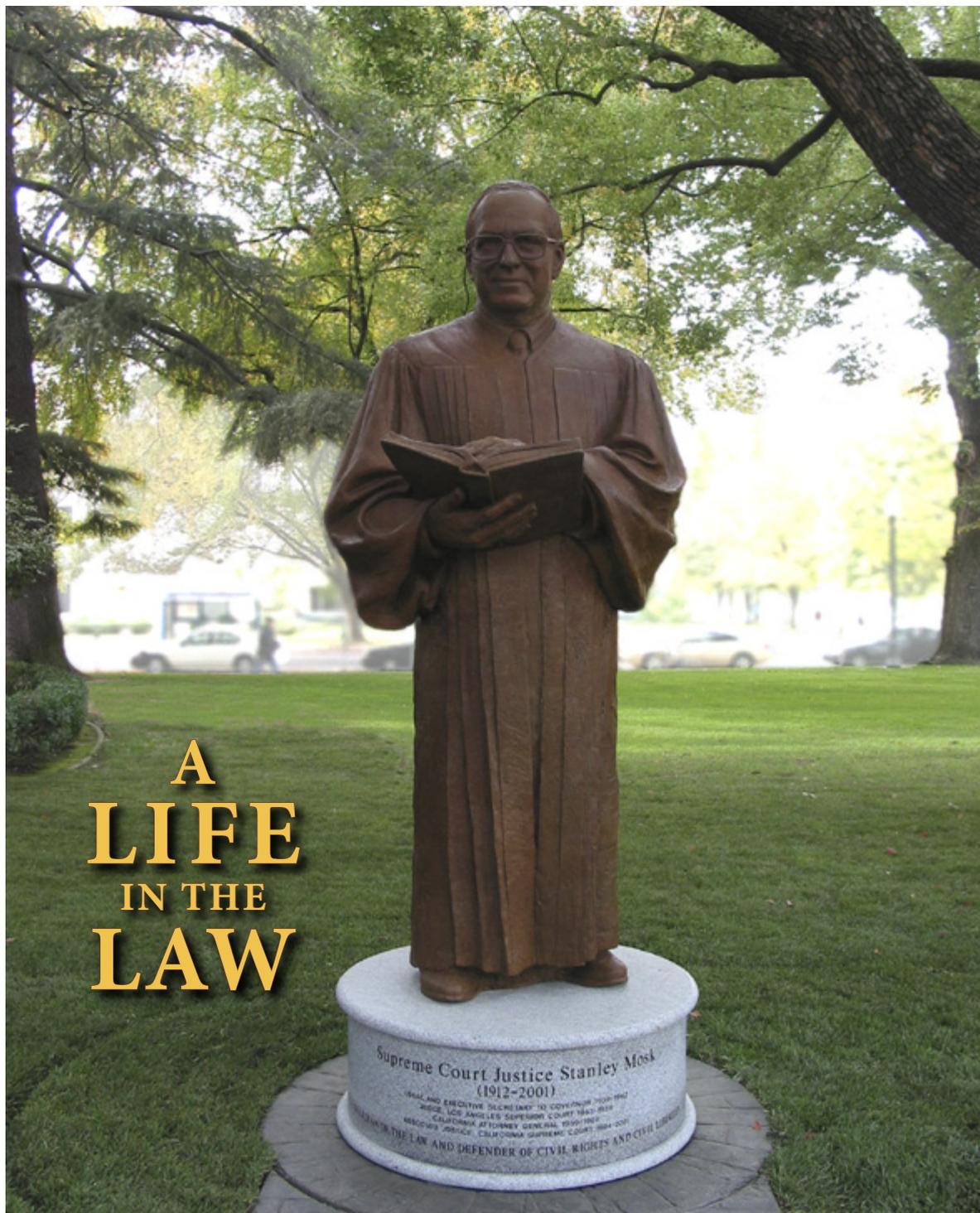




CALIFORNIA SUPREME COURT

Historical Society

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A
LIFE
IN THE
LAW

The Longest-Serving Justice

HIGHLIGHTS FROM A NEW BIOGRAPHY OF JUSTICE STANLEY MOSK

BY JACQUELINE R. BRAITMAN AND GERALD F. UELMEN*

HUNDREDS OF MOURNERS came to Los Angeles' majestic Wilshire Boulevard Temple in June of 2001. The massive, Byzantine-style structure and its hundred-foot-wide dome tower over the bustling mid-city corridor leading to the downtown hub of financial and corporate skyscrapers. Built in 1929, the historic synagogue symbolizes the burgeoning pre-Depression prominence and wealth of the region's Jewish Reform congregants, including Hollywood moguls and business leaders. Filing into the rows of seats in the cavernous sanctuary were two generations of movers and shakers of post-World War II California politics, who helped to shape the course of history. Sitting among less recognizable faces were current and former governors and elected and appointed officials in the local, state, and national arena. Framed by the grandeur of the dais, family members, friends, and colleagues sat in ornate, stately chairs, and then each took to the podium to share their version of the essence of the life of California Supreme Court Justice Stanley Mosk. Together, their testimony established that there were few people who could rival the 70 years of influence Stanley Mosk had on the evolution of California law, the administration of justice, politics, and social policy. The City of Los Angeles, the State of California, indeed the United States of America, had all been changed by his life, in ways both subtle and dramatic.

IN THE GOVERNOR'S OFFICE

Although Mosk started out [after the 1938 election of Culbert Olson as California's first Democratic governor since 1899] as number three in a three-man office, he moved up to principal executive secretary within a year, in charge of managing the office, and handling extradition, clemency, and other legal matters.

His service with Governor Olson taught Stanley Mosk that demonizing political enemies was not smart politics; you never know when you might need them as

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future allies. With rare exceptions, Mosk maintained cordial relations with political opponents throughout his lengthy career.

On one of his final days in office, Olson called Mosk into his office and told him to prepare commissions to appoint Harold Jeffries, Harold Landreth, and Dwight Stephenson to the Superior Court, and Eugene Fay and



Morey Stanley Mosk, circa 1934

PHOTOS: CALIFORNIA
JUDICIAL CENTER LIBRARY

Mosk himself to the Municipal Court. Mosk thanked the governor profusely. The commissions were prepared and the governor signed them, but by then it was too late to file them. The secretary of state's office was closed, so Mosk locked the commissions in his desk and went home, intending to file them early the next morning. In the middle of the night, the governor called to inquire if the commissions had been filed yet. When Mosk explained they had not, the governor said, "Good. I cannot leave Bob Clifton off. Put him in your place on the Municipal Court, and you take Dwight Stephenson's place on the Superior Court." Thus, at the age of 30, Mosk became the youngest Superior Court judge in the history of California. He later noted with pride, "There can never be one younger. A subse-

quent law requires 10 years of law practice before such an appointment can be made. I had been a member of the bar only seven years at that time."

JUDGE OF THE SUPERIOR COURT

In January of 1943, Justice Jesse W. Carter of the California Supreme Court administered the oath to swear in Stanley Mosk as a judge of the Superior Court for Los Angeles County. As the youngest judge in the county's court system, Stanley Mosk became the darling of the Southland's Jewish community, and a favorite of the Hollywood film colony. But first, he had to adjust to the seniority system that governed (and still governs) assignments within Los Angeles' huge court structure, and survive a formidable election challenge.

When a very youthful and inexperienced Judge Stanley Mosk reported for duty, the presiding judge of the Los Angeles Superior Court refused to assign him to a courtroom. He thought Mosk was "too young." Mosk

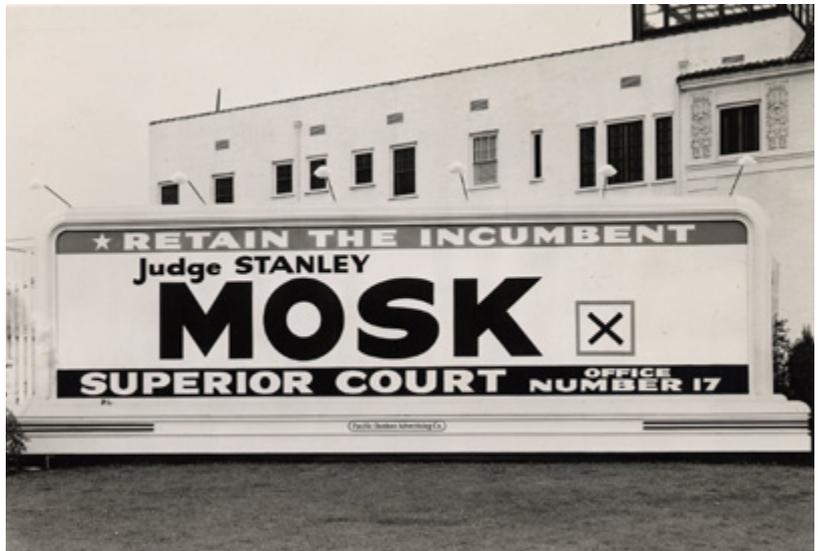
remained available for temporary assignments, however, and soon Judge Alfred Paonessa requested Mosk's service for six months in the city of Long Beach. Because of wartime personnel shortages, Judge Mosk helped the court catch up on its probate and divorce dockets. The Long Beach press covered the arrival of the precocious and charming new judge, and the local legal community warmly welcomed him. A quick study, he learned on the bench, having little courtroom or litigation experience under his belt.

Everything Judge Stanley Mosk did received press coverage, including his induction into the armed services. Unbeknownst to him, his love affair with publicity now inspired both the Army and the FBI to initiate investigations into the background of the new doughboy. The military records at Fort MacArthur refer to the subversive files of the Los Angeles Police Department, which at that time provided scant evidence of Mosk's activities. Most of what the LAPD file included was taken from published accounts of Mosk's appearance at public events, including a *Los Angeles Daily News* article indicating Morey Stanley Mosk was chairman of the Citizen's Committee for Industrial Justice. It reported that the following year Mosk acted as an attorney for the California Federation for Political Unity and Labor's Non-Partisan League. The report noted Mosk's service as Culbert Olson's executive secretary.

PUTTING HIS WORDS INTO ACTION

As a matter of California state law, racial restrictive covenants had been upheld in decisions of the California Supreme Court going back to 1919. The Court ruled that although sale of property to Negroes could not be restricted because that would be a restraint on alienation, restrictions on occupancy of the premises could be enforced.

Now, as a judge on the Superior Court, Stanley Mosk had an opportunity to put his words into action. Activist lawyers and reformers sought test cases to transform Los Angeles into an open, upwardly mobile society for all of its residents. The case of *Wright v. Drye* came before Judge Mosk in 1947, involving a fight by three families against the injustice of racial covenants and the demeaning methods used to enforce them. The defendants included three African-American families who had purchased homes in the tony Hancock Park neighbor-



MOSK WON EVERY POLITICAL RACE HE ENTERED. HIS FIRST CAMPAIGN IN NOVEMBER 1944 WAS TO RETAIN HIS JUDGESHIP.

hood of West Los Angeles. The lead defendant was Frank Lloyd Drye, a talented musician who moved his wife and five children from Alabama to their "dream house."

The deed to the Drye home included a racial restrictive covenant making their occupancy of the home they purchased unlawful. Two months after they moved in, nine white neighbors, led by Pastor Clarence Wright of the Wilshire Presbyterian Church, filed a suit to enforce the covenant by evicting the Dryes, as well as two other black families, the Stricklands and the Stewards, who had also purchased houses in the neighborhood.

Following the precedent established by the California Supreme Court would have required Judge Mosk to enforce the covenants and evict the Dryes, Stricklands, and Stewards from their homes. Mosk simply refused to do so. He courageously ruled that restrictive covenants were unconstitutional.

ATTORNEY GENERAL STANLEY MOSK

The 1958 election of Governor Pat Brown and Attorney General Stanley Mosk also brought a Democratic majority to the state legislature.

Most of the country's 50 heads of State Departments of Justice are traditionally addressed as "General," as is the Attorney General of the United States. Having never risen above Private First Class during his brief stint in the U.S. Army, California's new Attorney General loved being called "General" Mosk. On one occasion, however, he found it somewhat embarrassing. While attending a dinner hosted by Alfred Hart, the Los Angeles banker who served as his campaign finance chair, Hart introduced Mosk to his guests, saying, "General Mosk, meet



“DESPITE HIS PRONOUNCEMENTS, THE RECORD OF STANLEY MOSK DOES NOT SUPPORT THE CONCLUSION THAT HE WILL TURN FROM A CIVIL LIBERTARIAN TO AN AGGRESSIVE CRIMINAL PROSECUTOR SIMPLY AS A RESULT OF HIS ELECTION AS ATTORNEY GENERAL.”

— FROM MOSK’S FBI SURVEILLANCE FILE

so-and-so.” Then, Hart approached an imposing figure and said, “General Mosk, meet Omar Bradley.” As General Bradley reached out his hand, he asked the startled Mosk, “What outfit were you in, General?” Chagrined, Stanley Mosk mumbled something about the transportation corps and beat a hasty retreat.

A “CAUCASIAN CLAUSE” FOR GOLFERS

In September of 1959, Stanley Mosk was playing golf at the Hillcrest Country Club, a prestigious gathering place for golf, weddings, and gala affairs known for its predominantly Jewish membership, which had historically been banned from the city’s elite gentile clubs. Hillcrest was the only country club in Los Angeles that welcomed players of diverse race and ethnicity. Singer Billy Eckstine introduced Stanley Mosk to Charlie Sifford, one of the earliest and most successful black professional golfers. Mosk was incredulous when Sifford told him he was not allowed to play in tournaments sponsored by the Professional Golfers Association because of a “Caucasian clause” in their constitution. “You mean to tell me they actually have that in their organizational bylaws?” he asked.

The next time Sifford visited Hillcrest, he brought a copy of the PGA constitution and left it for Mosk. Mosk

contacted the PGA and verified that they continued to discriminate against non-Caucasians in admitting golfers to membership. In response to a protest from Mosk, the PGA informed Sifford it would make him an “approved tournament player,” which would allow him to join the tour, but it would not make Sifford a PGA member. He would still face discrimination at golf courses where PGA tournaments were held. The Caucasian clause remained on the books.

When Stanley Mosk learned that the 1962 PGA Championship was scheduled to take place at the Brentwood Country Club, he notified the PGA that a lawsuit would be brought to compel them to allow Sifford to play. He issued a public statement, announcing, “We intend to take every step available to us, both in and out of the courts, to force the

PGA either to eliminate this obnoxious restriction or to cease all activity of any kind within our state.” The PGA responded by announcing it would move the tournament out of California, to a private golf course near Philadelphia. Mosk responded by contacting his fellow attorneys general in other states, and encouraging them to keep the pressure on the PGA to change their constitution. The NAACP also joined in condemning the PGA, labeling the PGA Championship an “ugly tournament.” The PGA finally relented and the “Caucasian clause” was repealed. Charlie Sifford was admitted to full PGA membership in 1964.

“LITTLE OLD LADIES IN TENNIS SHOES”

Attorney General Stanley Mosk issued a widely publicized report examining the activity of secret right-wing extremist groups in California in 1961. In describing the John Birch Society, the report characterized the society’s membership as “wealthy businessmen, retired military officers, and little old ladies in tennis shoes.” The line got a huge play in the press after *The New York Times* picked up on it. One columnist warned, “The next time you see Attorney General Stanley Mosk, don’t sound off with ‘Anyone for tennis?’ With all those tennis shoes he

has been receiving in Sacramento re his remarks about the John Birch Society . . . [it] caused him to remark that ‘I hope the shoes will not be for the right foot only. We prefer well balanced people, both at home and abroad.’” Although the actual author of the report was Howard Jewel, he had heard his boss use the expression on many occasions. The term has since achieved a life of its own.

A FRIEND OF THE KENNEDYS

In the 1960 presidential race between Nixon and Kennedy, California was a key battleground state, although it was Nixon’s home turf. Not having a high opinion of Governor Brown, the Kennedy campaign staff looked to Mosk and Assembly Speaker Jess Unruh for guidance. Kennedy frequently visited California, and whenever he came, he was accompanied on the campaign trail by the state’s National Committeeman Stanley Mosk. The Mosks held fundraisers for their candidate, and Stanley Mosk, always attractive to women, held his own in the presence of the handsome and charismatic Kennedy.

President John F. Kennedy’s inauguration in January 1961 was an historic event. Stanley and Edna Mosk proudly watched the inaugural parade in 26-degree weather, and then hosted a gala celebration in the Congressional Room of D.C.’s Statler Hotel.

Just after President Kennedy’s inauguration, the FBI noted that because Stanley Mosk had been very active in the recent presidential campaign he was “evidently aiming” for an appointment to the Ninth Circuit Court of Appeals as an interim position until he could be appointed to the next opening on the United States Supreme Court. The possibility of an appointment was very real, but it was not to be. California Supreme Court Justice Jesse Carter and Senator Henry M. “Scoop” Jackson endorsed Mosk for the Ninth Circuit post. By February 1, however, Bobby Kennedy acknowledged that Mosk was staying in his present position.

Another topic of discussion with the Kennedys was Mosk’s political future. Mosk had declined an opportunity to serve in JFK’s administration, either as General Counsel for the Defense Department or the FCC. He thought his prospects for political advancement could best be cultivated by remaining in California. One journalist suggested that the “most important accomplishment” of President Kennedy’s trips to California was “the chance to meet and appraise” Attorney General Mosk, who, in the event Bobby Kennedy moved out of the U.S. Attorney General spot, could succeed him.

U.S. SENATOR STANLEY MOSK?

Even before JFK’s assassination in Dallas, Bobby Kennedy had urged Stanley Mosk to make a run for the Senate. Mosk had been urged to run against Senator Thomas Kuchel in 1962, but wisely declined. Kuchel was overwhelmingly reelected to his second term.

In 1963, it began to appear as though another Senate seat would soon be up for grabs. Senator Clair Engle was elected to succeed William F. Knowland in the 1958 Democratic sweep. Tragically, in 1963 he was stricken with brain cancer.

The Kennedy administration was pressuring Governor Brown to appoint a replacement, and on October 9, 1963, six weeks before President Kennedy’s assassination, a headline in the *San Francisco Examiner* announced, “JFK for Mosk If Engle Out.” A Field poll among Democratic voters showed Mosk with a substantial lead as a potential candidate for the U.S. Senate. This put Governor Pat Brown in a very awkward position, because he had already promised his support to Alan Cranston.

Governor Brown believed a divisive and expensive Senate primary fight in California would jeopardize the party’s chances in the November general elections, and even affect Lyndon Johnson’s hopes to carry California. Behind the scenes, Brown decided he had to convince Stanley Mosk not to announce his candidacy.

THE SMOKING GUN

Suddenly, Governor Pat Brown pulled out the “smoking gun”: a file of surveillance reports and photographs documenting that the Attorney General had been leading a “double life.” The official report of the Los Angeles Police Department surveillance of Stanley Mosk began in December 1958, when, one month before



Mosk, with Robert and Edward Kennedy in 1960, was an early supporter of their brother, John F. Kennedy.



“ARE WE GOING TO GIVE COLORADO RIVER WATER TO PEOPLE OF CALIFORNIA TO DRINK OR TO ARIZONA FOR ASPARAGUS?”

— MOSK, ARGUING *ARIZONA v. CALIFORNIA* BEFORE THE U.S. SUPREME COURT

taking office as Attorney General, his 1957 De Soto was observed parked at the West Hollywood home of a convicted bookmaker. Mosk's was not the only car seen parked in front of the house. When the police tracked the license plates of the other cars, they came up with a rogue's list of individuals who had been convicted as major marijuana suppliers, heroin peddlers, burglars, pimps, prostitutes, forgers, and smugglers, along with “sex degenerates” and “advocates of the Communist Conspiracy.” The police characterized the gathering as a “freak party.” What was the newly elected Attorney General of California doing partying with the low-life of Los Angeles?

The answer to this question lies buried in a mix of humanity known as the “counterculture” of Los Angeles. In the late 1950s and early 1960s, the once glamorous Sunset Strip, the stretch of unincorporated

land that passes through West Hollywood, became a favorite gathering spot for hippies, musicians and their groupies, and Hollywood hangers-on. The scene naturally attracted drug dealers, pimps, and prostitutes as well. It was eclectic and it was exciting, a magnet for tourists and locals looking for “action.” A number of the era's major rock bands emerged from this milieu, and the bars and nightclubs were popular watering holes for celebrities on the prowl. Stanley Mosk was apparently attracted by the excitement of the Sunset Strip counterculture, but the main attraction soon became a beautiful young woman. Her name was Sabrina Jourdan.

LAPD intelligence officers, who were well known for their interest in the comings and goings of elected officials, took a keen interest in the relationship between Stanley Mosk and Sabrina Jourdan. On July 15, 1963, Stanley Mosk flew from Los Angeles to Mexico City to participate in a drug law enforcement conference arranged by the Kennedy administration. The LAPD Intelligence File reports that Mosk met Sabrina at the airport, and once on the plane she was upgraded from tourist to first class to join him on the flight. The file also contained photos taken of the couple through a hotel window, although there was no explanation of who took the photos or why. The photos have disappeared, but several who saw them describe them as depicting Sabrina disrobing in Stanley's presence. The photos became the “smoking gun” used to derail the Attorney General's political ambitions.

Stanley Mosk as Attorney General and later as a Justice of the California Supreme Court was a bold defender of the constitutional right of privacy and a longstanding foe of intrusive and illegal police surveillance. Whether his legal and judicial views on these issues emanated from having himself been a victim of police surveillance makes for interesting speculation.

JUSTICE MOSK, NOT CHIEF JUSTICE

On August 10, 1964, Chief Justice Phil Gibson announced his retirement from the Supreme Court. Governor Pat Brown hailed him as one of the giants of American law, and then promptly appointed another giant to replace him, Associate Justice Roger Traynor. He also announced the appointment of Attorney General Stanley Mosk to take Traynor's place. Almost immediately, suspicion was voiced that Brown was delivering the inducement that got Mosk out of the Senate race. Both Brown and Mosk vehemently denied it, but neither of them were very credible in doing so. When the question of a “deal” was raised at the time Mosk announced his withdrawal from the Senate race, Mosk said he resented such a notion. He characterized it as “a disservice to a truly great court when we keep this rumor handy to bring out in a political sense.”

Furthermore, he added, at that time “there was no vacancy on the court and there’s no arrangement for a future vacancy.” Governor Brown later conceded the Supreme Court had been discussed prior to Mosk’s withdrawal, explaining that he was careful not to make Mosk a firm offer, but instead pointed out that “since Cranston was not an attorney, it would not be possible to appoint him to the Court.”

It is quite likely that both Brown and Mosk knew of Gibson’s retirement plans by March of 1964, when Mosk was forced out of the Senate race. Gibson would not have sprung a surprise retirement on Governor Brown. Stanley Mosk apparently expected that he would be appointed Chief Justice, to replace Gibson, which lends strong credence to the rumors that a deal had been cut. If so, Mosk would have thought the deal was that he would get the next appointment to the Court, and the next appointment to the Court was the Chief Justice. Earl Warren had experienced a similar situation, when President Eisenhower tried to backtrack on the promise to give him a spot on the Supreme Court, after the “next spot” turned out to be the position of Chief Justice. Mosk was actually angry when Governor Brown announced the elevation of Traynor to be Chief Justice at the same time he appointed Mosk as an Associate Justice. He confronted Governor Brown about renegeing on his promise, and stormed out of Brown’s office after a loud argument.

ON THE CALIFORNIA SUPREME COURT

On September 1, 1964, at the age of 52, Stanley Mosk was sworn in as the 86th Justice to serve on the Supreme Court of California. Mosk took over the seat previously occupied by Associate Justice Roger J. Traynor, the same seat that Justice Gibson had occupied years before, prior to his elevation to serve as Chief Justice. Traynor was that same day sworn in as the 23rd Chief Justice of the California Supreme Court. Thus, two prior occupants of the seat Mosk assumed had gone on to serve as Chief Justice, a tradition Mosk often thought he was destined to maintain.

Stanley Mosk hit the ground running as a new Justice of the California Supreme Court. His first majority opinion appeared only nine weeks after he was sworn in, and by the end of the year he had published 14 majority opinions and one dissent. During his 16 years on the Superior Court, he had closely followed the work of the Supreme Court and on occasion he had sat as a pro tem Justice of the California Court of Appeal. His six years of service as Attorney General provided invaluable familiarity with the workings of the Court and the personalities of its members. His editing and issuance of 2,000 formal opinions as Attorney General gave him insight into supervising staff and polishing their work product. Most impor-

tant, he recruited an outstanding lineup of judicial staff attorneys to assist him.

Justice Mosk relied upon Peter Belton and Olga Murray to draft his calendar memos and majority opinions. Belton developed an amazing capacity to assimilate and anticipate Justice Mosk’s views. As fellow Justice Joseph Grodin observed, “They were intellectual, symbiotic twins. Peter knew what Stanley’s view was about everything. I had the impression that all Stanley had to do was nod, and Peter would set out to write the opinion which he was sure that Stanley would want to have written.” More often than not, Mosk drafted his own dissenting and concurring opinions, sitting at his desk and pecking away at an old manual typewriter. He was efficient, finishing his work in less time than it took his fellow Justices.

When Justice Mosk assumed the role of a Justice of the California Supreme Court, observers anticipated he would become a reliable fifth vote for the Traynor Court majority. He never did. The Court divided in a 4–3 split in 21 of its decisions, and in most such cases the majority consisted of the Chief Justice joined by Justices Peters, Tobriner and Sullivan, with the dissenters including Justices Mosk, Burke and McComb. Justice Mosk’s rate of disagreement with the Chief Justice was 12.6 percent. Mosk was positioned slightly to the right side of



Mosk kept himself physically fit with frequent games of tennis, regularly beating his law clerks on the tennis courts.

a left-leaning court. Although Chief Justice Traynor led from the middle, the tilt was to his left.

THE MOSK DOCTRINE

In California, the practice of relying upon the state constitution to provide more expansive protection of individual rights than required by the Federal Constitution became known to many as “The Mosk Doctrine.” Mosk gained renown for his consistent rulings that sought to guarantee individual liberties contained in the California Constitution independent from the Constitution of the United States. The most important of these rulings came in a series of cases regarding the freedom of speech in privately owned shopping malls, which were open to the public.

THE DEATH PENALTY

On April 21, 1992, California conducted its first execution under the death penalty law enacted in 1978. Robert Alton Harris’ execution was originally scheduled for

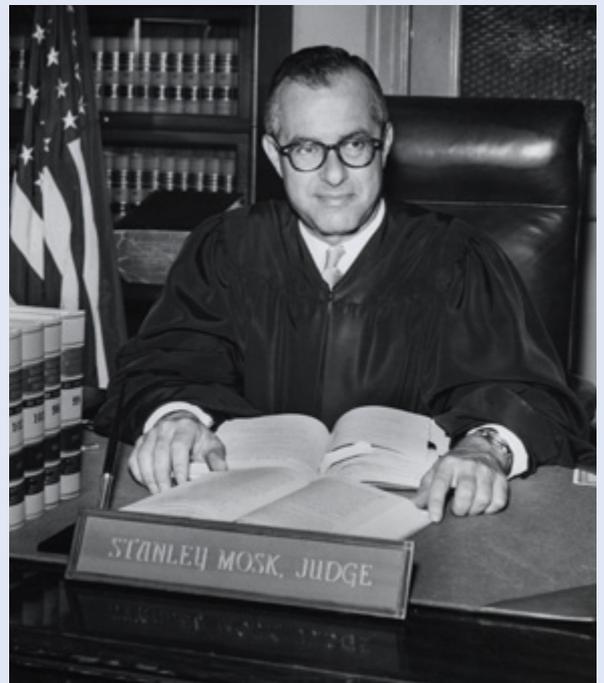
12:01 a.m. on the morning of April 21, 1992. Pursuant to the Court’s protocol, the Justices gathered in the chambers of Chief Justice Malcolm Lucas to respond to any last minute challenges to the execution, with an open line to the execution chamber. A series of four stays issued by individual federal judges delayed the execution until just after 6 a.m. In its order vacating the fourth stay of execution, the U.S. Supreme Court stated, “No further stays of Robert Alton Harris’s execution shall be entered by the Federal courts except upon order of this Court.” All of the California Supreme Court Justices spent over six hours of sleepless waiting. Halfway through this ordeal, Chief Justice Lucas noticed Stanley Mosk [then nearly 80] frequently checking his watch. He suggested Stanley go home and get some sleep, promising they would summon him if anything happened. Mosk replied, “I’m not worried about getting sleep. I have a 6:30 a.m. tennis match scheduled, and I’m concerned I may have to cancel it.” After the execution was finally carried out and Robert Harris was declared dead at 6:21 a.m., Justice Mosk went

His Only Death Sentence

JUDGE STANLEY MOSK sentenced only one man to death throughout his two decades on the Superior Court. Mosk described the trial as “one of the most dramatic cases I heard as a trial judge. . . . The case had all the overtones of intrigue, love, sex, hate, rejection, frustration, and finally violence.”

Newspaper readers followed the details of the case of John Crooker, who was accused of the first-degree murder of Mrs. Norma McCauley, an attractive, wealthy divorcee and mother of three who lived in the fashionable Bel-Air section of West Los Angeles. During his first appearance before Judge Mosk, “The law student and former house boy stood silently . . . until prodded into action by a slip of the tongue on the part of his attorney,” who waived reading of the complaint saying, “There were several facets of the case requiring study before a plea of ‘guilty’ is entered.” The lawyer corrected herself after “Crooker leaned over and whispered hurriedly,” saying that she meant “not guilty.” Another attorney represented Crooker for the remainder of the case.

Ten years before the United States Supreme Court decision of *Miranda v. Arizona*, Crooker’s new lawyer argued that during Crooker’s interrogation the police failed to warn him of his right to an attorney, and therefore his written confession should be excluded from evidence. Crooker also claimed he wrote out a confession to the murder in order to escape a police beating. Crooker



During his 16 years on the Superior Court bench, Stanley Mosk engaged in the trial and disposition of thousands of cases, but sentenced only one person to death.

said he had been hit three times and threatened with more violence and, as a result, he said he “would say anything they wanted me to say if they then would leave me alone.” Although Mosk was well aware of such police practices, he credited the denials by police witnesses and admitted the confession in evidence.

directly to his tennis match, then returned to the Court to put in a full day's work.

The interpretation and application of the California death penalty law would occupy the California Supreme Court throughout the remainder of Justice Mosk's tenure. Recognizing that the death penalty would continue to be a subject of discussion, he offered his perspective. "At the risk of appearing immodest, I claim to be particularly equipped to enter into this discussion because I have been on all sides of the issue — not, I hasten to explain, because of unconcern or ambivalence." Mosk proceeded to briefly chronicle at which stages of his life he considered the issue of capital punishment:

First, as an idealistic young man, I debated for abolition of the death penalty. Then, as executive secretary to the Governor of California, I had the duty of actually interviewing, in prison, men — and one woman — under sentence of death and making a report to the Governor. . . . Next, I became a

When Crooker was convicted, the jury recommended the death penalty. Upon Crooker's appeal, the California Supreme Court, with Justice Jesse W. Carter dissenting, affirmed Judge Mosk's ruling and Crooker's death sentence. On January 24, 1957, Judge Mosk set the date of execution for April 12. He later confessed to his discomfort in doing it. "If we truly believe that only God renders such irrevocable decisions as life and death, then the judge who makes the pronouncement of the ultimate penalty is in fact playing God. He is ordering the elimination of a human being."

Judge Mosk's ruling and Crooker's death sentence were affirmed by a 5-4 ruling of the United States Supreme Court, with Chief Justice Earl Warren joining the dissenters. The Supreme Court majority concluded that Crooker needed no warning of his right to counsel, since he had already completed a year of law school.

As Crooker's execution approached, Pat Brown had become governor and Stanley Mosk had become Attorney General. Crooker's petition for commutation of his death sentence was the first one heard by the newly elected governor. In explaining his decision to grant the commutation, he wrote:

I listened carefully to all they had to say, but what really made up my mind was a note from Stanley Mosk in the report, stating that as the trial judge he would not object to a commutation of Crooker's sentence from death to life imprisonment. "This defendant's crime arose out of a relationship with the deceased under a set of circum-

stances that would not likely happen again," Mosk wrote. "He is an intelligent young man of some cultural attainment, and if personality defects could be cured or contained, he could in the distant future become rehabilitated and become a constructive member of society."

Eight years later, after receiving numerous reports of Crooker's rehabilitation, Governor Brown again commuted his sentence from life without parole to life with parole, and Crooker was paroled and released from prison in 1972. Shortly thereafter, then-Justice Stanley Mosk received an invitation to John Crooker's wedding. He did not attend, but sent him a note to wish him well. Thereafter, every year without fail, he received a Christmas card from Crooker and his wife, updating him on how they were doing. Justice Mosk found one note particularly poignant:

I thought you would be pleased to know that Valerie and I have bought a house. It is the first home I have ever owned. I have been promoted by my employer in the bay area and am now earning a guarantee of \$25,000 per year. Things are really going well for us. I wish you continued success in your career.

Justice Mosk reflected that the rehabilitation of John Crooker to become a law-abiding member of society "would not have been possible were it not for the compassion of a Governor. Pat Brown — the original Governor Brown — was that type of human being." ☆

THE BAKKE DECISION

Probably no single decision rendered by the California Supreme Court during the 37 years of Justice Stanley Mosk's tenure engendered greater controversy than the case of *Bakke v. Regents of the University of California*. The preparation of the conference memo for the *Bakke* case was randomly assigned to Justice Stanley Mosk, and after the Court granted a hearing, he was assigned to author the Court's decision to strike down the special admissions program and order the admission of Allan Bakke to the medical school of the University of California at Davis.

Some of Justice Mosk's good friends and colleagues politely disagreed with his *Bakke* opinion. Others were not as civil. Justice Mosk's majority opinion subjected him to a barrage of liberal invective, which he took very personally. He liked to quote a remark by Los Angeles criminal defense attorney Marvin Part: "The difference between Stanley and the other type of mosque is that you don't have to remove your shoes before stepping all over Stanley Mosk."

Justice Mosk always took great pride in Allan Bakke's success in medical school and subsequent career as a physician. He later recalled that "for four years, I was



Edna Mosk was heavily invested in her husband's political fortunes. Her talent as a major fundraiser left no arm untwisted in Beverly Hills, and her indefatigable energy was legendary.

scared to death that Bakke would flunk out of medical school, and make our opinion look bad. But he graduated with honors." Bakke invited Justice Mosk to his medical school graduation party with a personal note of thanks, but Mosk did not attend.

A FRIENDSHIP WITH JUSTICE CLARK

Ronald Reagan labeled his appointment of Donald Wright to be California's Chief Justice as his "biggest mistake," echoing the regret President Dwight D. Eisenhower expressed over his appointment of Chief Justice Earl Warren to the U.S. Supreme Court. Reagan was determined not to make a similar mistake when the next court vacancy occurred with the sudden death of Justice Raymond E. Peters on January 2, 1973. Now the governor had an opportunity to replace the most liberal judge on the Court with a real conservative. He already knew who he wanted, and announced his appointment the day after Justice Peters' funeral. William P. Clark was a small-town real estate lawyer who became an eager and early supporter of Ronald Reagan's political ambitions.

Chief Justice Donald Wright was not impressed. Although Clark was a congenial and likable man, his presence on the California Supreme Court was embarrassing for Chief Justice Wright, and he was viewed with awkward suspicion by most of the other Justices. Nevertheless, he and Stanley Mosk became close friends.

That friendship says a great deal about Mosk. While Mosk's failure to recognize Southwestern University School of Law as his alma mater revealed his own elitist tendencies, rather than looking down his nose at Clark's scholastic deficiencies, he admired his ambition and persistence in overcoming them. Clark's career path bore a striking resemblance to that of Stanley Mosk. Clark viewed Stanley Mosk as a role model of sorts. Although he and Clark were usually on opposing sides in the decisions that divided the Court, Justice Mosk rarely let rancor in the conference room affect his working or personal relationships with his fellow Justices. He welcomed Clark to the Court with warmth and genuine affection, and Justice Clark gratefully reciprocated. Their close friendship continued long after Clark's departure from the Court.

HIS GREATEST DISAPPOINTMENT

The issue of retirement was one frequently raised throughout the later years of Mosk's tenure on the Court. For Mosk, the appropriate time to retire was when one could no longer competently handle the crushing workload. Stanley Mosk lived to work. As a seasoned Justice, having already served 10 years on the Court, he was at the peak of his productivity. He amply demonstrated his judicial independence and his elevated competence

in mastering the job description of an Associate Justice. What's more, his convivial personality nurtured congenial relationships with his fellow Justices. Most of the friendships and political alliances he had established as Attorney General remained strong, and his administrative skills were exceptional.

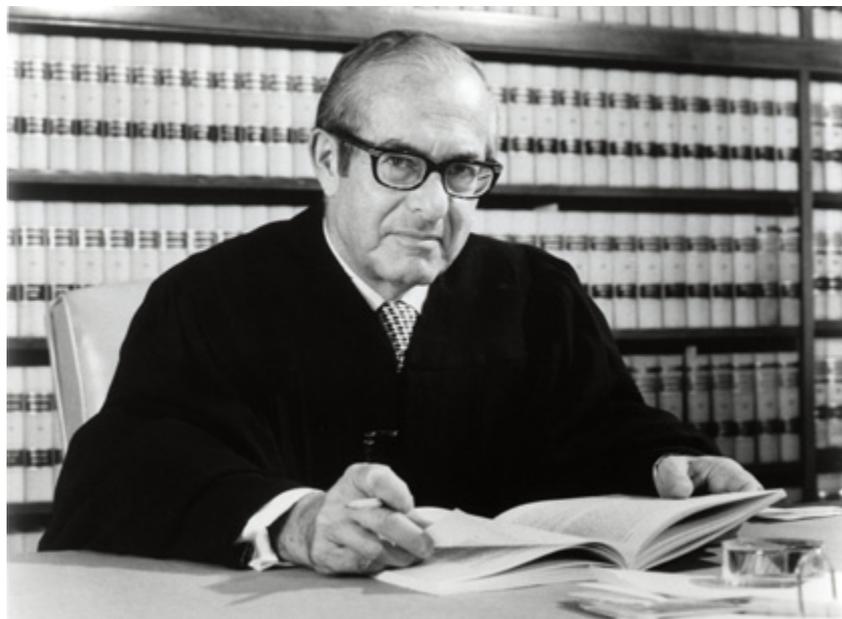
While Mosk gracefully aged, however, the winds of political change arrived in the Golden State in January 1975, when the youthful Jerry Brown took his oath of office for what would become two highly charged terms as governor of California.

When it came to making appointments to the massive state judiciary, Brown was at first slow to fill vacancies. During the first five months of 1977, Jerry Brown faced the challenge head-on when he needed to fill, in rapid succession, three judicial vacancies on the state's Supreme Court. Initially, Justice Raymond L. Sullivan retired from the Court on January 19. Then, less than two weeks later, on February 1, Chief Justice Donald R. Wright stepped down. Inherently, the most formidable challenge came with filling this second vacancy. No matter what choices Brown made, this moment in his administration could influence the course of judicial history for decades to come as well as the contours of his own legacy for historic statecraft. Finally, just three months later, on May 2, Justice Marshall McComb was forced to retire.

To most followers of the Court, it seemed obvious that to fill the position of Chief Justice, Brown should turn to either Justices Mathew Tobriner or Stanley Mosk. Both were esteemed figures and both had been appointed by Brown's father, Pat Brown, but that could have just as easily worked against them, given Jerry Brown's penchant to distance himself from the elder Brown's generational world-view and approach to governing.

Without any public revelation, Justice Tobriner took himself out of the running. He confided to a close friend that when Governor Brown offered him the Chief Justice seat, he declined to accept the honor. A broad spectrum of Mosk supporters chimed in on his behalf.

It soon became apparent that Jerry Brown was eager to make history by appointing the first woman to the state Supreme Court. Rose Bird's name quickly moved to the top of the short list. Brown thought placing Bird



FOR HIS FIRST SIX YEARS MOSK SAT AS A MEMBER OF THE TRAYNOR COURT, A JUDICIAL ERA STILL RECALLED IN REVERENTIAL TERMS.

at the head of the Court would send a clear message he was "shaking up" California government from top to bottom, rejecting the "old boy" politics of his father.

On February 12, 1977, Governor Brown announced his selection of Rose Elizabeth Bird to serve as Chief Justice of California and Wiley Manuel, the first black appointed to the Court, to serve as an Associate Justice.

Being rejected for the appointment as Chief Justice was perhaps Stanley Mosk's greatest disappointment, a wound that cut deep and seemed to never quite heal. He was fully justified in feeling that he was the most qualified person in California to assume leadership of the Court. Governor Brown's failure to offer even a semblance of personal and professional courtesy by broaching the subject with Mosk left Mosk to speculate as to what had contributed to this outcome. Some have assumed, including Mosk, that Brown passed over his name because of the *Bakke* decision, which was profoundly anathema to Brown's sensibilities. Jerry Brown denies the *Bakke* claim, and he may have had very good reasons to pass over Justice Mosk, but his handling of the process left Mosk with a bitter taste in his mouth. After Jerry Brown announced the appointment of Rose Bird as Chief Justice, Stanley Mosk never spoke to Jerry Brown again. Thus, Jerry Brown stands out as a rare exception to Mosk's incredible ability to "kiss and make up" with political enemies.

The festive swearing in of Chief Justice Rose Bird was held on March 28, 1977, in the newly restored

original courtroom of the California Supreme Court in Old Sacramento. In a departure from long-standing tradition that new Justices were sworn in by another member of the Court, Governor Jerry Brown insisted upon swearing her in himself. Stanley Mosk did not attend the ceremony. When Bird arrived at the Court's headquarters in San Francisco, Mosk informed the new Chief Justice, "I certainly cannot blame you for being here, but I blame Jerry Brown for putting you here." From that point on, it's not surprising that their relationship was a frosty, guarded one. "Rose Bird never let me forget that statement," Mosk recounted, explaining how their relationship devolved into one of distrust and suspicion. The version of Mosk's greeting remembered by Rose Bird was even more chilling. She confided to a close friend that Justice Mosk concluded his "welcome" by saying, "You will rue the day you came."

THE WHEELER DECISION

Among the most influential majority opinions Justice Mosk authored during his four decades on the Court was the ruling in *People v. Wheeler*. Justice Mosk broke new ground when the Court ruled that during jury selection for a trial, attorneys who exercised peremptory challenges in a discriminatory manner were required to explain their reasons for removing minority jurors. Although *Wheeler* was based upon Mosk's interpretation of California's state constitution, when the United States Supreme Court decided the same issue eight years later, it construed the U.S. Constitution to achieve the same result.

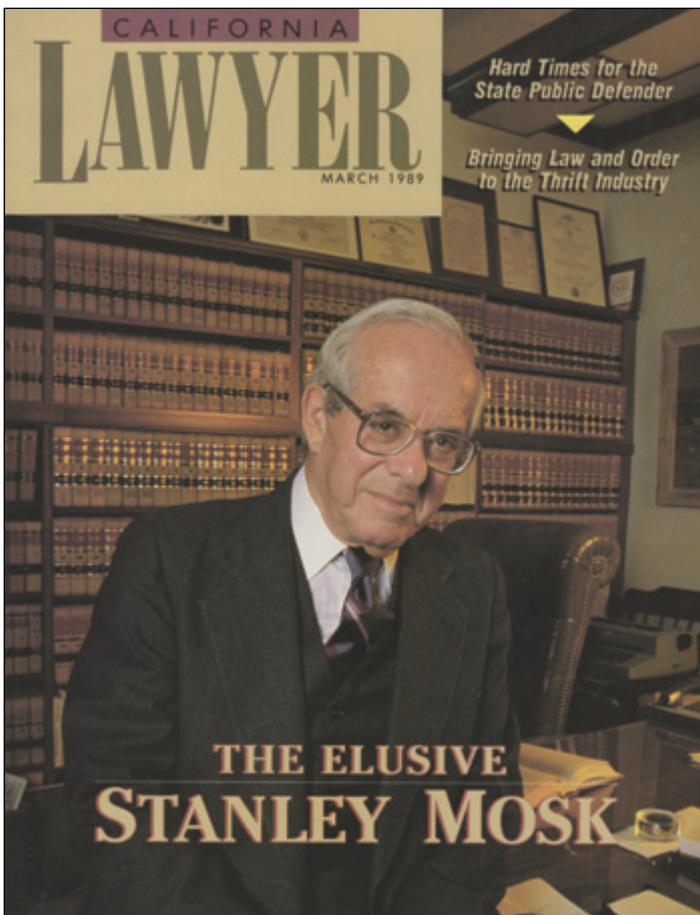
A SHOPPING LIST

Within a period of one year, death claimed both Justice Mosk's wife, Edna, and his mother, Minna Perl Mosk. On May 22, 1981, Edna passed away at the age of 65 after a particularly painful final battle with cancer. She had kept up a busy schedule despite chemotherapy treatments, blood transfusions, appointments with three or four different specialists, and the need to take more than a dozen pills a day. She utilized medicinal marijuana baked in brownies to alleviate her pain and the side effects of frequent chemotherapy during the final year of her illness. At the time, the use of medical marijuana was illegal in California, so the arrangements for her use of it had to be carefully concealed. Tucked inside a flap in Stanley Mosk's calendar for 1980 was a note in his distinctive handwriting. It read "¼ oz. Columbian Pot." It was a shopping list.

THE 1986 RETENTION ELECTION

The governor's use of death penalty votes as a criterion in selecting his targets underlined an irony that is essential to an understanding of what happened to the Court in 1986. The targeted Justices were subjected to a well-funded campaign to remove them from office. The chief contributors to that campaign were corporations and insurance companies who believed Governor George Deukmejian would appoint replacements who were friendlier to their business interests. The entire campaign, however, was focused on the Justices' voting record in death penalty cases.

In some quarters, the suggestion has been heard that Justice Mosk saved his neck in 1986 by strategically voting to dissent from the reversal of selected death penalty cases only when he was certain there were suffi-



A probing interview by Philip Carrizosa, a lawyer-journalist who closely followed the work of the California Supreme Court, challenged Justice Mosk in 1989 to explain his reversing field in his death penalty decisions. Mosk replied with a litany of his most important decisions. "The test is whether today I would write Bakke, Wheeler, Friends of Mammoth, Hawkins, the public trust doctrine cases, Marriage of Carney, and some 600 other opinions in the same manner. The answer is emphatically yes."

cient votes available to reverse the death sentence. As long as there were enough Justices available to achieve the result he really wanted, he would let them take the heat and join the dissenters. Although his vote would not make a difference in the outcome of the case, it would make a huge difference in persuading the governor, and ultimately the voters, not to target him for defeat. There is strong evidence to support this claim. Among the 59 death cases counted by the governor, Mosk cast a vote for death in only one case where his vote actually made a difference.

The pattern was remarkable enough to arouse the suspicion of Mosk's fellow Justices. At one point, Justice Grodin asked Peter Belton whether Mosk's votes to dissent from death reversals indicated a change in Mosk's longtime opposition to the death penalty. Belton replied that Mosk would not vote to affirm a death penalty judgment when his vote would make a difference in the outcome.

The 1986 campaign clearly demonstrated Stanley Mosk had lost none of the political savvy responsible for his previous overwhelming election victories. Mosk never lost an election in his life. Justice Mosk deliberately delayed announcing he would seek retention until the deadline. Meanwhile, Mosk granted media interviews that emphasized the distinctions between himself and Rose Bird.

Speculation that he might retire worked to his advantage, and if he had announced early, there would have been enormous pressure for him to join forces with the challenged Justices. Thus, he waited until the last possible moment to announce his plans to seek another term. Then, he dramatically revealed he would not form a campaign committee or mount a campaign. "I expect neither to solicit nor to accept campaign contributions. My expenditures, to be assumed personally, will include the filing fee (\$1,989.78) and 22 cents for a stamp to mail my declaration to the Secretary of State." His announcement inspired numerous friends to send him a 22-cent postage stamp. But at the last moment, he feared his paperwork might not make it to Sacramento on time. Stanley's papers were delivered by overnight mail at a cost of \$10.25.



MORE OFTEN THAN NOT, MOSK DRAFTED HIS OWN DISSENTING AND CONCURRING OPINIONS, SITTING AT HIS DESK AND PECKING AWAY AT A TYPEWRITER.

In the November election, Chief Justice Bird was rejected, winning approval of only 33.8 percent of the voters. Justices Cruz Reynoso and Joseph Grodin were also removed, respectively winning 39.8 percent and 43.4 percent of the vote. Justices Stanley Mosk, Malcolm Lucas, and Edward Panelli were retained with comfortable margins. Mosk won the support of 73.6 percent of the voters.

JUSTICE MOSK DISSENTS

The dramatic shift in the death penalty rulings was the most immediate and obvious consequence of the change in the Court's composition. From March of 1987 through March of 1989, the Supreme Court of California reviewed 71 judgments of death. Fifty-one of them, or 71.8 percent, were affirmed. In two short years, the California affirmance rate for state Supreme Court review of death penalty judgments moved from the third lowest in the United States to the eighth highest. Most of the affirmances were unanimous, with Justice Stanley Mosk joining in.

Stanley Mosk enjoyed a cordial relationship with the new Justices, but was quickly disenchanted with their "judicial activism" in overruling or limiting Bird Court precedents. The departure of Justice Allen Broussard left Justice Mosk as the only dissenter in many of the



MOSK POSSESSED A UNIQUE COMBINATION OF POLITICAL SAVVY, PERSONAL CHARM, AND SHARP INTELLIGENCE.

Lucas Court opinions, and his dissent rate rose sharply. He dissented from 40 percent of the Lucas Court opinions in 1992, and racked up the highest dissent rate of his career, 47 percent, for the cases decided in 1993 and 1994. Producing dissenting or concurring opinions for nearly half of the Court's output was a daunting task, and the five years of the Lucas Court from 1991 to 1996 were the most productive years of Justice Mosk's entire tenure. During those five years, he produced 60 majority opinions, 68 concurring opinions, and 140 dissenting opinions.

BACK ON THE WINNING SIDE

The appointment of Ronald George as Chief Justice signaled a remarkable realignment of the Justices that dramatically transformed the role of Justice Stanley Mosk. Throughout the 10-year reign of Chief Justice Malcolm Lucas, there was a solid conservative phalanx of five votes, with Mosk as the old "liberal" war-horse who frequently dissented.

From 1993 to 1997, Chief Justice George's rate of agreement with Justice Mosk crept steadily upwards, from 60 percent to 75 percent. For Justice Mosk, this

meant he was back on the winning side in more and more of the Court's landmark decisions, and had the opportunity to again write important majority decisions. His dissent rate steadily declined, falling below 20 percent. In 1997, he led the Court in production of majority opinions, authoring 21 of them.

LONGEST SERVING AND MOST PRODUCTIVE

On Sunday, December 26, 1999, Justice Mosk broke the record as the longest-serving Justice in the history of the California Supreme Court. Mosk holds the record as not only the longest-serving Justice; he also holds the record for being the most productive. He enjoyed the satisfaction of seeing many of his opinions embraced by judges of the appellate courts of other states. A recent study established that the California Supreme Court remains the "most followed" Supreme Court in the nation, in terms of its rulings being cited and followed by the courts of other states. The study identified 160 opinions authored by 33 different Justices as the "most influential," followed three or more times. Justice Mosk authored 27 of those decisions, more than any other Justice who ever sat on the California Supreme Court.

AND THEN HE WAS GONE

On Monday, June 18, 2001, Justice Mosk put in a full day at his Supreme Court chambers. His driver delivered him to his Nob Hill condo. When he walked through the door, he kissed [his third wife, Kaygey Kash Mosk] on the cheek and said he was going to lie down for a few minutes before dinner. As she walked with him down the hallway, she asked him if he was feeling all right. "Yes, yes, dear," he replied with the same words he had used to reassure her so many times before. She watched him walk down the hall with a feeling of dread streaming through her body. He usually came home with so much energy, more than for a man half his age. She prepared for their usual evening cocktail before stepping out to one of their favorite restaurants. She removed her apron and lit the candles on the counter. She walked down the hall toward the bedroom. She sat down on the bed next to her husband, and when he did not stir, she realized he was gone. She realized she had probably felt him fading away when he kissed her on the cheek. She held him tightly, as if trying to reverse the last moments in time, and she cried deep, mournful tears. She truly loved Stanley Mosk.

When she noticed something sticking out of his shirt pocket, she opened the folded paper and read the letter of resignation and his expression of gratitude to the people of California for giving him the opportunity to serve. He had intended to personally deliver it to the governor on the morning of the following day. ☆