was honored by the ABA Commission on Women in the Profession, which selected her for its prestigious Margaret Brent Women Lawyers of Achievement Award.

Justice Kennard also has received special recognition in a number of publications including *The Counselors, Conversations With 18 Courageous Women Who Have Changed the World*, by Elizabeth Vrato (2002), and in a law review article, *Joyce L. Kennard: An Independent Streak on California's Highest Court*, 65 *Albany Law Rev.* 1181 (2002).

Not reflected in these awards, however, is recognition of one of the justice's less-known talents. Her spacious hillside garden in Marin County boasts a delightfully dizzying variety of rose bushes. To see them in bloom would certainly bring numerous accolades from any member of the American Rose Society.

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**ASSOCIATE JUSTICE  
KATHRYN M. WERDEGAR**



PHOTO BY MOULIN STUDIOS

Justice Werdegar was appointed to the California Supreme Court by Governor Pete Wilson in May 1994. Previously, in 1991, Governor Wilson had made her his first judicial appointment, placing her on the California Court of Appeal (First District) in San Francisco, where she was the only woman among 19 justices. Before her appointment to the bench, Justice Werdegar worked as an attorney in the Civil Rights Division of the United States Department of Justice in Washington, DC, during the Kennedy Administration; as director of the criminal law division of California Continuing Education of the Bar; as a senior staff attorney with the California Court of Appeal and the California Supreme Court; and as a professor and Associate Dean for Academic and Student Affairs at the University of San Francisco School of Law.

She received her BA (with honors) from the University of California at Berkeley. She commenced her law studies at the University of California School of Law (Boalt Hall), where she was the first woman to be elected Editor-in-Chief of the *California Law Review*. She completed her law studies at George Washington University, where she graduated first in her class, served on the *Law Review*, and earned the school's Charles Glover Award for Highest Achievement in the Field of Law.

Justice Werdegar has received numerous honors and awards. In 2012 she was invited to deliver the Jefferson Memorial Lecture at the University of California at Berkeley. In 2000, she was appointed Regents' Lecturer at UC Berkeley and was elected to membership in the American Law Institute. She also is the recipient of the University of California School of Law Citation Award (the school's highest honor) (2002); the Consumer Attorneys of California Justice of the Year Award (1998); the California Alumni Association Excellence in Achievement Award (1996); and the George Washington University Law Alumni Association Distinguished Public Service Award (1996). She has written widely, on a variety of legal topics, and is a member of the Board of Directors of the California Supreme Court Historical Society.

Justice Werdegar has balanced a demanding legal career with her role as wife, mother and grandmother. She and her husband, Dr. David Werdegar, have two married sons and five grandchildren. Her life is also balanced and enriched by her pleasure in playing classical piano and her love of the outdoors. Those who, like her, enjoy the peaks of Mount Tamalpais and the lakes of the Marin Municipal Water District should not be surprised to see this most stylish justice in sturdy hiking boots and gear boldly heading up a trail.

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FORMER ASSOCIATE JUSTICE  
JANICE ROGERS BROWN



PHOTO BY SIRLIN PHOTOGRAPHERS

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Justice Brown was appointed to the California Supreme Court in May 1996 by Governor Pete Wilson. She served until June 2005, when she assumed her current position on the United States Court of Appeals for the District of Columbia Circuit. Justice Brown was the Supreme Court's first African-American female justice. Prior to her elevation to the Supreme Court, she served as an Associate Justice on the California Court of Appeal (Third District) in Sacramento (1994 to 1996), and as Legal Affairs Secretary to Governor Pete Wilson (1991 to 1994).

Justice Brown received her BA from California State University, Sacramento and her JD from UCLA. After graduating from law school in 1977, she worked for two years as a Deputy Legislative Counsel in the Office of the California Legislative Counsel in Sacramento. She then spent eight years in the California Attorney General's Office (1979–1987), where she worked in both the criminal and civil divisions. Subsequently, she served for two and one-half years as Deputy Secretary and General Counsel for the state's Business, Transportation and Housing Agency (1987–1990), working primarily with business regulatory departments. Prior to her appointment as the Governor's Legal Affairs Secretary, she briefly entered private practice as an associate at Nielsen, Merksamer, LLP, a Sacramento law firm specializing in government and political/electoral law (1990 to 1991).

Regarding her service on the California Supreme Court, she may be best remembered for the extended majority opinion she authored in a decision upholding Proposition 209, the voter-approved initiative barring

preferential treatment for women and minorities. (*Hi-Voltage Wire Works v. City of San Jose* (2000) 24 Cal.4th 537.) Her sometimes contentious writing style occasionally sparked controversy, as the concurring and dissenting opinion of Chief Justice George in the *Hi-Voltage Wire Works* case reveals. Like Justice Antonin Scalia on the US Supreme Court (with whom some of her former colleagues on the California Supreme Court have compared her) she did not shy away from taking verbal jabs at her colleagues.

After her appointment to the Court she chose not to move to San Francisco, but to remain in her home near Sacramento, and did much of her work from a small office in the Court's Sacramento chambers. Still, she had a passion for jazz, and could occasionally be spotted at Yoshi's, the venerable jazz club in Oakland (her husband is a jazz musician), sitting with legal briefs in hand.

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ASSOCIATE JUSTICE  
CAROL A. CORRIGAN



PHOTO BY ELSON-ALEXANDRE

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Justice Corrigan was appointed to the California Supreme Court by Governor Arnold Schwarzenegger, taking office in January 2006. Prior to her elevation, she served on the California Court of Appeal (First District) in San Francisco from 1994 to 2006, on the Alameda County Superior Court from 1991 to 1994, and on the Alameda Municipal Court from 1987 to 1991. She began her legal career in 1975 as a Deputy District Attorney in Alameda County and became a Senior Deputy District Attorney in 1985.

She received her BA (with honors) from Holy Names University in Oakland. She then attended a clinical psychology doctoral program at St. Louis University for two years, but left to pursue a career in law. She earned

her JD from the University of California Hastings College of the Law in 1975.

Justice Corrigan has long been active in the legal community. In 2003 she received the Jurist of the Year award from the California Judicial Council, after chairing the Judicial Council's Task Force on Jury Instructions, which resulted in an overhaul of the jury instructions then in use and the development of those presently employed by the California superior courts. Justice Corrigan also has taught, as an adjunct professor, in several Bay Area law schools (including Boalt Hall, Hastings and USF). She continues to participate in programs designed for practicing attorneys (the National Institute of Trial Advocacy) and judges (the California Judicial College and the Center for Judicial Education and Research, on whose Governing Board she served from 1994–1997).

For many years she has also taken time to be active in her local community. Among her long-standing charitable commitments is serving, since 1982, on the Board of Saint Vincent's Day Home, a child development center in Oakland. Saint Vincent's provides a number of services, including child care and education, primarily to single parent families who struggle at or below the poverty line. Justice Corrigan also has been a member of the Board of Directors of Holy Names University since 1988, serving as president for 15 of those years. And watch for her on the links — she is an avid and accomplished golfer.

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CHIEF JUSTICE TANI  
CANTIL-SAKAUYE



PHOTO BY WAYNE WOODS PHOTOGRAPHY

Chief Justice Cantil-Sakauye was nominated to be California's 28th Chief Justice by Governor Arnold Schwarzenegger in July 2010 and sworn into

office in January 2011. She is the first Filipina American justice on the Court and the second woman to serve as the state's Chief Justice.

Before being appointed to the Supreme Court she served for more than 20 years on California trial and appellate courts. In 1990, Governor George Deukmejian appointed her to the Sacramento County Municipal Court. In 1997, Governor Pete Wilson elevated her to the Superior Court, where she established and presided over the first court in Sacramento County dedicated to domestic violence issues. In 2005, Governor Schwarzenegger appointed her to the California Court of Appeal (Third District) in Sacramento.

She received her BA from the University of California, Davis, graduating with honors in 1980. After taking a year off to visit the Philippines, she entered the UC Davis School of Law (King Hall) in 1981. Upon graduation in 1984, she worked as a Deputy District Attorney in the Sacramento County District Attorney's Office, where she prosecuted a variety of criminal offenses. In 1988, she served on the senior staff of Governor Deukmejian in two capacities: as Deputy Legal Affairs Secretary and as Deputy Legislative Secretary.

Chief Justice Cantil-Sakauye has been described as strong, quick, personable, and an expert multi-tasker — attributes that serve her well in her multiple public and internal roles as Chief Justice. In addition to carrying the full workload of one of seven justices and presiding over the state's highest court, she also chairs the Judicial Council — the policy-making body of California's judicial branch. In essence, she is the CEO of the largest judicial system in the United States. In this capacity, for the past few years she has grappled with the difficult challenges presented by continuing reductions in state funding.

Budget problems have not diminished the Chief Justice's commitment to continuing, and expanding, the Court's recent outreach initiatives: holding oral arguments in venues other than the courtrooms traditionally used in San Francisco, Los Angeles and Sacramento and routinely inviting community college and high school students to observe oral arguments and interact with the justices after the formal proceedings have concluded.

Multi-tasking applies to her personal life as well. She is married to Mark Sakauye, a retired Sacramento police lieutenant; they have two teenage daughters. She is a devoted mom who still makes time for her daughters' volleyball games and related events, where on weekends (when not traveling on official business statewide or nationwide) she can be seen up in the stands working on her iPad or iPhone — and yet cheering at just the right moment. ★



SPECIAL OUTREACH SESSION AT UC DAVIS SCHOOL OF LAW, OCTOBER 2012

LEFT TO RIGHT: *Associate Justice Carol A. Corrigan, Associate Justice Kathryn M. Werdegar, Associate Justice Joyce L. Kennard, Chief Justice Tani Cantil-Sakauye, Associate Justice Marvin R. Baxter, Associate Justice Ming W. Chin, and Associate Justice Goodwin Liu.*

PHOTO BY KAREN HIGGINS / UC DAVIS

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## *Court Holds “Outreach” Special Sessions at UC Davis and USF Law Schools*

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Continuing a tradition begun under former Chief Justice Ronald M. George, the California Supreme Court recently held two special “outreach” oral argument sessions in venues beyond those normally used in San Francisco, Sacramento, and Los Angeles. In October 2012 the Court held a special session at the UC Davis School of Law, and in February of this year the Court heard oral arguments in a special session at the University of San Francisco School of Law. (Previously, the Court has held similar events in Santa Ana, Fresno, San Jose, San Diego, Redding, Santa Rosa, Santa Barbara, Riverside, and at UC Hastings and UC Berkeley.) On each occasion the Court heard oral arguments in three cases and fielded questions from both law students and local high school students.

Expressing the justices’ appreciation at each school for its hosting the event, Chief Justice Tani Cantil-Sakauye emphasized that one of her hopes for sessions of this kind is directly related to her commitment to fostering Civic Education (an understanding of how government actually works) among young people. At UC Davis, the Chief Justice explained the special session provides a unique educational opportunity for both law

students and local high school students to “observe the Supreme Court in action as it hears oral arguments in cases of major statewide importance.” At USF, the Chief Justice also expressed the hope that “experiencing their constitutional democracy in action” will inspire some of the high school students to careers in public service.

To enhance the students’ understanding of the proceedings, the Court posted in advance a calendar with expanded summaries of the cases to be argued as well as links to the parties’ briefs. Using these materials, teachers at local high schools in each area were able to work with their students to provide context for the oral arguments. The participating schools in San Francisco were Balboa High School Law Academy and Thurgood Marshall High School; at Davis the schools were Pioneer High School and West Sacramento Early College Prep. Prior to hearing counsel argue the scheduled cases, at both venues the justices entertained and answered questions from seven students, alternating between law and high school students.

During the proceedings at UC Davis, the Court took the opportunity to recognize the opening of the new California Supreme Court Clinic at the law school.



TOP ROW, LEFT TO RIGHT: *Associate Justice Carol A. Corrigan; Chief Justice Tani Cantil-Sakauye, Associate Justice Marvin R. Baxter and Associate Justice Ming W. Chin.*

CENTER ROW, LEFT TO RIGHT: *Associate Justice Joyce L. Kennard; Associate Justice Goodwin Liu; and Associate Justice Kathryn M. Werdegar.*

BOTTOM ROW: *High school students pose a question to the court; counsel and audience at the special session.*

PHOTOS ON THIS PAGE BY SHAWN P. CALHOUN / UNIVERSITY OF SAN FRANCISCO

(Please see article on page 11.) At USF, the Court's special session was an integral element in the celebration of the law school's centennial.

At both sessions, in addition to the courtroom proceedings, the justices attended an afternoon reception with the school's faculty and students. As has been the practice with most prior special sessions, both events

were televised live and in full on the California Channel, and now both may be viewed in the archives at <http://www.calchannel.com/special-outreach-session-at-the-uc-davis-school-of-law/> and <http://www.calchannel.com/supreme-court-of-california-special-session-at-the-university-of-san-francisco/>. ★

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TOP ROW, LEFT: *Chief Justice Tani Cantil-Sakauye makes her welcoming remarks before the start of the special session. The Chief Justice received her JD from the UC Davis School of Law in 1984.*

TOP ROW, RIGHT: *Associate Justice Goodwin Liu asks a question during oral arguments in *Nalwa (Smriti) v. Cedar Fair, L.P.* The case was one of three heard during the special session.*

CENTER ROW, LEFT: *Associate Justice Joyce L. Kennard speaks to counsel during oral argument in *Ralphs Grocery Co. v. United Food and Commercial Workers Union Local 8.**

CENTER ROW, RIGHT: *Davis high school student Daniel Tut, UC Davis law student Kelly Volkar, Davis high school student Sofia Cardenas, and UC Davis law student Richard Andrews listen to Miriam A. Vogel argue for the appellant during *Ralphs Grocery Co. v. United Food and Commercial Workers Union Local 8.**

BOTTOM ROW, LEFT: *Associate Justice Kathryn M. Werdegar (SECOND FROM LEFT) and Associate Justice Carol Corrigan (THIRD FROM LEFT) talk with UC Davis law staff and students during a reception following the special session.*

BOTTOM ROW, RIGHT: *Former Associate Justice of the California Supreme Court Cruz Reynoso attends the special session. Reynoso is a UC Davis Professor of Law Emeritus and was the inaugural holder of the Law School's Boochever and Bird Chair for the Study and Teaching of Freedom and Equality.*

PHOTOS ON THIS PAGE BY KAREN HIGGINS / UC DAVIS

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## UC Davis Launches State's First California Supreme Court Clinic

BY AIMEE FEINBERG\*

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The California Supreme Court touches the lives of every Californian. The Court reviews the work of about 2,000 judicial officers, the largest law-trained judiciary in the world,<sup>1</sup> and issues rulings governing countless day-to-day activities of the state's residents. According to the National Center for State Courts, the California Supreme Court processed a staggering 9,562 matters in 2010, thousands of cases more than the next busiest state high court.<sup>2</sup>

The Court's reach extends beyond the state's borders. In a comprehensive study published in 2007, Jake Dear and Edward Jessen concluded that the California Supreme Court is the most followed state high court in the United States.<sup>3</sup> Thus, when it comes to tort law, insurance law, criminal law, and others, the saying rings true: as California goes, so goes the nation.

It is fitting, then, that one of the state's newest legal clinics should train its attention on the state Supreme Court. In the fall of 2012, UC Davis School of Law launched the first and only law school clinic in the state to focus exclusively on the California Supreme Court. Inspired by a 2010 speech by former State Bar President Jeff Bleich<sup>4</sup> and modeled to a large extent on Stanford's first-in-the-nation US Supreme Court clinic, UC Davis's California Supreme Court Clinic provides pro bono representation to parties and amici in both civil and criminal cases pending before the state's High Court. The Clinic's six students, each of whom is selected to participate by application, become immersed in California Supreme Court practice and procedure. During the semester-long program, Clinic participants study the Court's rules, learn principles of effective appellate advocacy, hear from seasoned practitioners, and, under faculty supervision, research and draft briefs to be filed in cases pending before the Court.

Like many appellate advocacy programs, the Clinic aims to teach students critical brief-writing skills. But focusing exclusively on the California Supreme Court offers students other important learning opportunities. Because the Court grapples with some of the most complex

and consequential issues facing the state, students in the Clinic learn to research and analyze legal questions at an exceptionally deep level. They are called on to leave no stone unturned in their case research, to comb through legislative history, to examine agency regulations, to canvass laws in other jurisdictions, and to marshal policy arguments. By concentrating on the state's highest court, moreover, the Clinic offers students the chance to see how a

legal issue travels through the state system from start to finish. Likewise, because the Court (for the most part) has discretion to decide what cases it will hear, Clinic enrollees learn about the petition-for-review process and the characteristics of cases that may find their way onto the docket of a court of last resort. At the same time, focusing on a court with a docket as diverse as that of the California Supreme Court exposes students to an unusually broad array of legal issues. And by observing the Court's oral argument sessions, students see some of the nation's most respected jurists question advocates and explore the intricacies of complicated legal questions.<sup>5</sup>

Litigating cases before the California Supreme Court also provides students with an important opportunity to serve the public interest. Although the federal courts undoubtedly decide significant issues, the California state courts provide the forum for many more disputes to be resolved: in 2012, litigants filed 372,563 matters in federal district court; in fiscal year 2010–2011, filings in California superior courts surpassed 9.4 million.<sup>6</sup> At the same time, the state system often adjudicates cases in the areas of law most likely to affect people's everyday lives — how contracts are enforced, the accused are tried, businesses are regulated, marriages are dissolved, children are reared, and property is owned. By working on cases pending before the state's highest court, Clinic enrollees have the chance to present their clients' arguments knowing that a case's outcome will almost certainly impact the lives of many people.

The Court's special place in the state's judicial system offers special opportunities for law students. For the participants in the Clinic, it is an honor to litigate before the Court. ★



Aimee Feinberg

PHOTO BY KAREN HIGGINS / UC DAVIS

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\* Director of the California Supreme Court Clinic at UC Davis School of Law. Prior to joining the law school faculty, Feinberg was a litigator at Munger, Tolles & Olson; Law Clerk to Justice Stephen G. Breyer of the US Supreme Court; and Law Clerk to Judge David S. Tatel of the US Court of Appeals for the DC Circuit. She graduated from Stanford Law School in 2002, *Order of the Coif*, and holds a BA in Political Science and Economics, University of California, Berkeley 1995, *Phi Beta Kappa*.

*Endnotes appear on page 12*

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## Justice Liu Delivers the Mathew O. Tobriner Memorial Lecture at UC Hastings

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California Supreme Court Justice Goodwin Liu delivered the Mathew O. Tobriner Memorial Lecture at Hastings College of the Law on April 17, 2013. His topic was the role that state courts play when addressing questions of federal law, both constitutional and statutory. Noting that state courts are, unlike their federal counterparts, courts of general jurisdiction, he emphasized that they are therefore fully empowered to interpret and apply federal law and — contrary to the assumptions of many — may and do decide cases that raise solely federal law issues.



Justice Goodwin Liu

Justice Liu observed that since the 1930s American law has become increasingly “federalized.” He described this as an incremental process, the result of both expansive interpretations of the federal Constitution by the United States Supreme Court and the enactment of federal regulatory legislation covering fields as diverse as civil rights, the economy, and the environment. Given the ubiquity of federal law, state courts cannot avoid dealing with federal statutes and constitutional principles.

Moreover, Justice Liu maintained, state courts should welcome the opportunity to make a useful contribution to the judicial understanding of federal law. As one example he mentioned *Perez v. Sharp*, 32 Cal.2d 711, a case decided by the California Supreme Court in 1948, holding that state laws prohibiting interracial marriages violated the Equal Protection

clause of the *federal* Constitution — a determination rendered nearly 20 years before the US Supreme Court reached that same conclusion in *Loving v. Virginia* (1967) 388 U.S. 1.

The lecture was warmly received by a large and enthusiastic audience of Hastings students and faculty, judges, lawyers, and family and friends of the late Justice Tobriner. Former California Supreme Court Associate Justice, and current Hastings faculty member, Joseph R. Grodin introduced Justice Liu, highlighting some of his numerous academic and professional accomplishments before his appointment to the California Supreme Court in 2011 by Governor Jerry Brown. Justice Grodin also recalled Justice Tobriner as one of the finest justices in the history of the California Supreme Court — the author of opinions that resonated throughout the nation and are still studied in law schools. At the same time, he reflected on Justice Tobriner’s personal character and values: his passion for justice and his empathy, his ability to see the human beings behind the cases.

After Justice Tobriner’s retirement from the Court he had been scheduled to teach at Hastings, an opportunity lost upon his unexpected death in 1982. After his passing, Justice Tobriner’s friends and admirers joined with his family to initiate the memorial lectures at Hastings as a suitable public way to keep his legacy alive. (An article by former Justice Grodin concerning the origins of the memorial lecture series appeared in the Spring/Summer 2012 issue of this Newsletter. It was accompanied by a list of each of the 21 lectures that had been presented at Hastings between 1983 and 2004, providing the name of each speaker, the topic, and a citation to the Hastings journal in which they were published.) Justice Grodin joined with Hastings Dean Frank Wu in expressing both his gratification at seeing the tradition of lectures by distinguished speakers revived after a pause of nine years, and his pleasure that Justice Goodwin Liu had agreed to be the first speaker in the renewed series of memorial lectures. ★

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### SUPREME COURT CLINIC, *continued from page 11*

#### ENDNOTES

1. Chief Justice Tani Cantil-Sakauye, *State of the Judiciary, Address to a Joint Session of the Calif. Legislature* (Mar. 11, 2013), see <http://www.courts.ca.gov/21268.htm> [as of Apr. 16, 2013].
2. *State Court Caseload Statistics*, State Court Caseload Tables, 2010, Appellate — Grand Total Court Caseloads, Nat. Ctr. for State Cts., see <http://www.courtstatistics.org/Other-Pages/StateCourtCaseloadStatistics.aspx> [as of Apr. 16, 2013].
3. Dear & Jessen, “Followed Rates” and Leading State Cases, 1940–2005, 41 *U.C. Davis L.Rev.* 683 (2007).
4. *Remarks of Jeff Bleich at the First Annual Conference on the California Supreme Court*, 1 *Calif. L. Rev. Cir.* 1 (2010), see

<http://www.californialawreview.org/assets/pdfs/Circuit/01.01.Bleich.pdf> [as of Apr. 16, 2013].

5. See generally Karlan et al., *Go East, Young Lawyers: The Stanford Law School Supreme Court Litigation Clinic*, 7 *J. App. Prac. & Process* 207, 209–210 (2005) [discussing similar lawyering skills taught in US Supreme Court clinic].
6. Admin. Off. of US Cts., *Judicial Business of the United States Courts*, 2012 Annual Report of the Director, see <http://www.uscourts.gov/Statistics/JudicialBusiness/2012.aspx> [as of Apr. 16, 2013]; Jud. Council of Calif., *2012 Court Statistics Report, Statewide Caseload Trends, 2001–2002 through 2011–2012*, (2012) p. xiv, see <http://www.courts.ca.gov/documents/2012-Court-Statistics-Report.pdf> [as of Apr. 16, 2013].



LEFT TO RIGHT: *David A. Carrillo, former California Supreme Court Associate Justice Joseph R. Grodin, and attorney Calvin R. House at the February 2013 conference sponsored by the Center.*

PHOTO BY JIM BLOCK

## *Berkeley Law's New California Constitution Center*

BY DAVID A. CARRILLO\*

California is the nation's most populous state, and this year the Legislative Analyst's Office estimates that our state has the ninth largest economy in the world. State courts are often the first to be called upon to decide cases of national importance with broad social and political consequences. Indeed, the overwhelming majority of all legal cases nationwide are handled by state courts. The California Constitution and the Supreme Court of California in particular provide fertile ground for scholarly study, and have been the focus of great public attention at times — most recently in the debate over same-sex marriage. But state judicial systems have not been studied to the same degree as the federal judicial system, and to date there has been little sustained effort to study the California Constitution. Thus, when significant issues of state constitutional law arise, neither practitioners nor the courts have ready access to a comprehensive body of legal scholarship on California constitutional provisions.

\* Lecturer in Residence and Executive Director of the California Constitution Center at the University of California, Berkeley School of Law. J.S.D., LL.M., JD, and BA degrees, UC Berkeley. The author joined the Berkeley Law faculty, where he teaches and writes on the state Constitution, after a long career in government service and private practice.

To address that problem, Berkeley Law created the California Constitution Center ([www.law.berkeley.edu/calconcen.htm](http://www.law.berkeley.edu/calconcen.htm)) in 2012 as the first and only academic research institution devoted exclusively to studying the Constitution and high court of the state. The center will encourage and participate in developing a body of scholarly work on the difficult legal and policy issues that arise under the state charter, and will explore issues affecting the state judiciary generally and the state high court in particular.

The center approaches its mission from several angles:

▶ The Supreme Court of California Moot provides a venue for “mooting” cases pending before the state high court. In a moot, the practitioner representing a party argues the case before a panel of mock justices composed of expert appellate attorneys, retired judges, and legal scholars. Berkeley Law students may participate in a three-unit seminar to prepare bench memoranda and act as law clerks to the mock jurists. This program is made available at no cost to practitioners, to aid both the advocate and the Court by improving the quality of argument. Approximately four cases are mooted in each academic semester, and cases are generally selected based on the involvement of state constitutional issues. To preserve party privacy and work product confidentiality of the

participating practitioner, moots are closed to the public and the names of the cases mooted are not publicized.

► Center-affiliated faculty and practitioners teach academic seminars on California constitutional law, covering topics such as constitutional design, separation of powers, federalism, individual rights, relationships between the state and local governments, and California's mechanisms for direct democracy — the initiative, referendum, and recall.

► The center holds regular events, including a conference on the California Supreme Court and a local government conference with the Municipal Law Institute. The MLI conference (entitled "Local Governments Navigating the California Constitution") was held in February 2013. Panels were comprised of legal experts from across the state, including eminent jurists and scholars such as Joseph L. Sax, Professor (emeritus) of Environmental Regulation at Berkeley Law, and Hon. Joseph R. Grodin (ret.) of the California Supreme Court. The event tackled constitutional questions involving privacy rights, free speech and religious liberty, water access, state finance and revenue, the evolving trend of states limiting cities' powers, and tensions between local and state control. The California Supreme Court conference raises public understanding of the Court's work, and explores state constitutional developments and issues affecting the state judiciary. The next conference is planned for October 4, 2013, and it is anticipated that

it will be held in conjunction with a subsequent special oral argument session of the Court at Berkeley Law. At the previous offering of this conference four of the Court's justices participated in a series of panel discussions on the Court's recent term, the death penalty, private judging, and access to justice in family court.

► The center engages law students and practitioners as research fellows to publish scholarship on the state Constitution and courts, along with center-affiliated faculty publications, including *California Constitutional Law: Separation of Powers*, 45 *USF.L.Rev.* 655 (2011); *California Constitutional Law: The Religion Clauses*, 45 *USF.L.Rev.* 689 (2011); and a forthcoming chapter on the state judiciary in *Governing California: Politics, Government, and Public Policy in the Golden State* (IGS Press 2013).

► Finally, the center's website maintains an up-to-date list of activity in cases pending on the California Supreme Court docket at <http://www.law.berkeley.edu/php-programs/courts/>.

As the center grows, each of its existing programs will be scaled up: more cases will be mooted, more fellows will publish articles, and more courses will be taught. Although there is much that Berkeley Law can do to advance the understanding of the state charter and high court, there are limits on what one research center can accomplish without involvement from the broader legal community. By focusing attention on the state Constitution with this center, we hope that more attorneys and scholars will be inspired to work in this area. So, to all those with an interest in thinking, writing, and speaking about these things, the California Constitution Center is your venue. Our doors are open, and we look forward to working with you. ★

BELOW LEFT: *David A. Carrillo*

BELOW RIGHT: *David A. Carrillo (LEFT) and former California Supreme Court Associate Justice Joseph R. Grodin (RIGHT).*

PHOTOS BY JIM BLOCK





*Tani Cantil-Sakauye, Chief Justice of California, congratulates Frank A. McGuire, twenty-sixth Clerk of the Supreme Court of California, following his swearing-in on July 2, 2012. Also pictured are Mr. McGuire's spouse Trevor (FAR LEFT) and father Pat (SECOND FROM THE LEFT).*

PHOTO COURTESY OF MCGUIRE FAMILY

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## *Frank McGuire, New Clerk/Administrator of the California Supreme Court*

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In July 2012, Frank A. McGuire began serving as Clerk/Administrator of the California Supreme Court, succeeding Frederick "Fritz" Ohlrich, who retired at the end of June. (See *Ave Atque Vale: Fritz Ohlrich Retires as Clerk/Administrator of the Court* (Fall/Winter 2012 *CSCHS Newsletter*)). In announcing the appointment, Chief Justice Tani Cantil-Sakauye observed that his "experience in court administration and his background practicing appellate law and as a judicial staff attorney for the Supreme Court and Court of Appeal make him uniquely qualified for this position."

Even a cursory review of McGuire's career confirms the Chief Justice's assessment that he is superbly qualified to serve as the Supreme Court's twenty-sixth Clerk/Administrator. A native Californian, he earned his undergraduate degree from Stanford University, where he double-majored in English and Industrial Engineer-

ing, and was elected to both Phi Beta Kappa and Tau Beta Pi, a national engineering honors society. He studied law at Stanford as well, graduating with distinction from its Law School in 1986, having been elected to the Order of the Coif.

The following year, he served as a law clerk to Judge Cynthia Holcomb Hall of the United States Court of Appeals for the Ninth Circuit. He then joined Morrison & Foerster as an associate in its litigation department. From 1991 to 1996, McGuire served as a judicial staff attorney for Justices Robert Dossee and John ("Dick") Benson of the California Court of Appeal, First Appellate District, and then as a staff attorney for Associate Justice Janice Rogers Brown of the California Supreme Court. In 1999, following a brief return to private practice, McGuire resumed service at the First District, initially as a divisional attorney and a writ attorney for Division Three. In 2003, the First District appointed

him as its Managing Attorney, a position he held until his appointment by the Supreme Court last summer.

McGuire considers three of his previous positions to have been particularly valuable preparation for the demands and responsibilities of his new office. The ten years he served as First District Managing Attorney gave him the opportunity to work with William R. McGuinness, the court's Administrative Presiding Justice. Lessons learned from Justice McGuinness, whom he admires as a "superb" administrator, include the importance of looking "three steps ahead" — i.e., carefully anticipating the potential future effects of each and every management decision. Serving as a staff attorney



*Frank McGuire*

for Justice Brown for three years familiarized him with the procedures and dynamics of a seven-member court, which are quite different from those of the three-judge panels at the Court of Appeal. Finally, the time he spent as a writ attorney for the First District exposed him to a faster-paced judicial environment. Because of the large volume of writ petitions, many of which

required prompt disposition, the pressure was very intense. That experience recently proved useful when the Supreme Court was called on to deal with a petition filed by the California Fair Political Practices Commission. The FPPC sought an order requiring immediate disclosure of the identities of major donors to a political campaign. The Clerk's Office was able to scan all briefs and post them to the "cloud," allowing the justices, parties, media and general public to access them promptly and simultaneously.

Fritz Ohlrich, reflecting on his time as Clerk/Administrator, identified the reductions in state financial support for the Supreme Court as the principal frustration he faced. McGuire agrees with Ohlrich's assessment of the challenges presented by funding constraints and with his prediction that they will continue for some time. The Clerk's Office, for example, is currently operating with six vacancies, which cannot be filled given present budget realities, and there are similar unfilled vacancies elsewhere around the Court. Compounding these staffing shortages, all Supreme Court employees have been subject to a mandatory monthly furlough day, which reduces both their salaries and the amount of time available to complete their work by roughly five percent. McGuire observes that everyone at the Supreme Court is "pulling very hard on the oars" and commends them for maintaining a positive attitude and good morale through extraordinarily tough times.

McGuire recalls Justice McGuinness' observation that "difficult times, while tremendously challenging, also afford great opportunities for constructive change." In that spirit, McGuire is looking for ways to introduce greater efficiencies into the Supreme Court's operations. One such efficiency already being implemented is creating greater operational flexibility through cross-training of deputy clerks. McGuire readily acknowledges that he is still new to the job and that the policies and procedures at the Supreme Court are time-tested. But because he expects financial limitations to persist, he plans to draw on both industrial engineering principles he learned as an undergraduate and his own extensive personal experiences in judicial administration to help the Clerk's Office work smarter, not harder.

McGuire was born in Camp Pendleton, California, where his father was serving in the United States Marine Corps. After his military service, his father joined Wells Fargo Bank and the family relocated frequently as he moved up the corporate ladder. McGuire lived in six cities (Oceanside, Stockton, Vacaville, Woodland, San Jose, and San Mateo) by the time he reached seventh grade.

After settling in San Mateo, McGuire graduated from Aragon High School, a local public high school, where he was class valedictorian. While at Aragon, McGuire had an experience that influenced his later decision to attend law school. In his high school government/civics class, students were given the assignment of observing a trial. Most of his classmates chose to visit San Mateo traffic court in nearby Redwood City. McGuire and one classmate chose instead to travel to the San Francisco Hall of Justice, to watch the trial of former City Supervisor Dan White, charged with the murder of San Francisco Mayor George Moscone and Supervisor Harvey Milk. Security was intense. In the courtroom, they saw grieving families and friends of the victims, Dan White's wife and young son, as well as supporters of White, some of whom wore Nazi insignia. McGuire was profoundly struck by Judge Walter Calcagno's task of maintaining orderly and fair proceedings in a courtroom filled with emotion and incipient violence. McGuire recalls that this experience drove home to him the "awesome responsibility of the judicial branch of government."

McGuire lives in St. Francis Wood, a tree-lined, residential neighborhood west of Twin Peaks in San Francisco, with his spouse Trevor Manning, a local interior designer. They enjoy the City's many amenities, both the conventional (restaurants featuring cuisines of every nation) and those a bit off-beat (internationally-acclaimed film festivals featuring film noir and silent movie classics). ★

## Nineteenth-Century Supreme Court Resources in the California State Archives

BY SEBASTIAN A. NELSON\*

There are many golden nuggets of California Supreme Court history in the California State Archives, a division of the Secretary of State's Office.<sup>1</sup> The Supreme Court collection includes more than 8,500 cubic feet of textual records dating from the 19th through the 21st centuries — more than six hundred bound volumes, about a hundred maps, and several photographs and artifacts. There is a wealth of information about the administrative and legal history of the Court. In addition to providing evidence of the Court's procedures, activities and functions, these records contain fascinating and revealing details about individuals and historical events of interest to lawyers, teachers, historians, genealogists, and other researchers. The goal of this brief article is to introduce the resources available at the State Archives and to provide a glimpse at three of the “nuggets.”

A large portion of Supreme Court records in the State Archives date from the 19th century. The largest single series of records within these 19th century materials are case files. The docket numbers of the civil and criminal case files in the collection reflect the variety of numbering systems employed by the Court during the 19th century. According to the collection's inventory (finding aid), “prior to 1895 the numbering system . . . involves two series: numbers 1-4182 (1850–1863), which includes both civil and criminal actions, and numbers 1-21201 (1864–1895) . . . [T]he latter numbering system is complicated by the fact that at different dates blocks of numbers were set aside to distinguish between civil and criminal actions.”

Among the Archives' nuggets are materials contained in the file for *In re Perkins* (1852) 2 Cal. 424. That case brings to life the struggles that some African Americans faced after passage of California's Fugitive

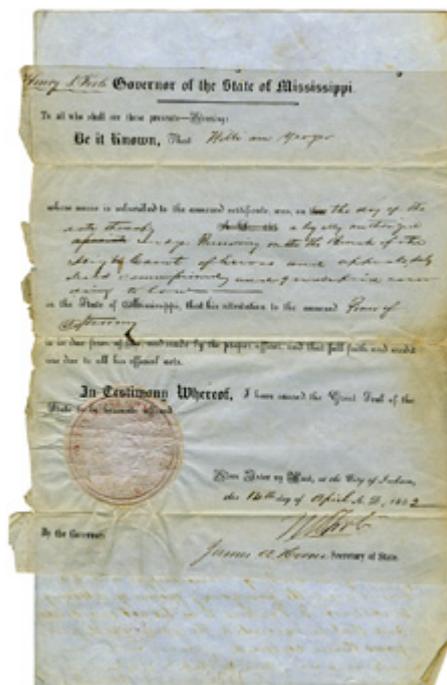


IMAGE 1: Certificate, signed by Mississippi Governor Henry S. Foote — part of the case file *In re Perkins* (1852) 2 Cal. 424, WPA No. 3285, Supreme Court of California Records, California State Archives, Office of the Secretary of State, Sacramento.

Slave Act in 1852. The petitioners in *Perkins* were three slaves who had been brought by their owner, C.S. Perkins, from Mississippi to California before the adoption of the state Constitution in 1849. Article I, section 18 of that Constitution declared that “[n]either slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this state.”

Perkins returned to Mississippi, leaving an agent in charge of the slaves. At this point, the slaves asserted their freedom and opened a business together. But when the Fugitive Slave Act was passed, Perkins demanded that the slaves be arrested and turned over to him. He granted Albert G. Perkins of Sacramento — presumably a relative — his power of attorney to act in his place and have these three individuals sent back to Mississippi. After they were arrested by a sheriff, the slaves sought a writ

of habeas corpus contending that the 1852 statute was invalid because it conflicted with the constitutional prohibition on slavery. The Supreme Court, however, concluded that the constitutional provision was merely “directory” and required implementing legislation to become effective. It ordered the three men remanded to their owner. IMAGE 1 is a certificate signed by the Governor of Mississippi attesting to the legality of the power of attorney document submitted to the California authorities by Albert G. Perkins.

Other types of 19th century Supreme Court records in the State Archives include minute books, civil and criminal registers of actions, calendars, stipulations, a roll of attorneys certified to practice before the Court, and several miscellaneous receipt and cash books used by the court clerks. Thirty-three volumes of judgment books dating from 1855 to 1885 contain entries complete with docket numbers, names of litigants and decisions. The State Archives' collection of civil and criminal opinions, both bound and unbound, contains many

\* Court Records Archivist, California State Archives.

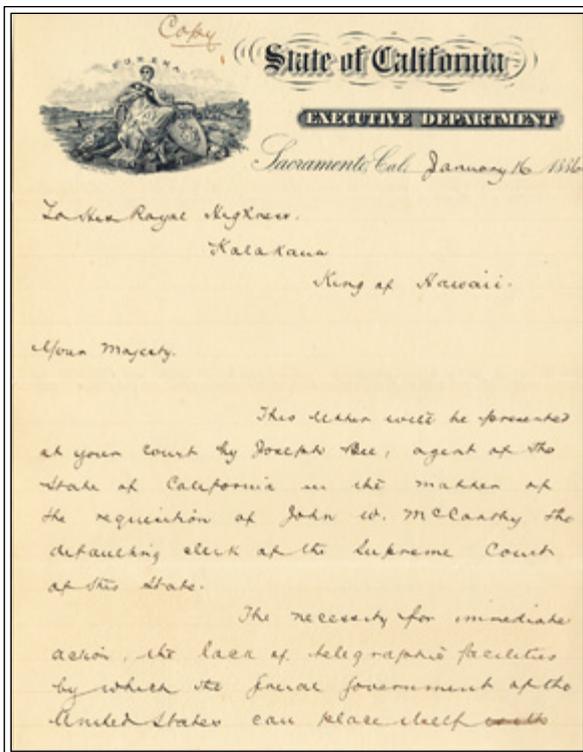


IMAGE 2: This is a “secretarial copy” of a portion of a letter sent by California Governor George Stoneman to King Kalākaua of Hawaii regarding the extradition of the notorious fugitive, and sometime Clerk of the Supreme Court, John W. McCarthy, January 16, 1886. (Extradition Case Files, WPA No. 1985, Governor’s Office Records, California State Archives, Office of the Secretary of State, Sacramento.)

opinions that were never officially published in *California Reports*. Twenty-three volumes of analytical indexes in the collection were compiled in response to Statutes 1877-1878, chapter 650, which directed the court clerk to make “a full and complete general analytical index of all cases filed in said Court, and the action thereon, from the organization of said Court to date.” One volume of manifolds from the Court’s San Francisco office dating from 1887 to 1892 contains daily notations of orders, filings and actions that were later used to generate entries in the registers of actions.

Many records in the State Archives created by the executive and legislative branches of state government also provide information about the history of the Court during the 19th century. The records of the Attorney General’s Office, for example, contain many registers of actions, bound docket volumes and case files for cases in which the Attorney General acted as the plaintiff’s or defendant’s counsel. Many of these cases were heard in the Supreme Court of California, and occasionally these Attorney General case files contain information that cannot be found in the Supreme Court records. Among the legislative papers in the State Archives are hearing transcripts and exhib-

its that comprise an Assembly Special Committee report concerning the case of John W. McCarthy,<sup>2</sup> who was elected Clerk of the California Supreme Court in 1882 (the position was elective at that time).

On January 15, 1886, McCarthy was indicted by a San Francisco grand jury for embezzling state funds. Anticipating that possibility, McCarthy had departed for Hawaii a few days earlier. An arrest warrant was issued and a fortunate San Francisco police detective assigned to take the next steamer to Honolulu to seek his arrest and return. IMAGE 2 is a copy of a portion of a letter dated January 16, 1886 sent by California Governor Stoneman to King Kalākaua in support of the efforts to have McCarthy extradited. McCarthy was arrested in Honolulu, but challenged the power of Hawaiian authorities to extradite him. His petition for habeas corpus was pursued to the Supreme Court of the Hawaiian Islands, which unanimously upheld the propriety of the Island’s executive branch honoring the request for extradition.

On his return McCarthy was convicted and sentenced to five years in prison. After about two and a half years, however, the new Governor pardoned him. The State Archives also has the file containing his pardon application. Astonishingly, his request was supported by the Superior Court judge who presided at his trial, 11 of the 12 jurors who convicted him, as well as the Chief Justice and three of the four associate justices of the California Supreme Court.<sup>3</sup>

The relationship between the Court and the State Archives goes back many decades. Supreme Court records were transferred to the State Archives as early as 1937, and in the Minutes of the Court from November 8 of that year appears an order signed by Chief Justice William H. Waste, directing the Clerk of the Court to transfer “transcripts and other records of the Court” to the State Archives, and noting that “[t]he Secretary of State, through the State Archivist, Mr. Bart C. Greer, who is a member of the staff of the Secretary of State, has offered to provide space and to carefully and permanently index all records and safely keep the same.”<sup>4</sup>

A few years after Mr. Greer’s offer, the State Archives’ collection of Supreme Court case files were indexed as part of a federally funded Work Projects Administration program. Approximately 30,800 civil and criminal case files comprising more than 1,400 cubic feet were indexed and assigned new identifications known as WPA numbers. The entries in the indexes themselves are arranged alphabetically by the names of both plaintiffs and defendants. Almost all 19th century Supreme Court case files in the State Archives and many early 20th century case files are listed in these WPA indexes. Consequently, researchers typically do not need to provide the original 19th century docket

number in order for State Archives staff to locate the desired case file.

IMAGE 3 is a map, assigned a WPA number, which was originally included in the Supreme Court case file of *Eldridge v. Cowell* (1854) 4 Cal. 80. The plaintiff, Mr. Eldridge, owned a waterfront lot in downtown San Francisco bounded on the east by Battery Street. Directly across Battery Street was the Bay. The Bay lands, however, had been subdivided by the City into “water lots.” The one across the street from Mr. Eldridge was owned by Mr. Cowell, who had anchored several permanently-moored ships that he had converted into shops and businesses. According to Mr. Eldridge these “improvements” were preventing his access to the water and depriving him of his rights to commerce and navigation. “Store-ships” were a common sight in old San Francisco and the map offers detailed information about the names and locations of some of these ships.

The California Supreme Court ruled in favor of Mr. Cowell, relying on state legislation passed in 1852 that approved development of water lots shown on San Francisco city maps, despite the fact that they were submerged. The Court’s decision upheld the state’s author-

ity to waive the public trust in navigable waters when justified by the public interest.

Interested in exploring the fascinating collections at the State Archives? Visit [www.sos.ca.gov/archives](http://www.sos.ca.gov/archives) for more information. ★

#### ENDNOTES

1. For a closer look at the history of and collections in the California State Archives, see John F. Burns and Nancy Lenoil, *The First California Statute: Legal History and the California State Archives*, 4 *California Legal History* (2009), pp. 443–476; and Laren Metzger, *State Archives Digitizes Constitutional Convention Papers*, *CSCHS Newsletter* (Fall/Winter 2008), pp. 22–23. [Editor’s note: John Burns is a former State Archivist of California and currently a member of the Society’s Board of Directors. The Society provided a grant to assist the State Archives in digitizing the 1878–1879 Constitutional Convention papers.]
2. Assembly Special Committee Report, 1885, Legislative Papers, LP7:27–37, California State Archives.
3. Application for Pardon File, 1890, Governor’s Office Records, WPA No. 4618, California State Archives.
4. Minutes, November 8, 1937, Supreme Court of California Records, California State Archives.

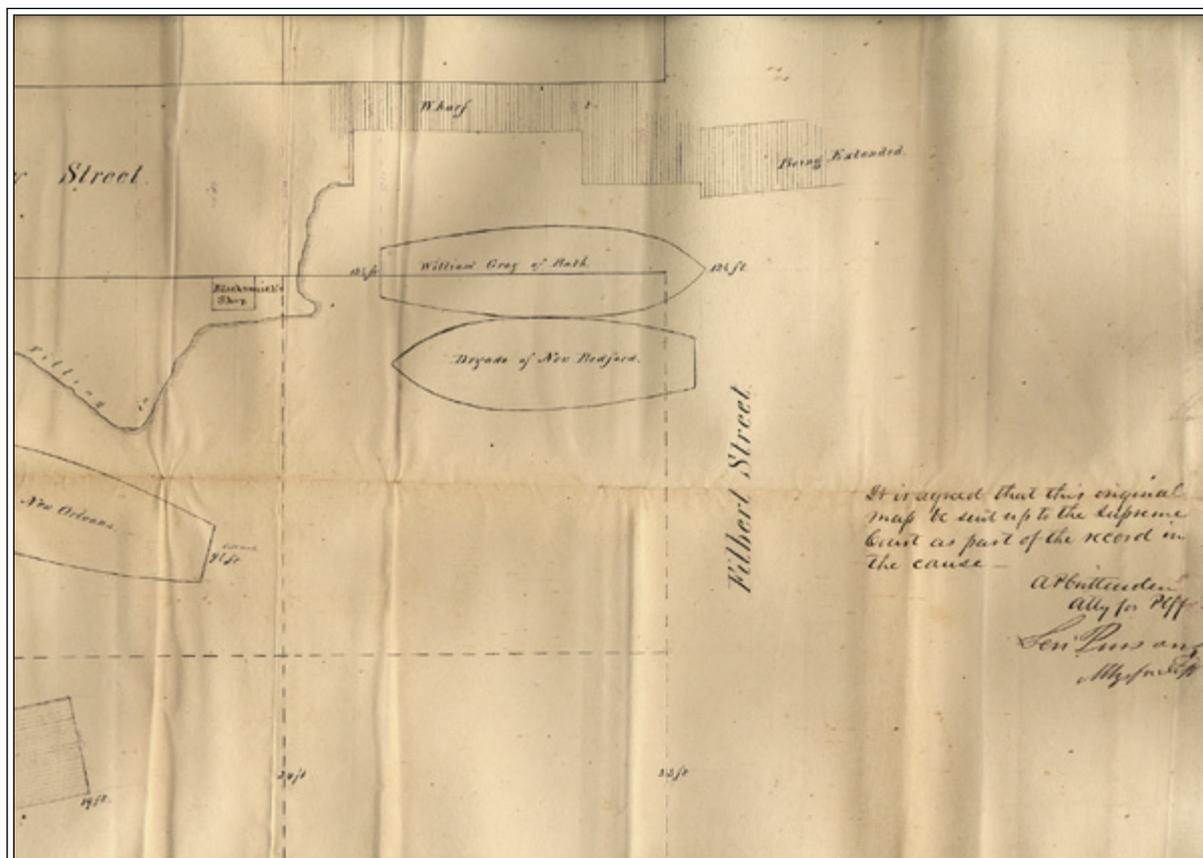


IMAGE 3: Map (detail), *Eldridge v. Cowell* (1854) 4 Cal. 80, WPA No. 7221, Supreme Court of California Records, California State Archives, Office of the Secretary of State, Sacramento.

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## IN THE CORRIDORS OF THE SUPREME COURT: HISTORIC PHOTOGRAPHS

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On the walls of the Supreme Court's private hallways are hundreds of framed photographs and images. In addition to 114 formal portraits — one of each justice — there are group photos of the justices (in chambers and on the bench), and photos memorializing special sessions held throughout the state. Intermixed with these are scenes from San Francisco and Los Angeles in the

nineteenth and early twentieth centuries, copies of the original architectural plans for the Court's current headquarters at 350 McAllister Street in San Francisco, maps, and memorabilia. Most of these items are never seen by members of the public. In this ongoing series, we will share a representative sampling of the Court's historic hallway images and photographs. ☆



### MEMORIAL SERVICE FOR JUSTICE TOBRINER, SAN FRANCISCO, 1983

LEFT TO RIGHT: *Louis H. Burke (ret.), Cruz Reynoso, Otto M. Kaus, Stanley Mosk, Rose Elizabeth Bird, C.J., Frank K. Richardson, Allen E. Broussard, Joseph R. Grodin; at podium, Raymond L. Sullivan (ret.).*



### LOS ANGELES, APRIL 1987

LEFT TO RIGHT: *David N. Eagleson, Edward A. Panelli, Stanley Mosk, Malcolm M. Lucas, C.J., Allen E. Broussard, John A. Arguelles, Marcus M. Kaufman.*



**CELEBRATION AT THE SWEARING-IN CEREMONY OF JUSTICE FRANK K. RICHARDSON  
IN CHIEF JUSTICE'S CHAMBERS, DECEMBER 1974**

*The justices are reacting to a Champagne cork that has just dented the ceiling in the Chief's chambers. When the room was remodeled after the building was evacuated following the 1989 Loma Prieta Earthquake, the dent was lost to history and landfill. LEFT TO RIGHT: Louis H. Burke (ret.), Raymond L. Sullivan, Stanley Mosk, Mathew Tobriner, Donald R. Wright, C.J., Frank Richardson, Marshall F. McComb.*

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**LOS ANGELES, 1932**

*LEFT TO RIGHT: William H. Langdon, Jesse W. Curtis, Emmet Seawell, William H. Waste, C.J., John W. Shenk, John W. Preston, John F. Tyler (who sat on numerous cases pro tempore, during the illness of John E. Richards).*

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MADLINE CHUN, a partner at HansonBridgett's San Francisco office, was recently elected Vice-Chair of the Legal Affairs Committee of the American Public Transportation Association. APTA is an association of local and regional governmental transportation agencies, metropolitan planning organizations, state departments of transportation, academic institutions, and private-sector companies engaged in various aspects of public transportation. The Legal Affairs Committee, comprised of attorneys who provide legal advice and representation to APTA member agencies, held its annual conference in Austin, Texas in February 2013, addressing topics ranging from federal initiatives on major infrastructure improvements to First Amendment and social media policies for operators of public transportation systems. Madeline moderated a panel on legal issues associated with encouraging local workforce and small business participation in large construction and procurement contracts.



Madeline also recently attended another, very different, gathering. This was the 40th class reunion of the Liceo Maria Auxiliadora, a high school on the Strait of Magellan in Punta Arena, Chile, which Madeline had attended as an exchange student. Her classmates had fascinating personal histories to relate. In the four decades since their graduation they have lived through a socialist revolution, a military dictatorship, the restoration of democracy, broad economic changes, and the election of Chile's first woman president, Michelle Bachelet.

BRENT HADDAD, MBA, PHD, was recently appointed Associate Dean of Engineering at UC Santa Cruz's Baskin School of Engineering. Professor Haddad now holds appointments in both the Department of Environmental Studies and the School of Engineering, where he will be founding chair of the Technology Management Department.



His expertise is in water rights, water transfers, and regional water governance. In 2012 he completed a Proposition 50-funded study of the costs and benefits of desalination in California that identified desalination as a promising strategy for helping meet California's

future water supply needs. In 2011–2012, he served on a National Academy of Sciences panel investigating water reclamation and reuse as a strategy for urban water supply. As a consultant, in 2010–2011 he facilitated a joint operations agreement among water agencies interested in building a regional desalination facility. The agreement covered system engineering, inter-agency communication, emergency management, capital and operating costs, and regulatory approval processes. He has advised water agencies on sustainable energy strategies and designed a new water rate structure for a mutual water company.

Currently Professor Haddad is facilitating a multi-agency/private sector reclaimed water transfer agreement that will reduce regional water cost while increasing water system reliability. He is the founder and director of WaterLab, the Water Teaching and Research Laboratory, located at the Watsonville Water Resources Center and dedicated to expanding the use of advanced water treatment technology.

HON. STEVEN HOWELL retired from the Butte County Superior Court in 2012, after more than 24 years on the bench, including 14 as Presiding Judge. Judge Howell's first courtroom was a double-wide trailer in the parking lot of the old courthouse in Oroville. The building was dubbed "the worst courtroom in the state." In the summer, it would get so hot that, as Butte County District Attorney Mike Ramsey recalled, the "court was

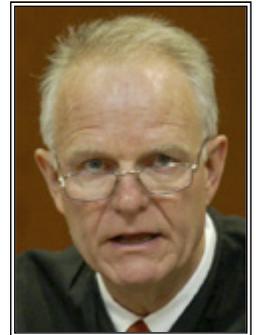


PHOTO COURTESY CHICO ENTERPRISE-RECORD

run by the thermometer instead of the clock." When the temperature rose above 85 degrees, Judge Howell would adjourn the proceedings, the courtroom would be emptied, and the noisy air conditioners would be turned on until the room was cooled enough to resume. Perhaps as a result, Judge Howell led efforts to improve the old Superior Court building: an expansion was completed in 1996 and two new courtrooms added in 2005.

In addition to improving facilities, Judge Howell was Presiding Judge in 1998 when Butte County's municipal and superior courts were consolidated. Butte was the first county in the state to do so, the local judges voting unanimously to merge the day after state voters approved a ballot measure allowing it. District Attorney Ramsey attributed the smooth transition (which had been controversial in other counties) to Howell's calm and academic demeanor.

HON. MICHAEL L. STERN is a judge of the Los Angeles County Superior Court, presiding in a downtown civil trial courtroom. His eloquent and impassioned essay about the consequences of the budget-driven restructuring of the civil courts was published by the *Los Angeles Times* in December 2012. Casualties of this most-recent round of budget cuts identified by Judge Stern include: closure of all courtrooms in 10 regional courthouses; elimination of staff court reporters in civil cases; and drastic reductions in the court's alternative dispute resolution programs that have "provided free or low-cost mediation services to civil litigants for decades." Judge Stern concludes that these significant changes "should be cause for alarm to anyone concerned about open and equal access to justice in our society . . . [and] require action by everyone to make the elected officials responsible for funding our courts aware that the words 'equal justice under the law' cannot become just another hollow slogan." The complete article can be viewed at <http://articles.latimes.com/2012/dec/07/opinion/la-oe-stern-l.a.-courts-justice-20121207>.



DON TAMAKI is the managing partner of Minami, Tamaki, LLP in San Francisco. He also is the president of the San Francisco Japantown Foundation, which provides support to community groups in order to preserve and promote Japanese-American culture. In that capacity, he recently negotiated an agreement between the Foundation and the San Francisco Recreation and Park Commission for a \$500,000 grant to renovate the world-famous tea house in Golden Gate Park. Tamaki was a principal speaker at the ceremony celebrating the completion of the project, all of the work having been accomplished using traditional methods of Japanese construction — e.g., careful joinery and no nails. His gracious remarks honoring the late Jack Hirose (who operated the tea house for many years as a City concessionaire and then donated the funds for its restoration) can be seen here: <https://www.youtube.com/watch?v=lbVOCXAdZTI>. In October 2012 Don also delivered a lecture entitled "Redress, Reparations and Beyond" to the Asian American/Asian Diaspora Studies class at UC Berkeley. ★



#### EDITOR'S NOTE

**T**here are two people whose contributions to this issue warrant recognition. Maureen Dear, an accomplished attorney and skilled writer, enhanced the article celebrating women justices on our High Court with observations based on her personal relationships with several of the justices. And the item about Judge Steven Howell that appears in Member News is based on an article by Brian Olson, a reporter for the Chico Enterprise-Record.

Another group deserves recognition for contributions made over a longer term. Because I will be leaving the Society's board of directors, after nearly 12 years, when my term ends this June and relinquishing my role as editor of this publication, I want to acknowledge them now. First, Society director and associate editor Jake Dear has somehow found time within his already demanding duties as Chief Supervising Attorney of the California Supreme Court to bring his energy, efficiency, good-humor, and deep knowledge of the law and the Court to each issue of the Newsletter. His contributions range from ensuring that the text generally follows the punctuation and citation rules of the Court's Style Manual to conceiving the idea for, and then implementing, the presentation of historic photographs from the "Corridors of the Court" as a continuing feature. His writing is consistently elegant and direct. His wide contacts within the judiciary and academy are a rich source of ideas for, and submission of, articles. And his companionable manner has sustained your editor's outlook during deadline pressures.

The Newsletter has been complimented for its stylish look. That is the result of the superb technical skills and aesthetic sense of Em Holland (who designs the layout of each issue) and Suzanne Bean (who accomplishes miracles with the photographs and other images). Finally, my predecessor as editor, director Selma Moidel Smith, has continued to contribute, reviewing each issue before it is sent to the printer, and thereby helping avoid errors of grammar, fact, and common sense. On behalf of the Society, I extend thanks to all. And knowing that they will continue as part of the team supporting a new editor, gives me confidence that the publication will remain in good hands. I look forward to reading it for many years to come. ★

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