

THE CALIFORNIA SUPREME COURT HISTORICAL SOCIETY YEARBOOK



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Editor's Preface

From the time of its founding, 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 in a message to members four years ago—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.” This *Yearbook*, the third that the Society has published since the first appeared in 1995, is but one instrument with which the promise in that message is being pursued. With the membership's generous support, the Society has also inaugurated a multi-author project for a history of the California Supreme Court, a study well along, now, toward its completion. Indeed, our lead article in this issue, by Dr. Charles McClain of the Boalt Hall School of Law's Jurisprudence and Social Policy program, offers readers a fine preview of the full history as it is drawn directly from his contribution to that volume. Similarly, Prof. Lucy Salyer of the University of New Hampshire has extracted the material for her article in this issue, on judicial reform in the Progressive Era and after, from the chapter that she is contributing to the history. The next *Yearbook* issue is also planned to include at least one major article reflecting the scholarship that is coming out of the multi-author history project.

In the present issue will be found also a product of one of the Society's most important research and publication programs, the ongoing effort to conduct oral history interviews of the justices and of others who have played a major role in recent legal and constitutional history of California. This program is led by Professor Gordon M. Bakken of the Fullerton State University faculty and founding vice-president of the Society, and relies for its success upon volunteer efforts by other historians and by members of the bench and bar. Previous interviews, published in the *Yearbooks*, have been with Justice Raymond L. Sullivan and with Justice Frank K. Richardson. We are proud to include in this issue a similar oral history, our first with a sitting member of the court, with Justice Stanley Mosk, indisputably one of the most important figures in the history of modern state constitutional jurisprudence. The Society is indebted to Margaret Levy, Esq., and to Prof. Bakken for their work on this important document. Unhappily, a plan to conduct an oral history interview with Justice Frank

Newman was defeated by his sudden and untimely death; but we have been fortunate to enlist Justice Joseph R. Grodin as author of a brief article on the subject of Justice Newman's service on the court.

Complementing these contributions, in this issue, are two other articles, of very different methodologies, bearing on the history of the court. The first, by Prof. Bakken, provides a retrospect on the judicial history of a hundred years ago; the second, by David Miller, is a fascinating adventure in iconography that fills what had been a troubling gap in the pictorial record of the high court's history.

That this last-mentioned article was inspired by an inquiry posed by Chief Justice Ronald M. George is a welcome reminder that the state's new Chief has taken up with verve and dedication the enterprise, set in motion by his predecessor, to support and encourage historical scholarship and broader public interest in the state's legal heritage and the history of its judicial institutions. It is with great optimism about the future of the Society that the board has welcomed the chief justice's election as its chairman, and we hope that future issues of this *Yearbook* will reflect well the spirit that he and the board have brought to their work in its support.

The editor of any journal of this sort runs up many debts, and it is impossible to acknowledge all of them adequately. I do wish to extend special thanks, however, to the two men to whom we have dedicated this volume. In nearly four decades of participation in scholarly societies, I have never seen any more devoted service than Chief Justice Lucas and Robert Warren, Esq., gave to this organization. They gave it a firm focus and vision, high scholarly standards, and a solid commitment to outreach and public education. In this work, it must be said, they were supported by the extraordinary efforts of Hal Norton, the first executive director, who helped establish a strong and enduring foundation for the Society in his membership efforts. The guidance, erudition, and wit of the late Bernard E. Witkin were also an essential ingredient in the organizational brew in the early years.

The academic editorial efforts associated with the *Yearbook* enterprise are *pro bono*, making it all the more important that thanks be extended to Gordon Bakken, Charles McClain, and the anonymous readers who have reviewed manuscripts. Prof. Lawrence Friedman of the Stanford Law School offered invaluable commentary on the McClain, Salyer and Bakken articles as they were presented in briefer format at a session of the

American Society for Legal History annual meeting in Minneapolis last year. Two organizations that are under supervision of the Boalt Hall School of Law at the University of California, Berkeley—the Center for the Study of Law and Society, and the offices of the Jurisprudence and Social Policy Program—provided secretarial support and office space. The editor and the Society are indebted for this help to Dean Herma Hill Kay, and also to the Center director, Prof. Robert Kagan.

We have been fortunate to enjoy a collaboration with the Institute of Governmental Studies Press, UC Berkeley, in the production and printing of these yearbook volumes. I am grateful to Maria Wolf, editor, and to Pat Ramirez, publications coordinator, at IGS Press, and also to the press's director, Gerald Lubenow, for giving tirelessly of their energies and attention. Finally, I wish to thank Karl Shoemaker, J.D., a graduate student in Jurisprudence and Social Policy at UC Berkeley, who has been a superb associate editor.

We look forward to publication in future issues not only of original scholarly articles but also, on occasion, important historical documents and pictorial materials. In an early issue, we had a "Reprises" section that reprinted some important studies that had appeared elsewhere; and suggestions for especially interesting articles on California's legal history that deserve republication will be welcomed by the editors. Correspondence from readers and potential contributors should be directed to the editorial office, at the Center for the Study of Law and Society, Boalt Hall School of Law, UC Berkeley, CA 94720-2150.

—Harry N. Scheiber