



CALIFORNIA SUPREME COURT

# Historical Society

NEWSLETTER • FALL/WINTER 2014



# Let Freedom Ring!



It was a confluence of historic events: the 150th anniversary of the Emancipation Proclamation and President Abraham Lincoln's Gettysburg Address and the 50th anniversary of Martin Luther King's "I Have a Dream" speech. All three milestones in the struggle for freedom were celebrated in the "Let Freedom Ring!" exhibit presented at the 2013 State Fair by the Third Appellate District and published for the first time on the following pages. Now the exhibit — and its mission to increase public understanding of the judicial system — continues in a new incarnation. See "Creating a Chronology of Freedom," page 10.

IMAGES & LAYOUT COURTESY OF E.REPUBLIC

# Freedom's Promise

## 1789 – 1865

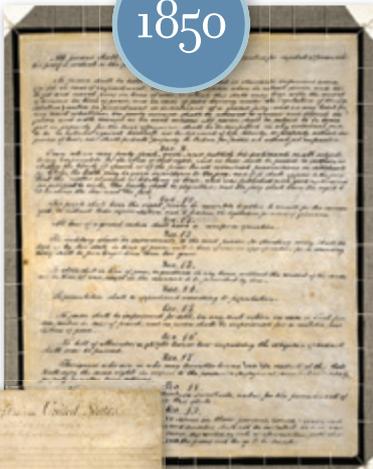
The U.S. Constitution's Bill of Rights and California's Declaration of Rights guaranteed fundamental freedoms when they were adopted, but only California prohibited slavery.

## Broken Promise/ Promise Restored: *The Fugitive Slave Act*

Despite the constitutional prohibition on slavery, the Fugitive Slave Act of 1852 authorized the capture and return of persons who came to California with their slave masters.

## Documents of Freedom

1850



California's Declaration of Rights, 1849. California was admitted to the Union in 1850, a free state.

The Bill of Rights, the first 10 amendments to the U.S. Constitution, 1789.



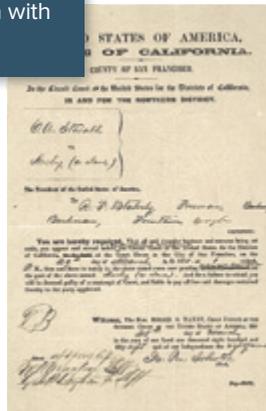
1851

*She wins freedom in court*

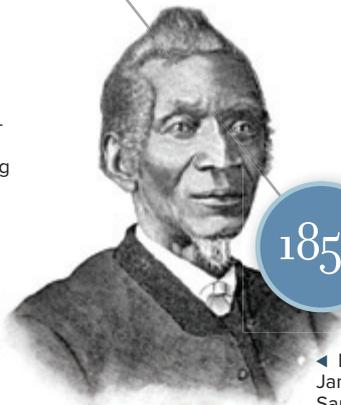
In 1851, Bridget "Biddy" Mason came to California with her family and her master, Robert Smith. When Smith decided to return to a slave state Mason went to court and won her freedom.

Mason became a successful midwife, entrepreneur and philanthropist. Los Angeles honors her with the Biddy Mason Wall at the Spring Street site of her first property.

photo courtesy of Los Angeles Public Library Photo Collection

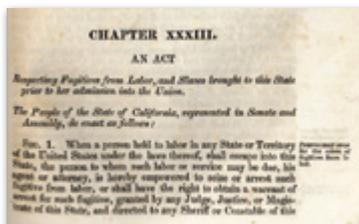


Archy Lee came to California with his master, Charles Stovall, but worked as a free man. When Stovall attempted recapture, Lee's supporters encouraged him and after five hearings in court, he was released, a free man.



1852

Reverend John Jamison Moore, a San Francisco civil rights advocate, supported Archy Lee through 5 court battles.



The Fugitive Slave Act, 1852.



The owner of slaves in Mississippi brought them voluntarily into California before the adoption of the Constitution by the State. The slaves asserted their freedom, and for some months were engaged in lawsuits for themselves. Afterwards the Act of 10 April, 1852, was passed by the Legislature, the 6th section of which in substance enacts, that slaves who had been voluntarily introduced into the State before the adoption of the Constitution, and who refused, upon the demand of their owner, to return to the State where they were labouring, &c. should be deemed to be fugitives from labour; and give the owner the same remedies for their recapture as are provided for the recovery of such fugitives. The owner, under the provisions of the above Act, brought them before a Justice of Peace who allowed the claim of the owner, and ordered them into his custody. The slaves then petitioned for this writ of habeas corpus, which came before the Supreme Court; and after hearing the case, the Court ordered that the writ be granted, and the slaves remanded to their owner.



Colton Hall in Monterey, the site of California's 1849 constitutional convention.



Colton Hall in Monterey today, on Pacific Street.

# Guardian of Freedom:

## *President Lincoln, the Emancipation Proclamation, the Thirteenth Amendment and the Gettysburg Address*

One hundred and fifty years ago, on January 1, 1863 President Abraham Lincoln issued the Emancipation Proclamation, releasing slaves from captivity and outlawing slavery forever. In November he traveled to Gettysburg, Pennsylvania where he acknowledged freedom's sacrifices in words that America remembers today. The Thirteenth Amendment to the Constitution, outlawing slavery, was adopted in 1865.

◀ Handwritten draft of the Emancipation Proclamation.



◀ Frederick Douglass is often regarded as the "father of civil rights." This mural, from the Recorder of Deeds Building, Washington, DC, is by William Edouard Scott. Entitled *Frederick Douglass Appealing to President Lincoln and his Cabinet to Enlist Negroes*, it is a memorial to Douglass's leadership and commitment to the cause of freedom and to President Lincoln's confidence in him.



First reading of the Emancipation Proclamation before President Lincoln's cabinet.



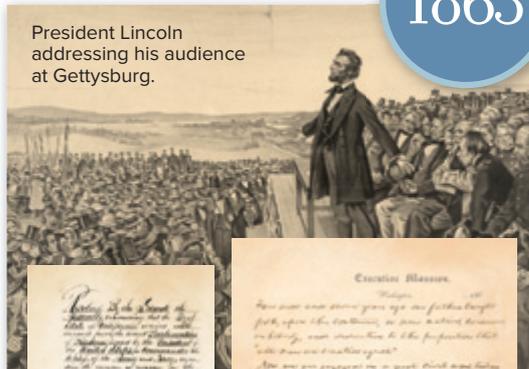
Emancipation Proclamation and the heritage of slavery.



An early photo of the gathering at Gettysburg.

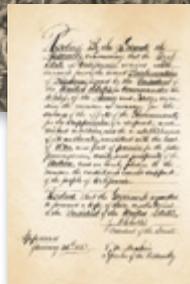
1863

President Lincoln addressing his audience at Gettysburg.

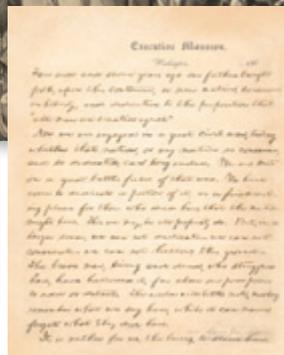


Emancipation Proclamation.

◀ Even though the **Perkins brothers, Carter and Robert**, had resided in California since 1849 the California Supreme Court returned them to their master in accord with the Fugitive Slave Act, a controversial decision.



The California Senate endorses the Emancipation Proclamation.



Handwritten draft of the Gettysburg Address, 1863.



California ratifies the Thirteenth Amendment, 1865. photo courtesy of Beinecke Rare Book and Manuscript Library, Yale University

# Challenges to Freedom

1868 – 1967

Although slavery was illegal, Californians continued to meet challenges in their everyday lives, in transportation, education, housing and marriage.

## Freedom to Learn

Denied the freedom to educate their children in public schools of their choice, parents brought their cases to court.

## Freedom to Travel

The Thirteenth Amendment did not guarantee freedom to travel. In 1868 the San Francisco Municipal Railway refused to permit Mary Ellen Pleasant to board a railway.

Broadway School, San Francisco, California, 1898.



1872

In 1872 the Broadway School refused to enroll eleven year-old Mary Frances Ward because she was a "person of color." The California Supreme Court heard her case, ruling that separate schools could be equal schools, and the discriminatory law was upheld.

San Francisco History Center, San Francisco Public Library

1868

Jan 1868.] PASADENA v. K. E. & N. R. R. Co. 489  
 Motion of the Court on Circuit, 2.

By the Court, CHANDLER, J.

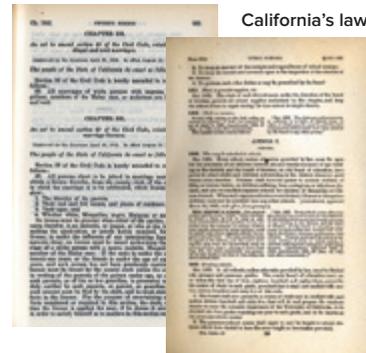
The facts of this case are that the female plaintiff, (who is a woman of color,) being desirous to take passage on one of the street cars of defendant, called the Conductor and requested him to take her on board; that he discomported her again and failed to do so, and by means of his refusing to carry her was unable to get upon the car. It was also proved, under objections from the defendant, that the Conductor on being asked by a help passenger standing in the car to stop the car for the plaintiff, replied: "We don't take colored people in the cars;" and it was further proved that there was ample room for the plaintiff, and that she was provided with the usual passage tickets, and was ready and willing to pay the fare. There was no proof of any special damage; and the jury having returned, without any charge from the Court, a verdict for the plaintiff for five hundred dollars.

The defendant asked the Court to charge the jury in substance:

First—That unless the plaintiff had suffered special damage the jury could only find nominal damages; second—that unless it appeared that the plaintiff had suffered damage, the defendant was entitled to a verdict; third—that if the defendant, by the Conductor, refused to receive the female plaintiff on the car, such refusal was merely a violation of duty on the part of the company, and does not entitle the plaintiff to exemplary damages; that they are entitled to nominal damages, or the actual damage they sustained;

Fourth—that the Conductor was not bound to stop his car at other than the usual places of stopping, nor unless to save the person who desired to get on board; fifth—that the plaintiff was not entitled to exemplary damages unless it was shown to the satisfaction and proof that the defendant acted with actual malice and ill will towards the plaintiff personally; that there is no such allegation, and that therefore the jury will exclude from their finding any verdict.

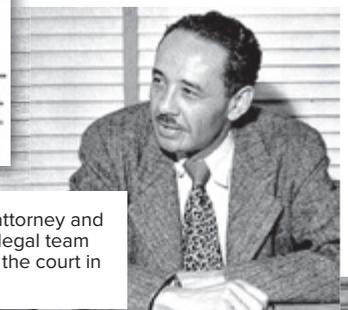
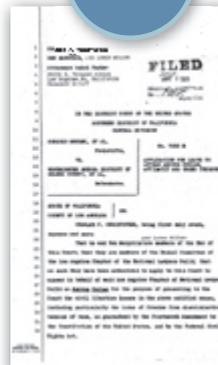
California's law.



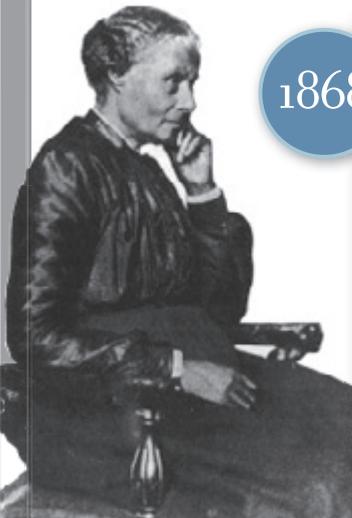
In 1885, the law was changed and school districts were required to admit all children ages of 6 to 21 residing within their boundaries.

1947

◀ In 1947 a California federal court case, Mendez v. Westminster, affirmed the rights of Mexican American children in Orange County to equal protection of the laws and to education in the schools of their choice.



Loren Miller, California attorney and member of the NAACP legal team appeared as a friend of the court in the Mendez case. ▶



Mary Ellen Pleasant.

Active in support of civil rights, she sheltered Archy Lee when he was pursued as a runaway slave.

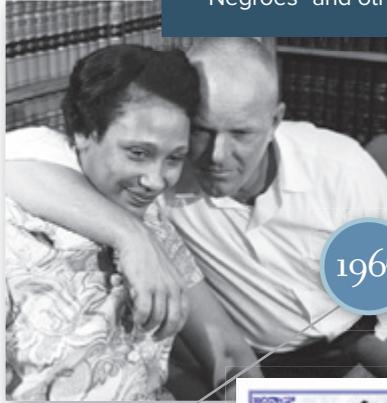
"We don't take colored people." Refused permission to board, Pleasant sued successfully in district court, where she was awarded damages. On appeal the California Supreme Court denied the damage award.



◀ "Her finest hour." She called the suit her finest hour, but this San Francisco plaque commemorates her many contributions.

## Freedom to Marry

Laws in many states prohibited all marriages between “white persons and Negroes” and other persons of color.

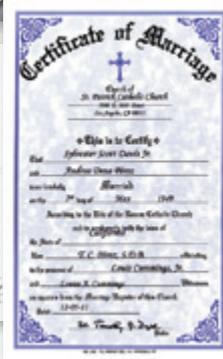


◀ In 1959 Mildred Jeter, an African American, and Richard Loving, a white man, were married in the District of Columbia. When they moved to Virginia, where interracial marriages were prohibited, warrants were issued for their arrest.

In 1967, the U.S. Supreme Court heard their case, ruling that Virginia’s law was discriminatory and unconstitutional.

Francis Miller/The LIFE Picture Collection/ Getty Images

1967



◀ Andrea Perez and Sylvester Davis met while working in the World War II defense industry, fell in love and decided to marry. When the county clerk refused to issue a marriage license to them, they took their case to court.

The California Supreme Court ruled the law unconstitutional, and Perez and Davis were married at St. Patrick’s Church in Los Angeles on May 7, 1949.

Visalia “Colored School”



In 1888 when Arthur Wysinger went to register at the public school in Visalia he was denied admission even though the new state law permitted him to enroll. When his case was heard, the California Supreme Court ruled that he must be admitted to the public school of his choice.

Annie R. Mitchell History Room, Tulare County Library, Visalia, California

Monroe Elementary School, Topeka, KS.



Second-graders in class at Monroe Elementary School.



Brown v. Board of Education of Topeka (1954)

In this landmark 1954 case, the U.S. Supreme Court ruled that segregated schools were unlawful because they denied African American children equal protection of the laws. Separate educational facilities, said the Court, are inherently unequal, and segregation in public schools was prohibited by the Court’s ruling.

When Frank Drye, a decorated veteran of World War II, purchased a home in an upscale Los Angeles neighborhood white neighbors tried to enforce a restrictive covenant to keep the Drye family from moving into their new home.

Kansas State Historical Society

## Freedom of Choice in Housing

In many white neighborhoods, property deeds prohibited the sale of homes to African Americans. When suits were brought to enforce the deeds, courts were called upon to enforce the discriminatory prohibitions, called restrictive covenants, in the deeds.



In 1947 Judge Stanley Mosk ruled that the restrictive covenant was unconstitutional and could not be enforced by the Los Angeles court.



In 1948, the U.S. Supreme Court also ruled deed restrictions on sale to African Americans unconstitutional, in the case Shelley v. Kraemer.

Francis Nancy

# Freedom to Play:

African American Leaders in Sports, 1930 – 1950

## “The World’s Fastest Human”: Jesse Owens

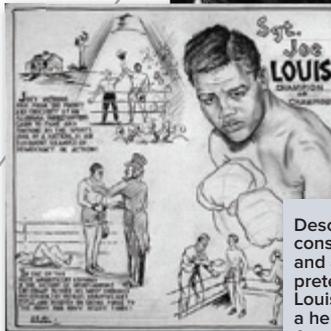
Jesse Owens, the first American to win four gold medals in the Olympic Games, set a record at the 1936 games in Berlin that was not matched until 1984, almost 50 years later.

1936



Hitler wanted to show the world that German youth were superior by their wins at the 1936 Olympic Games in Germany. Jesse Owens proved him wrong by winning gold medals in four contests: men’s long jump, 100-meter and 200-meter dash and as the lead-off man in the 400-meter relay.

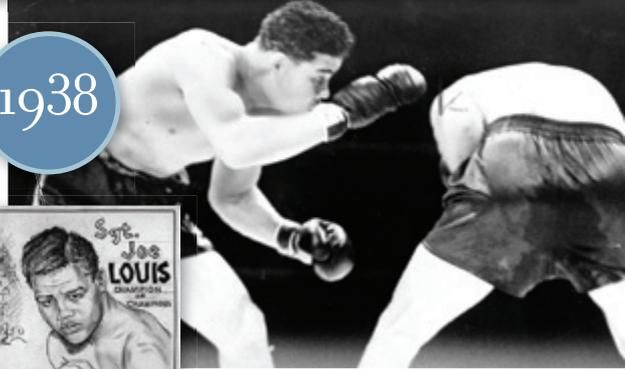
A dreamer who helped make others’ dreams come true, Owens served underprivileged youth during his lifetime, and was a well-known inspirational speaker. In 1976, President Gerald R. Ford awarded Owens the Presidential Medal of Freedom.



Described as a considerate man and a man without pretense, Joe Louis remains a hero for all Americans.

In the U.S. Army from 1942 to 1945, he served as a physical education instructor and staged 96 boxing exhibitions before two million soldiers.

1938



“I don’t want nobody to call me champ until I beat Schmeling.” Hitler considered German boxer Max Schmeling the ideal of German manhood. In a 1936 bout, Schmeling defeated Louis but in a 1938 re-match, Louis defeated Schmeling in a 2-minute, 4-second rout.

## A First in Football: Kenny Washington

A superstar at UCLA, where he played the backfield with Jackie Robinson, Kenny Washington was the natural choice for the Rams when they moved to Los Angeles. He signed with them in 1946.

1947



Washington’s goal: set a good example by being the best he could be. Despite the challenges of integrating the sport, he was a major force on the field, averaging 6.1 yards per carry and holding a team record for a 92-yard touchdown rush against the Chicago Cardinals in 1947.

Woody Strode, a UCLA teammate, signed two weeks later.

Los Angeles Times Photographic Archive, Department of Special Collections, Charles E. Young Research Library, UCLA

Los Angeles Daily News Collection, Department of Special Collections, Charles E. Young Research Library, UCLA

# A First in Baseball: Jackie Robinson

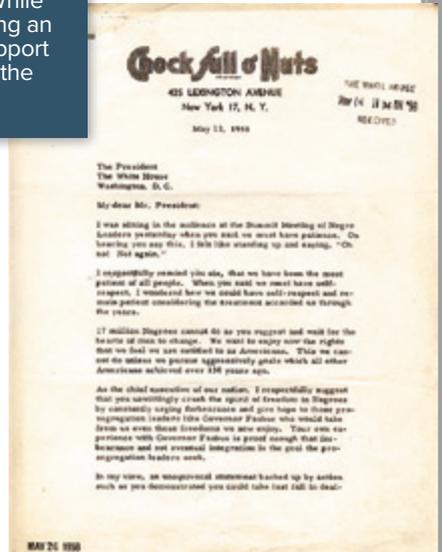
Jackie Robinson, the first African American to play in Major League Baseball, was a natural for the game and the challenge of integrating the sport. He lettered in four sports — baseball, football, basketball and track — at UCLA. While in the Army during World War II, he succeeded in opening an Officer Candidate School to African Americans, with support from Joe Louis. After the Army, he signed to play with the Kansas City Monarchs, a Negro League team.



◀ Branch Rickey had a life-long engagement with baseball as a player, a manager and an owner, and a keen interest in civil rights. In 1945 Robinson signed with him to play for the Montreal Royals, a Brooklyn Dodgers farm team.



A major advocate of civil rights, he expresses his concern about the spirit of freedom in this 1958 letter to President Dwight D. Eisenhower. ▶



1950

## 1950, A new start for Major League Basketball

In 1950 five African Americans signed to play on National Basketball Association teams: Nat "Sweetwater" Clifton, New York Knicks; Chuck Cooper, Boston Celtics; Hank DeZonie, Tri-City Hawks; Harold Hunter and Earl Lloyd, Washington Capitols

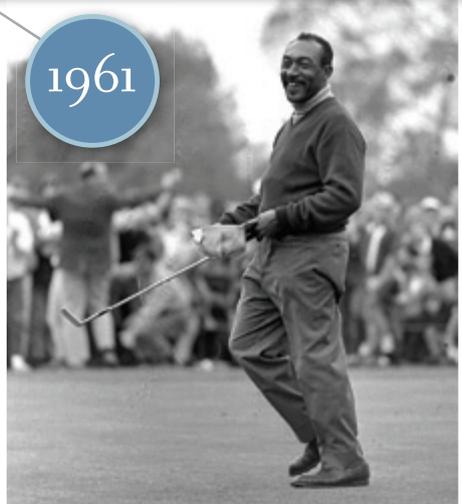


On October 31, 1950 Earl Lloyd became the first African American to play in the NBA and a Congressional resolution honors his achievement.

Vice-President Joe Biden and Earl Lloyd at the White House, October 27, 2010.

## Charlie Sifford, the PGA and Attorney General Stanley Mosk

In 1961, California Attorney General Stanley Mosk advised the Professional Golfers Association that segregated play was not permitted in California. The Southern California tournament was played at a city-owned course in Long Beach. Charlie Sifford, who had not been permitted to play in 1960, became the first African American member of the PGA.



1961

Charlie Sifford wins the 1969 Los Angeles Open.

Los Angeles Times Photographic Archive, Department of Special Collections, Charles E. Young Research Library, UCLA

# Freedom's Dream:

Tragedy and Triumph,  
1955 –

The last full measure  
of their devotion:

*freedom's martyrs*

Many have died for the cause of freedom. Loss of innocent life is not new in human history but it should never be forgotten.



On June 12, 1963 Medgar Evers, a civil rights activist and field secretary for the NAACP in Mississippi, was shot in the back while walking to his house. His two small children were witnesses to the murder. White supremacist Edgar De La Beckwith was twice set free by all-white juries although his fingerprints were on the gun and he bragged about

the murder at KKK meetings. In 1990, new evidence was produced through the efforts of the Jackson, Mississippi newspaper and Evers' widow, Myrlie Evers-Williams. The case was re-opened and De La Beckwith was convicted of murder.

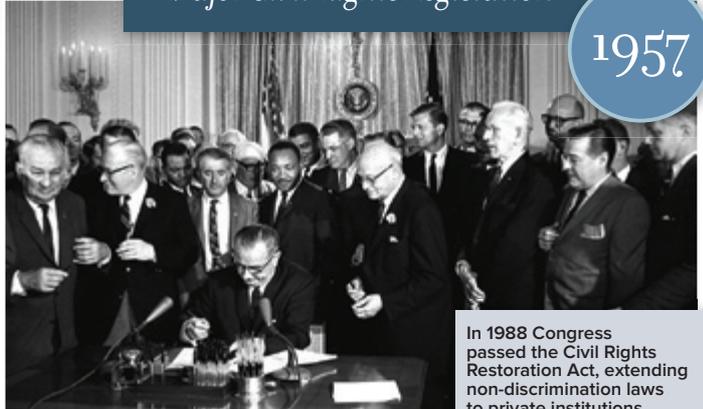


On June 4, 2013, Evers-Williams met with President Obama to commemorate the 50th anniversary of the death of Medgar Evers.

In 1955, 14 year-old Emmett Till was lynched for allegedly whistling at a white woman. Two of his confessed murderers died in 1994 and the case was officially closed in 2004 for lack of additional evidence.

## The Dream Becomes Law: Major Civil Rights Legislation

1957



The Civil Rights Act of 1957, the first major civil rights legislation in the 20th century, established the U.S. Civil Rights Commission.

"All persons within the jurisdiction of this state are free and equal, and are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever."

The Civil Rights Act of 1964, America's benchmark civil rights law, prohibits discrimination on the basis of race, color, religion, sex or national origin. In 1965 President Johnson issued Executive Order 11246 prohibiting discrimination in employment. Discrimination in housing was prohibited by the Civil Rights Act of 1968.

In 1988 Congress passed the Civil Rights Restoration Act, extending non-discrimination laws to private institutions receiving federal funds. The Civil Rights Act of 1991 strengthened laws prohibiting discrimination in employment.



On September 15, 1963 four little girls — Denise McNair, Cynthia Wesley, Carole Robertson and Addie Mae Collins — died in the bombing of the Sixteenth Street Baptist Church in Birmingham.



On May 24, 2013 President Obama signed a bill conferring the Congressional Gold Medal to commemorate the young lives lost 50 years earlier.



One day in December 1955, Rosa Parks declined to give up her seat in the "colored" section of a Montgomery bus to a white man. Her calm dignity inspired the Montgomery Bus Boycott, 389 days of quiet resistance to segregated buses. Dr. King was encouraged to assume leadership in the boycott, a first step in his pathway to non-violent resistance.

# Freedom to Vote is Fundamental

1965



## LBJ signing 1965 Voting Rights Act

Black and white people marched together for voting rights and, in 1965, Congress passed the Voting Rights Act, outlawing literacy tests for voting and authorizing the presence of federal examiners to assure equal access to the polls.



## The First Vote

In 1870 the Fifteenth Amendment to the Constitution extended the right to vote to African American men, but many States kept them from the polls by requiring literacy tests or payment of a poll tax. In 1964, the Twenty-Fourth Amendment outlawed the poll tax.

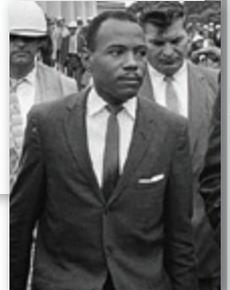
# Freedom in Education

School desegregation became the focus for resistance to change in American society and violence was too often the response to integration in public schools.



In 1957 nine African American students registered to attend Little Rock High School. Because the "Little Rock Nine" were in constant danger, President Dwight D. Eisenhower sent the U.S. Army troops and the National Guard for their protection throughout the entire school year.

James Meredith, a veteran who had completed two years of college, attempted to register to attend the University of Mississippi and was rejected. Courts intervened and he registered, but only after a violent confrontation between students and deputy U.S. Marshals. For the next year, deputy marshals provided 24-hour protection to assure Meredith's safety. On the March Against Fear in 1966, Meredith was shot and wounded three times. The shooter, later convicted of the crime, claimed "I only want Meredith."



# I have a Dream:

## The life and legacy of Rev. Dr. Martin Luther King, Jr.

Martin Luther King led a non-violent movement to secure civil rights for African Americans. In 1964, when he was just 35, he was awarded the Nobel Peace Prize. His famous writings include his "I Have a Dream" speech and "Letter from Birmingham Jail", both counted among the greatest documents in American history.



2011



On August 28, 1963 more than 200,000 people walked in the March for Jobs and Equality on Washington. "I have a dream" was Dr. King's message that day and his message remains an inspiration around the globe today.



On June 21, 1963 three civil rights workers — two white, one black — were arrested for speeding and jailed until nightfall. Then James Chaney, Andrew Goodman and Michael Schwerner were released to KKK members, who murdered them and buried their bodies. A federal investigation produced enough evidence to bring 18 men to trial and convict seven of them in 1964. Forty-one years later, in 2005, a final conspirator was tried and convicted on three counts of manslaughter.

*[A snippet of text from a document, likely related to the Voting Rights Act or the March on Washington.]*

On April 4, 1968 Martin Luther King was murdered by a bullet aimed at the motel where he was staying. Shocked and bereaved the nation grieved then and still mourns his loss today.

On February 1, 1968 two African American sanitation workers were crushed to death by defective equipment. Sanitation workers had long been frustrated by lack of attention to their warnings about safety, and they went out on strike. On April 3, in the final speech before his death, Dr. King assured them that "we've got to give ourselves to this struggle to the end." On April 29, 2011 eight survivors of the strike met with President Obama at the White House.



The “Let Freedom Ring!” exhibit is now installed at the Anthony M. Kennedy Library and Learning Center in Sacramento.

PHOTO: CALIFORNIA JUDICIAL CENTER LIBRARY

## *Creating a Chronology of Freedom*

“LET FREEDOM RING!” EXHIBIT, FIRST PRESENTED IN 2013, GETS A NEW LIFE

BY FRANCES M. JONES\*

IN 2013 AMERICA celebrated the 150th anniversary of President Abraham Lincoln’s Emancipation Proclamation and his Gettysburg Address, and the 50th anniversary of Rev. Dr. Martin Luther King’s “I Have A Dream” speech on August 28, 1963. The “Let Freedom Ring!” exhibit, one element of the Third Appellate District’s 2013 State Fair program,<sup>1</sup> supported community outreach — an official judicial function — to increase public understanding of the court system.<sup>2</sup> Now, newly installed in the Anthony M. Kennedy Library and Learning Center in Sacramento, the exhibit continues

to honor these three major events in the struggle for civil rights, particularly for African Americans. It also celebrates the struggles and triumphs of many brave and dedicated Americans.

Linking the Emancipation Proclamation, the Gettysburg Address, and the “I Have A Dream” speech presented a storytelling challenge — a challenge taken on by the Sacramento-based media and research company e.Republic<sup>3</sup> and the staff of the California Judicial Center Library,<sup>4</sup> who worked together to compose and design the exhibit. Measuring 40 feet in length and 10 feet in height, it was installed in the California Building at the 2013 State Fair and on view for more than 750,000 fairgoers.

Although each of the anniversaries celebrated in 2013 marked a critical and influential event in American life, none of the events occurred in an historical vacuum. Library staff members selected images and wrote stories of events that claimed or expanded civil rights in California and in the nation, creating a chronology of freedom. The team at e.Republic — a company whose work focuses exclusively on state and local

\* Director, Library Services, California Judicial Center Library. The author thanks the Hon. Tani G. Cantil-Sakauye, Chief Justice of California; Hon. Judith McConnell, Administrative Presiding Justice, California Court of Appeal, Fourth Appellate District; and the Hon. Kimberly J. Mueller, U.S. District Court for the Eastern District of California, for their generosity in responding to questions and providing background information for this article. Additional thanks to library colleagues Judy Mitchell and Martha Noble for their helpful review and editing of article drafts.

government and education — designed and presented the exhibit.

#### THE EXHIBIT'S CHRONOLOGY

**FREEDOM'S PROMISE, 1789–1865.** California's 1849 Constitution prohibited slavery, and California entered the Union as a free state. But the freedom guaranteed to Californians had limits, and some slaves accompanying their masters from other states found they were not free in California. Bridget “Biddy” Mason was among the first African Americans to claim freedom for herself and her family. They came to California in 1851 with their master. When he decided to return to a slave state, Mason won her family's freedom in court in 1856.<sup>5</sup> She continued to live in Los Angeles, where she has been commemorated as a highly successful entrepreneur and philanthropist. Seven years later, President Lincoln issued the Emancipation Proclamation, declaring that persons held as slaves were forever free.

**CHALLENGES TO FREEDOM, 1868–1967.** Certain basic rights — the right to attend the schools of their choice, to marry the spouse of their choice, and to reside in any neighborhood they chose — were limited or denied to African Americans and some others.

School segregation severely restricted the freedom to learn. Mary Frances Ward was 11 years old in 1872 when her parents attempted to register her to attend the school closest to their home. When the school principal refused to register her, she and her parents asked the court to admit her. Although the California Supreme Court regarded education as a substantial right, it refused the request in 1874 on the grounds that schools for “colored” children, although separate, provided equal education opportunities.<sup>6</sup> In 1880, California law was amended to provide that every school, unless otherwise provided by law, must be open for the admission of all children between six and 21 years of age residing in the district.<sup>7</sup> In 1888, Arthur Wisinger and his father went to register at the public school in Visalia, where they were told to take the boy to the “colored” school. The California Supreme Court ruled that the school had no power to refuse enrollment to a child of African descent after the adoption of the 1880 statute.<sup>8</sup>

The practice of separate public schools did not end there, however. *Westminster v. Mendez*<sup>9</sup> was brought in Orange County to assure equal educational opportunity for children of Mexican descent. Regarded as the case that ended school segregation in California, this critical decision precedes by seven years the U.S. Supreme Court's landmark decision in *Brown v. Board of Education*.<sup>10</sup>

Andrea Perez and Sylvester Davis met while working in the World War II defense industry and fell in love. They decided to marry and applied for a marriage license with the county clerk in Los Angeles. Their

application was refused on the grounds that the California Civil Code provided that “all marriages of white persons with Negroes, Mongolians, members of the Malay race, or mulattoes are illegal and void,” and prohibited issuing a license authorizing “the marriage of a white person with a Negro, Mulatto or Mongolian or member of the Malay race.”<sup>11</sup> Perez, of Mexican descent and classified as white, and Davis, a Negro, were refused a marriage license. They asked the California Supreme Court to require that their marriage license be issued. Deciding *Perez v. Sharp*, the court ruled that marriage is a fundamental right that cannot be denied to persons on the basis of race.

When Frank Drye, a decorated veteran of World War II, purchased a house in an upscale Los Angeles neighborhood, white neighbors tried to keep his family from moving into their new home. The neighbors cited a restrictive covenant in the property deed that prohibited occupancy by African Americans. In 1947, Los Angeles Superior Court Judge Stanley Mosk ruled the

#### ALTHOUGH DESIGNED SPECIFICALLY FOR THE 2013 STATE FAIR, THE EXHIBIT HAS TAKEN ON A CONTINUING ROLE IN EDUCATING THE PUBLIC.

restrictive covenant unconstitutional and unenforceable. In 1948, the U.S. Supreme Court ruled restrictive covenants unconstitutional and prohibited in all states.<sup>12</sup>

**FREEDOM TO PLAY, AFRICAN AMERICAN LEADERS IN SPORTS, 1930–1950.** During the first half of the 20th century, African American athletes were restricted from playing in major league sports. The leadership of Jesse Owens, Joe Louis, and Jackie Robinson changed the way the games were played.

Jesse Owens was the first American to win four gold medals in the Olympic Games, a record set at the 1936 Berlin Olympics and not matched until 1984. Born in Alabama and later educated in Detroit, Joe Louis knew poverty. As a very young man he studied cabinetmaking, but soon learned that boxing was his talent and his calling. He reigned as world champion from 1936 until 1949, defending his title successfully in 25 bouts.

Jackie Robinson, the first African American to play in Major League Baseball, was a superb athlete who rose to the challenge of integrating the sport. In 1945 Robinson signed with Branch Rickey to play with the Montreal Royals. Rickey had a lifelong engagement with baseball as a player, a manager, and an owner and a keen interest in civil rights. After a year with the Royals, Robinson moved to the Dodgers and played in six World Series

in his 10-year career, compiling a lifetime .311 batting average.

**FREEDOM'S DREAM, TRAGEDY, AND TRIUMPH, 1955–PRESENT.** The struggle for freedom and equality continued in the years that followed. Rev. Dr. Martin Luther King Jr. emerged as the leader of non-violent protest in America. Despite the many tragedies of the civil rights movement, his belief in peaceful protest engaged hundreds of thousands of Americans of all races who joined together to work for justice and harmony, leading to the enactment of major civil rights legislation. The stories of 20th century heroes and martyrs in the cause of freedom continue to be told: Medgar Evers and civil rights workers James Chaney, Andrew Goodman, and Michael Schwerner in Mississippi; and four young girls, Denise McNair, Cynthia Wesley, Carole Robertson, and Addie Mae Collins, who died in the bombing of the 16th Street Baptist Church in Birmingham. Many others, including those whose stories may not be known, have been dedicated to the cause of civil rights, upholding the constitutional guarantees of freedom for all Americans.

#### THE STORY CONTINUES

Although designed specifically for the 2013 State Fair, the exhibit has taken on a continuing role in educating the public. In January 2014 it was installed at the Anthony M. Kennedy Library and Learning Center in Sacramento<sup>13</sup> during the annual Martin Luther King Jr. Celebration Dinner. Supported by the Sacramento Federal Judicial Library and Learning Center Foundation, the library develops programs for elementary and secondary teachers and their students — as well as the general public — that promote public understanding of an independent judiciary and the rule of law. Exhibits, school tours, and public lectures help illuminate the constitutional context in which the judiciary operates as the nonpolitical branch of government.<sup>14</sup>

Promoting public understanding of the rule of law and the judiciary's unique role has become more important in recent years. In California, the focus on these goals was sharpened with the establishment of the Commission for Impartial Courts by former Chief Justice Ronald M. George and the commission's final report in 2009.<sup>15</sup> The report encouraged the judicial branch to take a leadership role in advancing civic education.

The Civic Learning California Summit, under the leadership of Chief Justice Tani G. Cantil-Sakauye, took place in February 2013. The summit gathered a broad range of representatives and interests, including education, civil rights, labor, and the bar. Courts interacting daily with a broad range of Californians depend on an informed public that understands the importance of a fair and impartial judiciary as well as their own roles as jurors, litigants, or witnesses. Because it is impar-

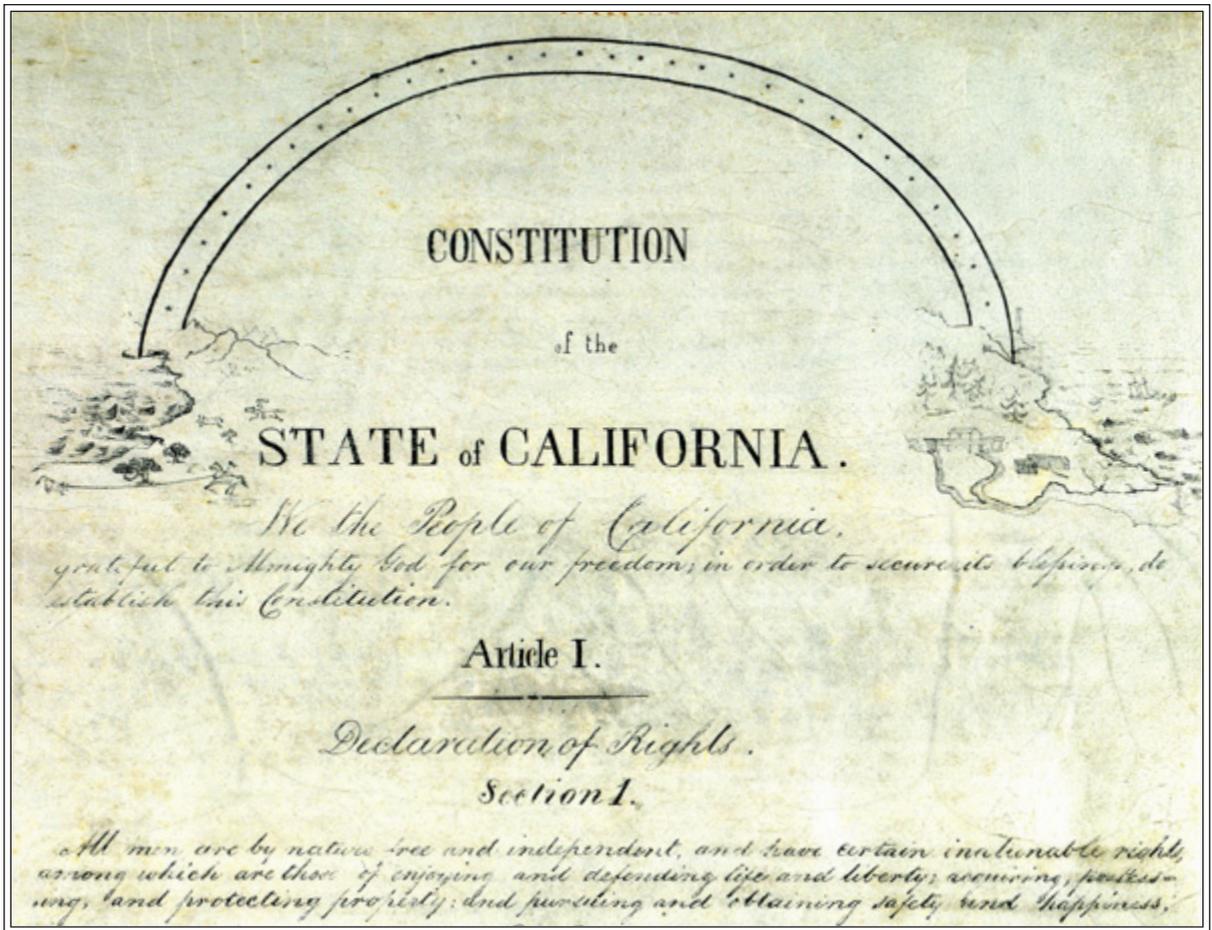
tial, the judiciary has been well positioned to serve as a catalyst for the identification of common interests and the formation of new partnerships, all with the common goal of extending and improving civic education in California.

At the conclusion of the summit, the Chief Justice and State Superintendent of Public Instruction Tom Torlakson formed the California Task Force on K-12 Civic Learning, an historic partnership between the judiciary and the schools. The task force report, *Revitalizing K-12 Civic Learning in California: A Blueprint for Action*, was issued in August 2014.<sup>16</sup>

The Third Appellate District's 2013 State Fair program presented a mosaic of learning opportunities, with the exhibit but one piece. Many of the stories told in the exhibit explore the role of the judiciary in the preservation of civil rights. All tell of heroes and their dedication to the rule of law and to the principles that underlie constitutional guarantees of civil rights. Its role at the 2013 State Fair has ended, but the exhibit has a new location and a new role in civic education for voices of the future that will proclaim: "Let Freedom Ring!"

#### ENDNOTES

1. *California Supreme Court Historical Society Newsletter*, Fall/Winter 2013, pp. 22-24.
2. Standards for Judicial Administration, Standard 10.5, [http://www.courts.ca.gov/documents/standards\\_of\\_judicial\\_administration.pdf](http://www.courts.ca.gov/documents/standards_of_judicial_administration.pdf).
3. See <http://www.erepublic.com/about/>. The "Let Freedom Ring!" project would not have happened without the support of Dennis McKenna, co-founder and chief executive officer of e.Republic. Patty Cota and Lane Carol Kight of e.Republic coordinated work on the exhibit, of which Heather Whisenhut was the designer.
4. The California Judicial Center Library serves the California Supreme Court and the Court of Appeal, First Appellate District.
5. *Mason v. Smith*, First District Court, Los Angeles, 1856 (not published).
6. *Ward v. Flood*, 48 Cal. 36 (1874).
7. 1880 Amendments to the Political Code, ch. 44, §26.
8. *Wysinger v. Crookshank*, 82 Cal. 588 (1890).
9. *Westminster v. Mendez*, 161 F. 2d 774 (9th Cir. 1947).
10. *Brown v. Board of Education*, 347 U.S. 483 (1954).
11. *Perez v. Sharp*, 32 Cal. 2d 711 (1948).
12. *Shelley v. Kraemer*, 334 U.S. 1 (1948).
13. Located in the Robert T. Matsui Federal Courthouse at 511 I Street in Sacramento.
14. <http://www.sacjlc.org/about-the-sfjll-foundation>.
15. <http://www.courts.ca.gov/4040.htm#tab15970>.
16. <http://www.cde.ca.gov/eo/in/documents/cltffinalreport.pdf>.



## The California State Constitution

### AND ITS INDEPENDENT DECLARATION OF RIGHTS

BY JOSEPH R. GRODIN\*

ARTICLE I WAS the first substantive item on the agenda of California's 1849 Constitutional Convention. At that time, the provisions of the federal Bill of Rights did not apply to the states, so except for those provisions of the federal Constitution directly applicable to the states (such as the Impairment of Contracts Clause), Article I of the California Constitution was the primary, if not the only, protection California would have against abuse of power by the state and local governments.

The Declaration of Rights survived the 1878–1879 Constitutional Convention virtually intact, except for the addition of provisions prohibiting the Legislature from granting irrevocable or preferential “privileges or immu-

nities” (now part of Section 7), prohibiting property qualifications for voting (now Section 22) and stating a rule of constitutional construction (now Section 24).

There were few important changes in Article I until 1972, when initiative measures added “privacy” to the list of inalienable rights protected under Section 1 and added what is now Section 27, sanctioning the death penalty. In its 1971 report, however, the California Constitution Revision Commission recommended a number of changes, some of them cosmetic but others substantive. The state Constitution, for example, contained no explicit clause guaranteeing equal protection of the laws or prohibiting the establishment of religion such as are contained in the federal Constitution. Throughout California's history, courts had relied on other provisions to provide equivalent or, in some cases, more protective doctrine, but the Constitution Revision Commission recommended inclusion of

\* Co-author with Darien Shanske and Michael B. Salerno of the forthcoming second edition of *The California State Constitution* (Oxford University Press, 2014), from which this is adapted, and former justice of the California Supreme Court.

these specific clauses in the state Constitution. The Legislature agreed, and the voters enacted the changes into law in 1974.

The 1974 revision also confirmed the independence of the state Constitution through addition of a new provision (Section 24), declaring that the “rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution.” This was not a new concept. In the 1950s, California courts began to chart an independent course, beginning with *People v. Cahan* (1955),<sup>1</sup> which held that evidence seized in violation of the search and seizure provisions of the California Constitution was inadmissible in a criminal proceeding. This was six years before the U.S. Supreme Court reached a similar conclusion.

In *Cardenas v. Superior Court* (1961),<sup>2</sup> the California Supreme Court, rejecting federal constitutional law to the contrary, held that retrying a criminal defendant after a mistrial granted on the court’s own motion would violate the state Constitution’s ban on double jeopardy. In 1972, in *People v. Anderson*,<sup>3</sup> the California Supreme Court, expressly declining to pass on the application of the federal cruel and unusual punishment clause, invalidated California’s death penalty statute on the ground that it violated the state constitutional prohibition of “cruel or unusual punishment.” In the years following, California courts built on these foundations to provide a variety of safeguards in criminal trials in addition to those required by the federal Constitution.

California courts staked out the independence of the state Constitution in other areas as well. The privacy clause, added in 1972, has been accorded a more generous scope and application than the implied privacy right of the federal Constitution. Due process and equal protection principles have been applied in broader fashion than their federal counterparts. The distinctive language of the California Constitution protective of free expression has been read more broadly than the First Amendment, and in *Robins v. Pruneyard Shopping Center* (1979),<sup>4</sup> the California Supreme Court held — contrary to the federal rule — that under the state’s Constitution, the owner of a shopping center was required to permit the distribution of handbills containing a political message. Indeed, independence runs both ways: California’s constitutional guarantee of a speedy trial, for example, has been construed to provide less protection than the federal Constitution requires.

Judicial decisions relying on the state Constitution to provide additional protection beyond the federal Constitution have met with occasional resistance from the voters. In two areas — the rights of defendants in criminal trials and the rights of minorities to integrated schools — the voters came to reject

such decisions and to insist, through initiative constitutional amendments, that rights be limited to the federally mandated floor. In 1972, they added Section 27 to declare that the death penalty did not constitute cruel or unusual punishment under the state Constitution. In 1979, they amended Section 7, removing the authority of California courts to order busing as a remedy for school segregation except to the extent that the remedy was required by federal law. Three years later, they approved an initiative measure entitled Victims’ Bill of Rights (now Section 28), which made sweeping changes in criminal procedure. In 1990, voters approved another broad measure, Proposition 115, that (among other things) would have prohibited courts from affording “greater rights to criminal defendants than those afforded by the Constitution of the United States” and would have required courts to construe virtually all of Article I, as applied to criminal cases, “in a manner consistent with the Constitution of the United States.” The California Supreme Court, however, has held that such sweeping changes could be adopted only through the process of constitutional revision. More recently, voters adopted an initiative measure (Proposition 8) aimed at overruling the California Supreme Court’s decision upholding same-sex marriage.

The record of California courts in viewing constitutional issues through the prism of the state Constitution has been mixed. Occasionally the courts have disposed of rights claims without reference to the state Constitution, or instead of focusing first on the state constitutional issue — as would logically be required by the principle that rights under the state Constitution are independent — California courts occasionally focus first on federal jurisprudence and then add, without further analysis, that the result would be the same under the state Constitution. With respect to some provisions, the courts have declared that the meaning of the federal and state provisions is identical, leading to the awkward result in some cases that the meaning of the state Constitution varies with changing U.S. Supreme Court decisions. In recent years, however, the California Supreme Court has become more disciplined in its acknowledged obligation to construe the state Constitution independently and for decades has been in the forefront of state courts in recognizing that obligation. ☆

#### ENDNOTES

1. *People v. Cahan*, 44 Cal. 2d 434 (1955).
2. *Cardenas v. Super. Ct.*, 56 Cal. 2d 273 (1961).
3. *People v. Anderson*, 6 Cal. 3d 628 (1972).
4. *Robins v. Pruneyard Shopping Ctr.*, 23 Cal. 3d 899 (1979).

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# The Truly Independent Nature of the California Constitution

BY CHIEF JUSTICE TANI CANTIL-SAKAUYE\*

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ONE OF THE key overarching issues that courts frequently face when called upon to interpret and apply the provisions of the California Constitution is the appropriate relationship between the provisions of the state Constitution and the provisions of the federal Constitution.

As an historical matter, of course, state constitutions of the original states predated the adoption of the federal Constitution. Furthermore, when the California Constitution was first drafted and adopted in 1849, the provisions of the state constitutional Declaration of Rights were the only source of protection for the populace from overreaching actions of the state government. There was no other protection because at that time the federal Bill of Rights applied to and limited only the actions of the federal government, not the states. Accordingly, a number of early California Supreme Court decisions recognized that the California Constitution is a document of independent force and that its provisions, even when linguistically similar or identical to provisions of the federal Constitution, need not necessarily be interpreted to bear the same meaning that the United States Supreme Court had given to an analogous federal constitutional provision. Nevertheless, for many years California Supreme Court decisions, in interpreting the state Constitution, generally deferred to the United States Supreme Court's interpretation of similar provisions of the federal Constitution, particularly in settings where the federal constitutional jurisprudence was more developed than the parallel state constitutional provision. Over the past several decades, however, the California Supreme Court has demonstrated a renewed appreciation of the truly independent nature of the California Constitution and an increased willingness to examine and analyze both the distinct origins of state constitutional provisions and the manner in which those provisions have been interpreted and understood in past California decisions and in the California legal context more generally.

In my view, this is an entirely appropriate and important development. The California Constitution has its own distinct history, both as initially created at

the 1849 constitutional convention and as revised at the 1879 constitutional convention, as well as through the numerous constitutional amendments and revisions of the state Constitution that have been adopted by the voters of California over the past century. Many commentators have observed the relative ease by which the California Constitution can be amended through the initiative process and have accurately highlighted how this unusual attribute of our state constitutional structure has expanded our state Constitution. But the fact that the people of California have such a contemporary, continuing and direct voice in the substantive content of our state Constitution also means that the California Constitution can accurately be viewed as a document truly belonging to the people of this state. Through the proposal and adoption of constitutional amendments relating to, for example, the operation of the criminal

## THE CALIFORNIA CONSTITUTION HAS ITS OWN DISTINCT HISTORY.

justice system, the protection of an individual's privacy, the openness of governmental actions, and the reform of the electoral and reapportionment ground rules, the voters of California have in recent years utilized the democratic process to fashion the state's fundamental charter in a manner that embodies their views and perceived needs. Accordingly, in interpreting the California Constitution, courts are properly mindful of the distinct and truly independent character of this extraordinary document.

Of course, recognition of the truly independent nature of the California Constitution is not to deny the supremacy of the provisions of the federal Constitution in settings in which the federal Constitution applies. Thus, for example, when the United States Supreme Court has interpreted a provision of the federal Constitution as prohibiting a state legislature from enacting a particular law or as precluding the use in a criminal trial of evidence obtained in a particular manner by a local police officer, that federal constitutional rule will be controlling over any state constitutional provision and will dictate the result in any case in which the federal constitutional provision is properly invoked. But the fact that the United States Supreme Court's current interpretation of a provision of the federal Constitution is controlling in this context does not mean that a similarly worded provision of the California Constitution must necessarily be interpreted to provide at least as much protection

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\* Adapted from the foreword to the forthcoming second edition of *The California State Constitution* (Oxford University Press, 2014) by Joseph R. Grodin, Darien Shanske, and Michael B. Salerno.

*Continued on page 26*

# *It Started as a Coaching Trip of Great Hilarity and Joy*

THEN IT SPARKED A LIVELY AND GROUNDBREAKING 1896 PERSONAL INJURY TRIAL

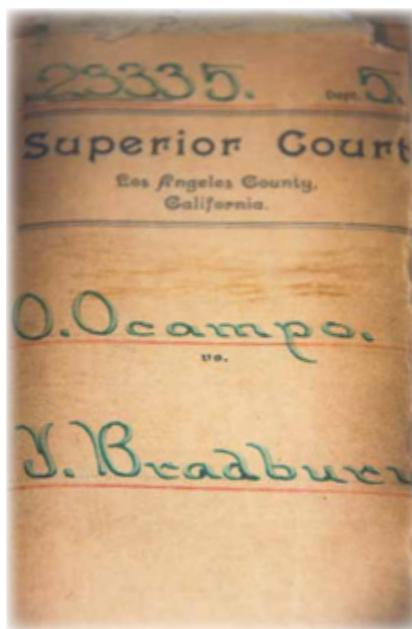
BY JUDGE MICHAEL L. STERN\*

WHILE HISTORY DOES not remember most of what occurs in the halls of justice, many everyday cases still merit attention. One such case is *Ostiano Ocampo v. John Bradbury*, filed on May 16, 1895, in Los Angeles Superior Court. It was rediscovered a few years ago by Dr. William Frank, an archivist and historian at the Huntington Library. When he pulled open the string holding together the round file of the case, photographs dropped out, revealing one of the first known uses of photos as demonstrative evidence in California.

## THE PLEADINGS

The pleadings in a case litigated more than 100 years ago look remarkably similar to those filed today. The facts set forth in the personal injury complaint filed on May 16, 1895, for plaintiff Ostiano “Tommy” Ocampo against defendant John Bradbury by attorney J. Marion Brooks are mundane. Ocampo alleged that on May 23, 1894, he was employed by Bradbury as a coachman for a tour north from Los Angeles “for pleasure, recreation, great ostentation, and show.” The party started by horse coach via Conejo Rancho along the coast. Ocampo asserted that, after crossing into Ventura County, Bradbury “conducted himself by reckless and careless driving,” causing the coach to overturn, and that Ocampo was so “severely injured, wounded, bruised, and totally disabled” that he was “unable to earn a living.” He prayed for \$250 in medical expenses and \$25,000 for permanent and serious injuries.

Bradbury’s counsel, Edward Lamme, demurred on the grounds that the “complaint does not state facts sufficient to constitute a cause of action” and moved to strike “certain surplusage.” On July 8, 1895, Judge Lucien Shaw overruled the demurrer but struck allegations that the outing was “for pleasure, recreation, great ostentation, and show.”



The defendant answered and denied the plaintiff was “at all anyway injured by reason of any carelessness or negligence” caused by Bradbury. He claimed that he hired Ocampo solely as a guide because he did not know the roads to Santa Barbara. When they came to a juncture that offered two alternative roads, Ocampo told Bradbury to take the route along the coast that went along a hillside with unstable sandy soil. It was Bradbury’s defense that the accident was caused by Ocampo’s contributory “negligence, recklessness, or carelessness” in selecting “the wrong roadway.”

The *Los Angeles Times* on September 10, 1895, reported that plaintiff’s attorney Brooks visited the seaside location of the incident and proposed to present then-novel trial evidence: photographs illustrating how the accident had occurred. Photos of a coach with a “French doll” mannequin representing a coach passenger and other accident scene photos would be offered to show how Bradbury “recklessly turned the horses to one side, overturning the coach from the bank, instead of keeping ahead along the road.” This newfangled demonstrative evidence was precedent-setting for its time.

## THE CAST OF CHARACTERS

The contrast between plaintiff Ocampo and defendant Bradbury was profound.

Born in 1856, Tommy Ocampo came from a once well-regarded California-Mexican family whose name had been associated with Spanish land grants, ranchos, and fiestas. By the late 19th century, however, the standing of the Ocampos had fallen, and Tommy worked as a tour guide and team driver, including serving as a hack for the affluent Dominquez family.

John Bradbury, born in 1872, was a perfect symbol of the emerging dominant Anglo culture of Los Angeles. His father, Lewis Bradbury, had made a fortune in Mexican mines and Southern California real estate. Lewis Bradbury had commissioned the Bradbury Building,

\* Judge, Los Angeles County Superior Court

the birdcage elevator building in downtown Los Angeles that still bears his name. His wife, and John Bradbury's mother, Simona Martinez Bradbury — dubbed the “Cinderella of Rosario” based on the name of the town of her Mexican origins — had risen from maid in her husband's mansion to become a grand dame and heir to his fortune.

When he came of age in 1893, John Bradbury obtained a huge inheritance from his father and celebrated his 21st birthday with a stag party for the local social elite at the Bradbury ranch near Monrovia. He scandalously eloped to marry Lucy Banning, the daughter of another pioneer family. He became well known around town in 1895 for losing a wager that he could travel around the world in 90 days. It took him 93.

The trial judge, Lucien Shaw, bearer of State Bar card No. 4, joined the Los Angeles Superior Court bench in 1889 and served until 1903, when he was appointed an associate justice of the California Supreme Court. He later served as chief justice from 1921 to 1923. In the 1890s, he assisted in reviving the dormant Los Angeles Bar Association and forming the Los Angeles Law School, which was ultimately integrated into the University of Southern California. His son, Hartley Shaw, also served from 1933 to 1956 on the Los Angeles Superior Court, including a term as presiding judge.

#### “BATTLE OF THE COLONELS”

The *Ocampo v. Bradbury* trial, conducted from January 8 to 10, 1896, in Department 5, was heralded in the *Los Angeles Times* as the “Battle of the Colonels.” As it unfolded, the facts sometimes took a back seat to the histrionics of the lawyers and witnesses.

The “At the Courthouse” column in the *Times* reported that Department 5 had standing room only when Judge Shaw's bailiff called the court to order and “the usual courtroom loungers craned their necks and pricked their ears for the sensational details which have been promised by the plaintiff and his counsel” of the “famous coaching trip.” Ready for the proceedings, “Judge Shaw received the countenance and moral support of Judge Clark and Judge McKinley, who took turns in occupying the extra chair on the bench and lending dignity to the occasion by way of counterbalancing the enticing swish of silken skirts, the murmur of whispered comments, and the glitter of bright colors in the corner where Mrs. Bradbury and her friends were enjoying a new kind of amusement, rendered all the more piquant by the dash of personal interest in the outcome.” This was not to be any ordinary personal injury trial.

Ocampo, outfitted with a pair of upholstered crutches, “stared dreamily into space” at counsel table while his attorney J. Marion Brooks “hovered

protectingly near his client,” “portentous and mysterious” as he contemplated “tangling witnesses on cross-examination.” Opposing counsel Lamme, “planted solidly beside Colonel Bradbury, looked equally serene, and smiled cherubically.”

A jury was impaneled after a short examination, the *Times* reported, and Brooks “opened the case with a wild flourish of trumpets, reviewing the entire progress of the coaching party, which, he reproachfully observed, was distinguished by ‘great hilarity and joy,’ and leading artfully up to the final tumble over the embankment, and the great and last injury of Tommy.”

Then Colonel Ocampo — practically all true gentlemen in those days claimed to be what today might be called a “Kentucky colonel” — took the stand and poured

forth his story, “the narrative being so full in direct examination that Judge Shaw tried in vain to stem the tide.” Getting to the point, Ocampo testified that he had been hired to act as the guide, cook, and general roustabout to assist Colonel Bradbury's party's

### **OCAMPO V. BRADBURY INVOLVED ONE OF THE FIRST KNOWN USES IN CALIFORNIA OF PHOTOGRAPHS AS DEMONSTRATIVE EVIDENCE.**



IMAGES: HUNTINGTON LIBRARY

travel up the coast toward San Francisco. All went well until they got to Ventura, where the party dined off a billiard table and grew “particularly jovial and boisterous.” More liquid refreshment was consumed after they continued their excursion north — enough that Bradbury at the reins almost tipped over the coach. Alcohol allegedly continued to flow liberally as they traveled up the road to Santa Barbara with Bradbury at the reins. Finally, at the point of the accident, Bradbury lost control and the

### **TRIAL JUDGE LUCIEN SHAW, BEARER OF STATE BAR CARD NO. 4, WAS APPOINTED TO THE CALIFORNIA SUPREME COURT IN 1903 AND SERVED AS CHIEF JUSTICE FROM 1921 TO 1923.**

wagon capsized and tumbled down the embankment, landing on top of Ocampo. According to the plaintiff, the defendant stood by casually smoking a cigarette as the injured Ocampo lay writhing in pain with a severely injured hip.

Pausing for effect, plaintiff’s counsel Brooks “waited for the shudder caused by the revelation of this to chase itself down the twelve sensitive spines of the jury” and, with some fanfare, produced photographs re-creating the accident and moved that they be received into evidence. According to the *Times* report, quite a “scrap” and bickering over admissibility ensued between counsel. This was “quenched” by the judge, who admitted the evidence.

Defense attorney Lamme at once assailed Ocampo with the accusation that Ocampo had been lame since youth and, in addition, that lately he had been seen around town taking visitors on tours in “off hours,” despite his supposed severe injury. The *Times* reported that Ocampo was “badgered out of his life” by questions concerning details of the location of the accident, including the width of the roadway. Ocampo claimed the road was “exactly five feet and twelve inches wide, indignantly denying the suggestion that it might be six feet.” He soundly insisted that Bradbury was at fault and that Bradbury’s drunken condition had caused him to lose control of the coach.

### **THE PLOT THICKENS**

The second day of the trial opened with excited court watchers gathering to hear the “spicy details which were expected to develop” and to learn whether Ocampo would be entitled to “a moderate slice of the Bradbury estate.” The *Times* reported: “Not the least interested spectators — who had ensconced themselves in the seats reserved for the hoi polloi — was a bevy of elegantly

dressed ladies, of which Mrs. J. Bradbury was the star attraction. They listened to the words of the witnesses with the same attention that they would have given to the pastor in a fashionable church.”

The audience did not wait long for the attorneys’ pyrotechnics to be ignited. Lamme soundly objected when Brooks referred to Ocampo as “colonel,” a term that had been easily bandied about the courtroom. He maintained that only his client, Colonel Bradbury, had a true claim to the title, it having been conferred on him by Governor James Budd, who named Bradbury an aide-de-camp with the rank of lieutenant colonel. Judge Shaw had no patience for the argument, ruling that “plain mister was good enough for all around.”

Recalled to the stand, Ocampo detailed that not only was he out-of-pocket for medical expenses but also was suffering from “that tired feeling” and had trouble sleeping. On cross-examination, Lamme unsuccessfully attempted to establish that Ocampo was under the influence of alcohol at the time of incident. He denied he was anything but sober when the accident occurred and asserted that the accident resulted from Bradbury losing control of the wagon. The *Times* observed: “In the cross-examination Colonel Brooks was called down for his absurd questions, but failed to shake the witness’s testimony.”

The testimony of a member of the ill-fated outing party disclaiming use of alcohol inspired this lawyer-like exchange:

*Mr. Lamme: What was Ocampo’s condition as to sobriety? Did he hit the bottle very often?*

*Colonel Brooks: We object to this. There is no funny business in this case!*

*Mr. Lamme: Well, if there isn’t, you’ll get it in all right enough.*

*The Court: The objection is overruled.*

It then was elicited that the witness would have preferred to see Bradbury win the suit because “he would hate to have a hired man sue him for a big pile of money in the event of a similar accident.”

At long last, defendant Bradbury was called to testify and, “with a smile, child-like and bland, the aide-de-camp to the Governor climbed into the witness stand.” He testified that he had retained Ocampo at \$40 per month to act as the guide on the northern-bound excursion. It was to be via a yet-to-be-determined coastal road. He characterized the trip as a “sort of Gipsy lay-out, a go-as-you-please excursion, a junketing tour comparable only to the wind which goeth whither it listeth.” All Ocampo had to do was guide the group in the right direction.

Bradbury testified that the party came to a place upon entering Ventura County where they had to choose one route or the other. He followed Ocampo's direction to take the road along the coast. At a point where the road was seven feet wide, the hind wheel reared up, the horses ran off with the front wheels and Ocampo and the wagon rolled downhill. Ocampo got up from the wreck and told him not to mind as the accident had been unavoidable. Bradbury blamed Ocampo for choosing a route that he should have known was hazardous because of unstable sand encountered along the roadway. He paid Ocampo's medical bills when they got to Santa Barbara, and that was the last he heard about the matter before he was served with the summons in the suit.

By the time Bradbury stepped down, none of his testimony had explained what happened to the six bottles of champagne and two each of port and whiskey carried by the excursion party that plaintiff's counsel initially had threatened to elucidate but then inexplicably abandoned.

Attempting to bolster Ocampo's case, attorney Brooks recalled his client for rebuttal. According to the *Times*, "He failed to elicit anything from the witness, but while Judge Shaw was ruling on an objection, Brooks, who was evidently absent-minded, interrupted him. As this had happened several times, the court got mad and ordered the clerk to enter a fine of \$5 against the lawyer, who apologized profusely, but the fine stood just the same. After this Mr. Brooks could think of nothing more than to have it remitted, and when last seen when court adjourned, he was making a bee-line for the judge's chambers to get let off."

#### A QUICK VERDICT

The *Times* reporter covering closing arguments on January 10, 1896, was not impressed with the attorneys' remarks. He reported: "Arguments lasted all day, and were not enlivened by much hilarity, the only breaks in the flow of steady reasoning with the jury being when Colonel Brooks, following his usual erratic practice, skated several miles around the point without managing to touch it."

The matter was submitted to the jury at 4:15 p.m. and a verdict for the defendant was returned in 10 short minutes. The *Times*' terse description of the courtroom after the verdict is anticlimactic: "The congratulations and condolences were all in, the crowd was out, and quiet reigned in Department 5."

The *Times* had the last word on *Ocampo v. Bradbury* in a poem entitled

"Ballad of the Brave Colonel" published on Sunday, January 12, 1896:

*'Twas in Ventura County  
Upon a summer's morn,  
That colonel upset the coach  
When Ocampo blew the horn.*

*Ocampo! Ocampo!  
A colonel bold like you,  
How could you bring an action  
When he's a colonel, too?*

*But half a dozen of champagne  
And only two of whiskey,  
Was that enough of Baccie stuff  
To make a colonel frisky?*

*And Colonel Brooks of marital mein,  
Could you insinuate  
That liquor flowed as well as blood  
Around the colonel's pate?*

*The colonels kissed the dusty road,  
Great Mare! What a collision,  
One swears the other had a call  
Which waits the court's decision.*

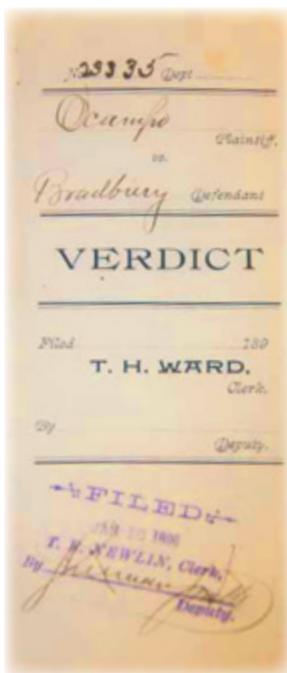
*Now Bradbury bold, when driving a day,  
With precious burden freighted,  
Be sure your guide doth know the way  
And ditches allocated.*

Great poetry it is not, but perhaps it is a fitting epitaph for a preposterous trial rediscovered in the Superior Court files of yesteryear.

#### POSTSCRIPT

The accident did not injure Tommy Ocampo for life. He worked as a tour guide and driver until he died in 1912. His obituary in the *Times* reported that he was the favorite driver for Helen Hunt Jackson in her quest to gather material for her epic novel *Ramona*. He was remembered as a familiar figure north of Second and Spring Streets who "seldom went south of that line in his visits to the city, insisting that a good stage driver always kept some familiar landmark in sight."

When John Bradbury died on August 20, 1913, he was recalled as a horseman, sportsman, and scion of a family that constructed some of the most important buildings in Los Angeles. He lived his last years in a fabulous mansion on Court Street not far from the present-day Stanley Mosk Courthouse. ★





*Justice Baxter appeared as Justice Terry, with the Chief Justice as his client and wife, Sarah Althea Hill.*

PHOTOS: PAUL CLARK

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## *Telling the Tale of California's Most Colorful Justice*

FIVE JUSTICES DRESS UP IN A REPRIS OF A PROGRAM ON JUSTICE DAVID S. TERRY

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**F**IVE MEMBERS OF the California Supreme Court starred in a reprise of *Justice David S. Terry and Federalism: A Life and a Doctrine in Three Acts* before an audience of more than 700 lawyers and judges at the 2014 annual meetings of the State Bar and the California Judges Association in San Diego.

Chief Justice Tani Cantil-Sakauye, Associate Justices Marvin Baxter, Goodwin Liu, Carol Corrigan, and Ming Chin and U.S. District Court Judge Larry Burns played the various roles in the September 12, 2014, program, which was sponsored by the California Supreme Court Historical Society and the Northern District of California Historical Society.

Donning 19th-century costumes and props, the judicial cast entertained a sold-out audience with stories from the life and times of David S. Terry, California's most colorful Supreme Court justice. It was educational, too: The script by Society board member Richard Rahm told Justice Terry's tale through the lens of the evolution of federalism in California before and after the Civil War. Rahm and former State Senator Joe Dunn narrated the program against a backdrop of historical images.

*Justice Terry and Federalism* was first presented two years ago in San Francisco. It was later performed in Los Angeles and Fresno, each time with members of the state and federal judiciary reading various historical

parts. Justice Baxter also played the part of Justice Terry, his predecessor from the San Joaquin Valley, in the San Francisco and Fresno performances.

In San Diego, Justice Baxter persuaded four of his colleagues to join him as he reprised his role as David Terry. Justice Kathryn Werdegar, who appeared in each of the three previous performances, could not participate because of previously scheduled travels.

The program required the six judicial participants to play 19 different parts, necessitating several changes of costume in front of — and to the delight of — the audience.

**ACT I** of the program takes place shortly after Terry assumed the bench in 1856 when he was "arrested" by the notorious Vigilance Committee for stabbing one of its officers in the neck with a Bowie knife during a street melee. Although the Governor of California appealed to the U.S. Navy and Army to suppress the Vigilantes and to rescue Terry, they refused based on states-rights principles. True to the character of his Fresno predecessor, Justice Baxter, to the surprise of his colleagues — particularly Judge Burns, who was sitting next to him — reached into his breast pocket and brandished a foot-long Bowie knife (plastic, but realistic looking). The Vigilantes eventually released Terry when its officer recovered from his wounds. Terry became Chief Justice of California in

1857, but resigned to fight a duel with U.S. Senator David Broderick, one of his political enemies. Justice Chin, who played the part of Senator Broderick, slumped over the table when the audience learned that Terry had shot him dead.

**ACT II** takes place in 1884, when Terry represented Sarah Althea Hill (played by the Chief Justice) in a series of sensational state and federal trials and appeals involving her alleged marriage to U.S. Senator William Sharon (played by Justice Liu). Although the state and federal courts came to opposite conclusions, the state courts eventually acceded to the supremacy of federal jurisdiction. In each of the trials, Sharon, who had made millions from the Comstock Lode, claimed that Hill was his paid mistress, while Hill produced a written marriage contract, the authenticity of which was disputed. In the midst of the litigation, Terry and Hill were married. After the marriage, both were cited for contempt and jailed by U.S. Supreme Court Justice Stephen Field, who had been Terry's colleague on the California Supreme Court in the 1850s. Both Terry and Hill had pulled weapons — Terry a knife, Hill a pistol — against court personnel. One of the high points of the program came when the audience was told about Hill's bragging to the court about her gun skills, claiming she could "hit a four-bit piece nine times out of 10" — at which point the Chief Justice jumped up from her seat and demonstrated to the audience of judges and lawyers her own finger-on-the-trigger skills.

**ACT III** concerns the legal aftermath of Terry being shot dead by Deputy U.S. Marshal David Neagle (played by Justice Corrigan, using her best "cowboy" accent) when Terry assaulted U.S. Supreme Court Justice Field by punching him in the face while he was eating breakfast. Although Neagle was arrested by the county sheriff and charged with murder, the federal court in San Francisco discharged Neagle after a two-week habeas corpus trial, holding that the state could not prosecute because the marshal was acting within the course of his federal duties. The U.S. Supreme Court, with Field recusing himself, affirmed. ★



*Justice Baxter flashes his knife before U.S. District Judge Larry Burns.*



*The Chief Justice acting out Sarah Althea Hill's skills with a gun.*



*Justices Chin, Corrigan, and Liu helped tell Justice Terry's story.*

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# For the Society, Three Years of Significant Progress

BY DAN GRUNFELD\*

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**S**HORTLY AFTER I became the Society's President in 2011 we developed a list of initiatives and tasks which I believed should be the focus of the Society's efforts. As is always the case with nonprofits, more work needs to be done. But I'm pleased to report that we have made significant progress in enhancing the Society's work and mission. In no particular order, the six primary areas which were the focus of our efforts in the past three years were:

## **I. PRESENTING MORE VIBRANT AND DIVERSIFIED PROGRAMS AND COLLABORATING WITH OTHER NONPROFIT ORGANIZATIONS**

The decision to move proactively to collaborate with other outstanding nonprofits has proved, in the view of most, to have been of great benefit to the Society. This direction met with some initial board members' concerns that the quality of our programs would suffer, and our "brand" would diminish. However, collaborations with, for example, Zócalo, the continued popularity of the David Terry program, and our collaboration in that effort with, among others, the Northern District of California Historical Society, and many other examples have helped expose our work to new audiences and potential supporters without impacting our longstanding commitment to the excellence of our programs.

## **II. MAINTAINING FINANCIAL STABILITY AND GROWTH**

Three years ago the Society, like the vast majority of other nonprofits, was operating under the cloud of the aftermath of the Great Recession and the ensuing general decline of support for the nonprofit sector. Thanks to precise budgeting, careful attention to expenditures, our policy of paying as we go and remaining debt free, and the outstanding work by the Budget, Executive and other committees, the Society's financial situation has not only been stable but also steadily improved.

In FY 2009/2010 our Total Equity ("TE" which is assets minus liabilities) was \$451,013. In FY 2010/2011 TE was \$467,645; in FY 2011/2012 TE was \$494,090, and in FY 2012/2013 the figure was \$506,993. In FY 2013/2014, it is anticipated that TE will be in a similar range.

This represents strong and disciplined financial performance at a time when many other nonprofits continue to struggle. Keeping our financial infrastructure



*Dan Grunfeld interviewed former Chief Justice Ronald M. George about his oral history in December 2013.*

PHOTO: HUGH WILLIAMS

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and performance strong will remain critical to the Society's future growth and success.

## **III. ENHANCING OUR FUNDRAISING**

A June 2013 memorandum from the Development Committee outlined potential fundraising opportunities and initiatives. We have made significant progress on some of the items outlined in the memorandum, less so on others. The report remains an excellent blueprint and action plan for moving forward on this important initiative.

## **IV. PUBLISHING THE HISTORY OF THE CALIFORNIA SUPREME COURT**

It appears that this seemingly long-elusive goal is likely to be accomplished soon. The decision to change publishers has been key to progress on this front. Based on recent communication with the publisher, the book is expected to be published early next year. The publication of the book provides the Society a unique opportunity to reach out to new stakeholders, reconnect with old friends, conduct extensive media outreach, and generally raise the profile of the organization.

## **V. RAISING THE SOCIETY'S PROFILE**

Because of the somewhat specialized mission of the organization, it is unlikely that the Society will ever become a widely popular nonprofit with vast numbers of supporters. Nonetheless, it has long been the view of

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\* President of the California Supreme Court Historical Society, 2011-2014

many on the Board that, considering the importance of the California Supreme Court and the excellence of our work, the Society is not as well-known as it should be. In the past three years, significant steps have been taken to address this issue. This includes, among other things, the collaborations discussed above. In addition, programs like the interview of former Chief Justice Ronald George in Beverly Hills, which attracted managing partners of major law firms and others who have traditionally not been aware of the Society, were welcome examples of our efforts to better communicate the Society's mission and work to a more diverse audience. More work needs to be done on this front but progress has been made.

#### VI. MAINTAINING AND SUSTAINING THE EXCELLENCE OF OUR PUBLICATIONS AND PROGRAMS

We should be proud of the fact that the Society's "work product" — our publications, programs and initiatives — are as strong and vibrant as they have been at any point in my well over a decade of involvement with the Society. Selma Moidel Smith's exemplary contributions and insistence on excellence are part of the Society's DNA. In my view, the newsletter has never been better. The programs, as discussed above, are more innovative and our writing competition draws increasingly more accomplished participants. Maintaining this excellence

in the years and decades to come, and securing the financial resources to support and enhance this excellence, is of critical importance to the Society's future.

#### MOVING FORWARD

In upcoming years, in addition to continuing to expand and improve on the efforts above, the Society, in my view, should also focus on the following:

1. Developing a more diverse board, including members from communities of color and better geographical representation from all parts of the state.
2. Holding events outside of our core support areas in the Bay Area and Southern California. In this regard, the presentation of the David Terry program in Fresno, spearheaded by Justice Marvin Baxter, and our presentation at the annual State Bar meeting in San Diego were welcome and important developments.
3. Continuing and enhancing the recruitment of committed Board members who will actively contribute to the Society's mission.

There are, of course, other opportunities and challenges that will present themselves in the years to come. But the past three years have been productive for the Society, and I believe that we are well positioned to become an even better organization in the future. ★

### 'A FIRM AND STEADY HAND'

Dear Dan:

As Chair of the California Supreme Court Historical Society, I congratulate and thank you for your dedicated service as President of the Society over the past three years, and for your many prior years of service on the board before that. Despite having many other pressing professional obligations, you have, with a firm and steady hand, expertly led the Society's noble efforts to recover, preserve, and promote California's legal and judicial history through its publications, educational programs, and support of scholarly research.

You have also been an integral part of the Society's efforts to assist private and public agencies with exhibitions and oral histories, as well as the acquisition and archiving of judicial materials. Notably, during your term as President, the Society has been involved in significant outreach and archival programs — including the well-received oral history of former Chief Justice Ronald M. George.

In addition to your work for the Society, I also take this opportunity to acknowledge your other

extracurricular work, giving back to the legal profession and your community. While previously serving for nine years as the president and chief executive officer of Public Counsel — the nation's largest pro bono public interest law firm — that organization has more than doubled its size and expanded its scope nationally and internationally. In addition, at Morgan Lewis, you continue to undertake pro bono work, dedicating a portion of your practice to the development of strategies and opportunities in the areas of life sciences, green technology and alternative energy, and nonprofits.

On behalf of the People of the State of California and the Supreme Court Historical Society, I thank you for your service and wish you the very best in your future endeavors — including, I hope, a continuing relationship with the Society.

Sincerely,

Tani G. Cantil-Sakauye  
Chief Justice of California



## 2014 STUDENT WRITING COMPETITION WINNERS ANNOUNCED

First place winner Bradford Masters (CENTER) is congratulated by Chief Justice Tani Cantil-Sakauye (LEFT), Associate Justice Kathryn Mickle Werdegar (CENTER RIGHT), Society President Jennifer King (RIGHT), and board member Selma Moidel Smith (CENTER LEFT) — at the California Supreme Court, November 12, 2014.

PHOTO: WILLIAM A. PORTER

(PUBLISHED IN THE SAN FRANCISCO AND LOS ANGELES EDITIONS OF THE DAILY JOURNAL ON NOVEMBER 24, 2014)

THE CALIFORNIA SUPREME COURT HISTORICAL SOCIETY is pleased to announce the winners of its 2014 CSCHS Selma Moidel Smith Law Student Writing Competition in California Legal History.

First place was won by Bradford Masters of UC Davis School of Law for “The (F)law of Karma: In Light of *Sedlock v. Baird*, Would Meditation Classes in Public Schools Survive a First Amendment Establishment Clause Challenge?” He receives a prize of \$2,500 and publication in the 2014 volume of *California Legal History*, the Society’s annual scholarly journal.

Second place was awarded to Lauren Williams of the University of San Diego School of Law for “California’s

Anti-Revenge Porn Legislation: Good Intentions, Unconstitutional Result.” She receives a prize of \$500.

The third place winner is Shannon Flynn Smith of Michigan State University College of Law for “Virtual Cloning: Transformation or Imitation? Reforming the *Saderup* Court’s Transformative Use Test for Rights of Publicity.” She receives a prize of \$250.

The high quality of the winning entries — and their common theme of addressing emerging legal issues — has resulted in the editorial decision to publish all three in the 2014 journal.

The three distinguished judges, all of whom are professors of law or history, were: Mark Bartholomew, SUNY Buffalo Law School; Sarah Barringer Gordon, University of Pennsylvania; and JoAnne Sweeny, University of Louisville School of Law. ★



Second-place winner  
Lauren Williams.



Third-place winner  
Shannon Flynn Smith.

### COMPETITION RENAMED

Dan Grunfeld, Society President (2011–2014), announced at Selma Moidel Smith’s birthday celebration in April 2014 that the Society has renamed



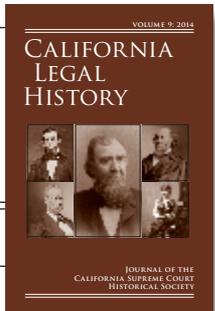
its writing competition in her honor — recognizing her work as a Society board member, including initiating and conducting the annual writing competition and serving as editor-in-chief of the annual journal, *California Legal History*.

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*\*Please note that issues prior to 2006 were published as California Supreme Court Historical Society Yearbook. (4 vols., 1994 to 1998-1999.)*

(or, stated somewhat differently, to be as restrictive of legislative or executive action) as the federal constitutional provision as interpreted by the federal high court. If the history, past interpretation, or intent of the state constitutional provision supports a different and less protective (or less restrictive) meaning of the state provision, the state provision can and should be read in that fashion, leaving the federal Constitution as the sole basis for the required contrary decision. Thereafter, should the United States Supreme Court reconsider its interpretation of a federal constitutional provision, which is not uncommon, California courts would have no need to revise the interpretation of an analogous state constitutional provision but could properly maintain the interpretation dictated by the state constitutional history and intent. Accordingly, it is entirely proper for state courts, in determining the appropriate meaning of the California Constitution, to be faithful to a fair and accurate view of the intended meaning of each state constitutional provision, whether that meaning embodies a constitutional guarantee that is more expansive, equally expansive, or less expansive than that reflected in the interpretation of the analogous federal constitutional provision.

One important consequence of the independent nature of the provisions of the California Constitution is to place a significant responsibility upon counsel who rely upon a state constitutional provision in litigation. When a state constitutional provision is at issue, counsel should not rely solely upon the more familiar federal constitutional precedents interpreting the parallel provision of the federal Constitution. Instead, counsel should recognize the responsibility to research and analyze the independent sources that may shed light on the appropriate interpretation and application of the state constitutional provision in question. Past California decisions have identified many of the distinct sources that counsel should examine in this regard. They include the records of the state constitutional conventions, the distinct legal, political, and cultural settings in which the state constitutional provision was adopted, state court decisions and common legal practice revealing how the provision has been interpreted and understood over time, as well as the effect that developments in California statutory and common law properly have on the contemporary meaning of state constitutional provisions.

I can assure counsel that courts charged with the responsibility of determining the proper interpretation of state constitutional provisions will look for and appreciate the insight that counsel may contribute in this regard. ☆

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