

THE CALIFORNIA SUPREME COURT  
HISTORICAL SOCIETY YEARBOOK



VOLUME 4  
1998 - 1999

Editor  
**Harry N. Scheiber**  
*Boalt Hall School of Law  
University of California, Berkeley*

Published by  
The California Supreme Court Historical Society

Design and Production  
David Price

CONTENTS

Editor's Preface Page i

I. ARTICLES

---

Lucy Salyer Protective Labor Legislation and the California Supreme Court, 1911-1924 Page 1

Hank Thayer "A Man for Breakfast": Crime and Violence in Inyo County During the 1870s Page 23

Jake Dear and Levin Historic Sites of the California Supreme Court Page 63

II. ORAL HISTORY

---

Adam Badawi Introduction to the Bernard Witkin Oral History Page 95

Gordon Bakken Conversations with Bernard Witkin Page 109

Harry N. Scheiber On the Broussard Oral History Interview: Editor's Note Page 137

Amy Steigerwalt Introduction to the Oral History Interview: Aspects of the Judicial Contributions of Allen Broussard Page 143

Gabrielle Morris Oral History Interview with Justice Allen Broussard Page 155

---

Contributors Page 278

## PREFACE TO THE FOURTH YEARBOOK

This is the fourth Yearbook to be published by the California Supreme Court Historical Society, advancing further the Society's commitment to scholarly studies as a complement to its public outreach and educational functions. Since its founding, the Society has sought to encourage new studies not only of the Court itself and of the state's judiciary more generally, but also of the larger context of judicial history. Thus former Chief Justice Malcolm Lucas asserted in a message to members at the organization's founding that historical study of the Court embraces as well "the individuals who crafted the opinions that helped shape our world, the society in which they lived, and the forces that touched them." These objectives have been warmly endorsed by Chief Justice Ronald M. George and the Society's present directors, who have continued to pursue with verve and dedication a broad agenda of activities designed to support and encourage public attention to the state's legal heritage and institutions.

Our lead article, by Professor Lucy Salyer of the University of New Hampshire, focuses on a set of doctrinal developments in the Court's history concerning labor law and policy. This article provides a probe in depth into the early history of workers compensation, maximum hours, and "liberty of contract" in the political arena and before the judiciary. This study complements another, published in our third Yearbook (1996-7), in which Professor Salyer dealt with judicial reform in the Progressive era. Taken together, her two articles offer a fine preview of the chapter she is preparing for the multi-author history of the California Supreme Court now under preparation under the Society's sponsorship.

In a very different mode of research, Hank Thayer's article on crime and criminal justice (including vigilante style justice) in frontier Inyo County offers a systematic analysis of statistical evidence from an aspect of California's past that is often portrayed largely in romantic and general terms. However, in addition to

bringing together statistical measures to the fullest extent that a fragmentary and incomplete record will permit, the author also has constructed a narrative that puts the statistical numbers and charts into a real-life framework and context. Violence is a dark and troubling theme in the history of American law, a subject that is familiar to those readers who recall the article on the Chinese immigrant and crime in early California by John Wunder and Clare MacKanna, Jr., in the second (1995) volume of this Yearbook. Both in contributing to the statistical record and in providing qualitative accounts of people and incidents involved in early California's record of crime, the two articles offer intriguing parallels as to both methodology and substance. Mr. Thayer's study was undertaken originally in Gordon Bakken's graduate seminar at California State University, Fullerton and has been revised and edited for this publication.

Still a third type of history is embodied in Jake Dear's and Levin's investigations of the history of buildings that have housed the California Supreme Court over a century and a half's time. Dear and Levin have had remarkable success in unearthing pictorial as well as conventional written documentary evidence; and it is especially appropriate that the results of this extensive project should appear now, not long after the Court has moved to its new quarters. Their research has filled a significant gap in the institutional history—or, if you will, the archaeological history—of the Court, and is exemplary of how conventional historical analysis can be augmented by ingenious detective work.

The subject of legal and judicial biography has been an important focus of attention in the earlier Yearbooks, and it is evident once again in this one. In our past issues we have published oral history interviews with Justices Stanley Mosk, Raymond L. Sullivan, and Frank Richardson. Here we are pleased to publish two oral history interviews which (like the earlier ones) constitute exceptionally important contributions to California's judicial history and legal development. Bernard Witkin is a legendary figure, and he was revered by the bar and bench. Yet, despite his long years of active

involvement and often outspoken role in public discourse on California law and legal institutions, he seldom made of record his candid views of individuals or of controversial trends and incidents in the history of the California Supreme Court. Now, with the generous cooperation and approval of Mrs. Alba Witkin, an invaluable revealing interview conducted by Professor Gordon Bakken in 1991 has been made available for publication. The sparkling wit and the profound wisdom and insight for which Bernie Witkin is so well remembered come through brilliantly in this interview, and the Society is especially proud to have the opportunity to make it available. Especially so as Mr. Witkin was a founding member of the Society and its board of directors, and together with Robert Warren, the founding president, and several justices of the Court, he played a leading role in shaping the organization's agenda and goals. The interview is introduced by a short essay contributed by Adam Badawi, a doctoral student in the Jurisprudence and Social Policy Program, Boalt Hall School of Law, University of California, Berkeley.

Similarly of exceptional value to scholars and to the public for what it reveals of a remarkable individual's views and his role in the history of California law is the oral history interview of the late Justice Alan Broussard. Whereas the Witkin interview was conducted for the Society by one of its own members and directors, Prof. Bakken, the Broussard interview was undertaken as part of one of the renowned projects conducted by the Regional Oral History Office (ROHO) of UC Berkeley's Bancroft Library. The Yearbook is indeed pleased to have obtained permission to publish it in edited form here; and Amy Steigerwalt, also a UC Berkeley doctoral student, has contributed an essay examining three exemplary opinions and recalling the larger scope of Broussard's career.

Justice Broussard's long career in public life involved him in a host of leadership positions in both the private sector and governmental service, quite apart from his contributions from the bench. We have thought it appropriate, however, to publish here mainly the segment of his interview that related to his role as a

judge. Broussard provided information that is not available in other sources about some of the Court's inner workings and about personalities. Moreover, despite his desire to maintain a judicial stance and avoid criticism which he had not put on record otherwise, he expounded in an intriguing way—sometimes in considerable detail—about issues, episodes, and people in passages that provide intriguing looks behind the curtain at the Bird and Lucas Courts. We look forward to publication in our next issue of the oral history interview of the late Justice Frank Newman, another in the ROHO/Bancroft Library's oral history series in judicial history.

As editor, I am most grateful to the authors of the articles; to Gordon Bakken—who maintains his record of contributing either an article or interview to each of our published issues; and to the Bancroft Library and ROHO for providing the texts in this Yearbook. Dr. Charles McClain, my colleague in the Jurisprudence and Social Policy Program and an historian of California law, is a valued adviser on editorial matters. Ms. Kiara Jordan of the Jurisprudence and Social Policy Program, UC Berkeley, staff has once again provided expert assistance in word processing and preparation of the articles and interviews for the press; and Amy Steigerwalt has assisted overall in editorial work and cite checking. I am grateful to scholars at UC Berkeley and other institutions who refereed the articles. The Center for the Study of Law and Society, UC Berkeley, and its director, Professor Robert Kagan; Dean Herma Hill Kay of Boalt Hall School of Law; and James Pfeiffer, executive director of the Society, all have been supportive in myriad ways.

A note of special thanks is owed to the Chief Justice and to the Society's board of directors, who continue to take time from their busy lives in law firms, universities, and the bench to devote time and energy to the cause of advancing scholarship on California's legal history. Robert Warren, Esq., of Los Angeles, founding president of the Society, has been a pillar of support from the first day of this editorial enterprise; and Justice Elwood Lui extended help to the Yearbook enterprise in all ways during his distinguished presidency.

We look forward to publication in future issues not only of original scholarly articles and additional oral history interviews, but also, on occasion, of important historical documents or pictorial materials such as accompany Jake Dear's article in this issue. Some issues also feature a "Reprises" section in which we reprint what are considered classic scholarly writings on the Court's history and on California legal development. Hence we welcome suggestions as to works that would be of interest to our readers and deserve republication. Correspondence from readers and authors of original articles for editorial consideration should be directed to the Editor, at the Center for the Study of Law and Society, Boalt Hall School of Law, University of California, Berkeley, CA 94720-2150.

HARRY N. SCHEIBER

*The Riesenfeld Professor of Law & History  
Boalt Hall School of Law, UC Berkeley*