

THE CALIFORNIA SUPREME COURT HISTORICAL SOCIETY YEARBOOK



VOLUME 2
1995

Editor: Harry N. Scheiber

Published for the Society by the
Institute of Governmental Studies Press
University of California, Berkeley

Contents

Editor's Preface

I. ARTICLES

- | | | |
|------------------------|--|-----|
| Peter L. Reich | Mission Revival Jurisprudence:
California Courts and Hispanic
Water Law Since 1850 | 3 |
| Susan Scheiber Edelman | "A Red Hot Suffrage Campaign":
The Woman Suffrage Cause
in California, 1896 | 49 |
| Paul Sabin | High Tide of Equal Protection:
Justice Raymond L. Sullivan's
Opinions in <i>Serrano</i> and <i>Westbrook</i> | 133 |

II. ORAL HISTORY

- | | | |
|---------------|---|-----|
| Gordon Bakken | Interview of Justice
Raymond L. Sullivan | 161 |
|---------------|---|-----|

III. REVIEW ARTICLE

- | | | |
|---|---|-----|
| John R. Wunder
Clare V. McKanna, Jr. | The Chinese and California:
A Torturous Legal Relationship | 195 |
|---|---|-----|

IV. BOOK REVIEW

- | | | |
|---|--|-----|
| Joseph R. Grodin, <i>In Pursuit of Justice</i> , reviewed by
W. Michael Gillette | | 217 |
|---|--|-----|

CONTRIBUTORS 221

Editor's Preface

From its earliest founding period, the California Supreme Court Historical Society has sought to encourage scholarly studies not only of the California judiciary but also—as Chief Justice Malcolm Lucas asserted eloquently in a message to members in our 1994 Yearbook—the larger context of judicial history: “the individuals who crafted the opinions that helped shape our world, the society in which they lived, and the forces that touched them. . . .”

The articles that we publish now, in this second annual yearbook, answer well the challenge that the Chief Justice suggested ought to be our guiding agenda. Peter Reich undertakes a bold and striking reappraisal of the California Supreme Court and lower courts' shaping of a key element in nineteenth-century law; and, in counterpoint, John Wunder and Clare McKanna put the record of the criminal trial courts under the microscope for a systematic analysis, including quantitative study, of how minority defendants fared before the California judiciary in an age when overt racial prejudice had great salience both in American social life and in the state's legal culture.

Susan Scheiber Edelman's study of the 1896 campaign for woman suffrage in California uses that important episode in state constitutional history as a lens through which to examine the ideas, the political alignments, and the social forces that influenced the outcome of a hard-fought contest over a vital issue in law and democratic governance. It is especially appropriate that this study should appear in the centennial year of the suffragists' unsuccessful effort to achieve basic reform of the California constitution.

The Society is especially proud to feature, in this issue, the career of one of the California Supreme Court's most notable justices, the Hon. Raymond L. Sullivan. Justice Sullivan generously agreed to an extended interview, one of the first in the Society's ongoing project for oral history interviews of the justices and others who have played a major role in California legal and constitutional history. In addition, Paul Sabin contributes an article that analyzes the jurisprudence of Justice Sullivan in the history of equal protection doctrine in California law; this serves as an important complement to the articles by Amy Toro and by Ben Field on aspects of the judicial thought and contributions of the late Chief Justice Roger Traynor that were published in our 1994 YEARBOOK.

The California Supreme Court Historical Society has been most fortunate in the opportunity to join with the Institute for Governmental

Studies Press of the University of California, Berkeley, in the publication of these yearbook volumes. The principal work of substantive editing for this issue has been done in the Center for the Study of Law and Society, and in the offices of the Jurisprudence and Social Policy Program, both of the Boalt Hall School of Law, UC Berkeley. I wish to thank Dean Herma Hill Kay of Boalt Hall and Prof. Robert Kagan of the Center, for their continuing support of this project. Kiara Jordan of the Boalt Hall staff has provided expert word processing and other assistance; I am grateful also to Maria Wolf (editor) and Pat Ramirez (publications coordinator) of the IGS Press, and to Gerald Lubenow (head of the Press), who have given tirelessly of their energies to the process of final editing and production.

A special note of thanks is owed to all the members of the Society's board of directors, who have shown in countless ways their serious devotion to advancing historical scholarship on California law; but I would like to note especially the warm support extended by Robert Warren, Esq., of Los Angeles; Chief Justice Malcolm Lucas; and Lee W. Cake, executive director. In the Society's earliest days, the support of Hal Norton, first director, was also much appreciated. Dr. Charles McClain of Boalt Hall has been a valued adviser on scholarly matters.

Lastly, I must say with great sadness that the guidance, erudition, encouragement, and wit of the late Bernard E. Witkin will be very badly missed.

We look forward to publication in future issues not only of original scholarly articles but also, on occasion, important historical documents and pictorial materials. Potential contributors are urged to contact the editorial office, at the Center for the Study of Law and Society, Boalt Hall, UC Berkeley, CA 94720-2150 (FAX 510 642 2951), for information of how to submit materials for appraisal.

—Harry N. Scheiber