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# In Memoriam

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## HONORABLE MARSHALL F. McCOMB

Judge of the Superior Court of Los Angeles County, 1927-1937  
Associate Justice of the Court of Appeal, Second Appellate District, Division Two,  
1937-1956;  
Associate Justice of the Supreme Court of the State of California 1956-1977.

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The Supreme Court of California met in its courtroom, Paramount Plaza Building, Los Angeles, California, November 6, 1981.

Present: Chief Justice Bird, presiding; Associate Justices Tobriner, Mosk, Richardson, Newman, Kaus and Broussard. Gill, Clerk; Williams and Rogers, Bailiffs.

CHIEF JUSTICE BIRD: We meet this morning to pay tribute to the memory of Marshall F. McComb, who served as an Associate Justice of the California Supreme Court from 1956 until 1977. On behalf of the court, I wish to welcome Justice McComb's widow and his daughter, Martha Mullin and the friends of the family. Justice Frank Richardson will speak on behalf of the court.

ASSOCIATE JUSTICE RICHARDSON: Thank you, Madam Chief Justice. The court pauses today in its Los Angeles calendar to note with sadness the passing of our colleague, Marshall Francis McComb, the 80th member of our court. While the occasion is one of sorrow at the state's loss of a distinguished citizen, in reflecting upon his days among us we sense that here was a life fully and richly lived. Justice McComb was born in Denver, Colorado, the son of a mining father, who moved with his family in the 19th century successively to San Diego and then to Los Angeles. It is fitting that we should be expressing this tribute to him today, here in Los Angeles, because his roots were here. It is here that he lived his earlier years attending the Olive Street Grammar School, Manuel Arts High School, and the University of Southern California Preparatory School. After graduating from Stanford, Justice McComb served his country during World War I in the United States Navy attaining the rank of Lieutenant Commander. Following receipt of his law degree, cum laude, from the Yale Law School, he began the general practice of law here in Los Angeles.

Upon his appointment to the Los Angeles Superior Court in 1927, he began a judicial career which spanned more than a half century. His fellow jurists chose Justice McComb as presiding judge of that distinguished court and he devised the Master Calendar Plan which was widely credited with containing the then growing and heavy volume of litigation. The people of Los Angeles County reelected him twice.

His judicial skills were recognized in 1937 when he was appointed to the Court of Appeal for the Second District in Los Angeles. Then in 1956 he was called to our court and served on it from 1956 to 1977 becoming its senior member. Justice McComb was a devoted colleague who was always loyal to the court. His many opinions for the court over more than 20 years were uniformly crisp, spare, lean and to the point. His reasoning and conclusions were very well defined. His philosophy was one of restraint. There was no doubt where he stood on the critical issues which came before the court during his long tenure on it. He held the strong, independent and self-reliant views of the typical Westerner.

Beyond his contributions to California law, there was a quality in the character of Justice McComb which was revealed to all of those who observed him—that was his essential humanity. He had profound respect for people not only in the aggregate, but for people as individuals, as persons. He valued them as friends regardless of their station or their means. He related to them at their own level and they, in turn, responded to him. He was people oriented and was organizationally related.

His fraternal and association ties were numerous and diverse and he held high office in many groups. To mention any of his affiliations is to ignore many others, but his service in the Navy during World War I and his status as a war veteran were sources of considerable pride to him. He was proud of our flag and for many years wore a small emblem of the flag on his coat lapel. Both nationally as Vice President of the Navy League and locally as a charter member of Los Angeles Post No. 8, American Legion, he demonstrated his strong interest in veterans' affairs.

He was very approachable and several members of his staff have recently recalled that during his busiest and most active years those with personal problems frequently sought the benefit of his experience and wisdom. We who served with him were constantly aware of his personal warmth and radiating kindness which were generated deep within the heart of the man whose impulses were generous. He gave of himself and of his substance to good causes in full measure. To a university library which has been named for him, to a major hospital on the governing board of which he served for many years, and the countless social, religious and charitable enterprises of many kinds, Justice McComb truly left a rich heritage. In the more than 20 years of his service on this court, while expressing both strong and honest views, he demonstrated a gentility of spirit, a generosity of outlook, and an acceptance of life which gave him an inner peace. Now that he is gone we can preserve only in memory his twinkling eye, his erect carriage, his unfailing courtesy, his gentlemanly manner, his humor and his kindness. As friends and colleagues, we cherish our association with him. We honor and respect his loyal service to the people of this state.

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We extend to his widow, Margherite, and to all of his family our sincere sympathy in their loss. We share with them also our deep appreciation and that of the bench and the bar and the people of California for his life and for the many years of faithful service which Justice McComb gave to our judicial system.

CHIEF JUSTICE BIRD: Thank you, Justice Richardson, for those eloquent words. We will now turn to Justice Mildred Lillie, a long time friend of Justice McComb, who will speak next.

JUSTICE LILLIE: Madam Chief Justice and Associate Justices, may it please the court. We are here in remembrance and it is my pleasure to join with Justice Richardson in this splendid tribute to Justice McComb. The memory of Marshall Francis McComb will long live in the annals of California judicial history and in the hearts of those whose lives he touched.

His service to the people of the state and to the administration of justice began with his appointment to the Superior Court of Los Angeles County in October, 1927. Prior to his judicial career which spanned a period of over 50 years, he had been engaged in general practice. One of his most prestigious clients was The Hearst Corporation. His friendship with members of the family and the senior officers of the corporation he kept intact all of his life.

Marshall McComb was 33 years old when he became a superior court judge. He had a remarkable administrative ability of which few of us were aware or remember, and some senior lawyers will never forget. The youngest of 38 superior court judges and early in his judicial career, he was assigned to preside in the civil calendar department. In those days, as today, the court was bedeviled with an insurmountable backlog of civil cases. Marshall McComb resolved to clear up that backlog and he did just that, and in a surprisingly short time, through perseverance and his stern approach to lawyers who had fallen into dilatory practices. First he cut a swath through the backlog and then he designed the Master Calendar System. At first the mortality rate was high; lawyers who were not prepared for trial or whose clients or witnesses were not in court found their cases summarily dismissed, and staggered out of the courtroom in the old red courthouse not quite knowing what had happened to them. And he did all of this with unflinching courtesy, always the gentleman. He restored the court to its normal routine and reduced the time from initiation of the lawsuit to trial to six to eight months, a far cry from the present day struggle to set causes for trial within the five-year period. Even in those days, it was a very dramatic accomplishment; he had devised a system that would enable our courts to deal satisfactorily with the ever increasing flow of civil cases. He won the admiration of the bar, that is after the lawyers involved had recovered from their shock, and his Master Calendar System became the subject of numerous articles in national publications. In only a short time, he made a worthy national

reputation for himself. And that accomplishment reflects his philosophy of getting on with it and getting the job done. Perhaps it is the same philosophy that inspired his short, concise opinions. Pithy, but to the point and covering all issues, the format used by him in both the Court of Appeal and the Supreme Court generally assumed the Socratic method. He stated the question and then answered it. Once, I asked him the secret of producing a short, adequate opinion; with tongue in cheek, he answered "You will find that as you grow older you will have less and less to say." But somehow it hasn't worked out too well for me. His economy of words accounts too, for his disinclination to ask questions from the bench, and it generally characterized his personal communication with others. He wasted little time on unproductive conversation.

Marshall McComb valued countless persons in friendship. They came from everywhere, from every walk of life. Friendship was important to him; and he maintained his friendships and old ties throughout his judicial life without compromising his role as a judge. Those he befriended supplied him with a great variety of interests and often brought to him a greater variety of problems and concerns—to them he gave freely of his time and his personal advice. His great capacity for friendship touched my life too. My first contact came through my late husband who in the early 1940's had started through the chairs in Elks Lodge 99, later to become exalted ruler, largely through the encouragement of Marshall McComb. He was a kind and generous mentor, and lavish with his time, his means, his wisdom and his experience. He long will be remembered for his fierce love of country and devotion to the preservation of its traditions and institutions. His opinions, majority and concurring and dissenting alike, reflect his philosophy of judicial restraint and his solid conviction that the community and the victim are as much entitled to the protection of the law as the perpetrator of the crime. At times he was devastatingly outspoken and there was never any doubt about his views on any given issue. He was an independent thinker and he had the courage and the strength of heart and spirit to stand alone in his convictions. His love of country and devotion to the principles and ideals that made it strong were reflected in his own personal life. At every turn he extolled the virtues of this great nation as though he himself, in the early days, had helped fashion the Republic with John Adams, Thomas Jefferson, and Benjamin Franklin, the generators of our democratic form of government. He never tired of voicing his pride in the system of which he was a part. Through his life, judicial career, accomplishments and contributions to the administration of justice, he left a rich and loving legacy to his family. He lives deep in the hearts and memories of his beloved widow, three daughters, grandchildren and great grandchildren. And through his legal opinions he will continue to live as long as there are readers of case law.

Thank you.

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CHIEF JUSTICE BIRD: Thank you, Justice Lillie. We now will turn to Dean Leigh Taylor of Southwestern University School of Law, who is a friend of the McComb family.

MR. TAYLOR: Madam Chief Justice and Associate Justices. May it please the court.

“He . . . proved again the simple secret that a great judge must be a great man. He must have a full sense of the seamless web of life, a grasp of the endless tradition from which we cannot escape. He must be capable of stern logic and yet refuse to sacrifice to logic the hopes and fears and wants of men. He must be able to catch a glimpse of the ultimate in the immediate, of the universal in the particular. He must be statesman as well as jurist, thinker as well as lawyer. What he is doing is to shape the categories through which life must flow, and he must have a constant sense of the greatness of his task. He must know the hearts of men and yet ask to be judged from the conscience of their minds. He must have a constant sense of essential power, and yet be capable of humility in its exercise. He must be the servant of justice and not its master, the conscience of the community and not of its dominant interests. He has to put aside the ambition which drives the politician to search for power and the thinker to a construction of an abstract system. No one must be more aware of the limitations of his material, none more hesitant about his personal conviction. The great judge is perhaps the rarest of human types, for in being supremely himself, he must yet be supremely selfless. He has to strive towards results he cannot control through material he has not chosen. He has to be in the great world and yet aloof from it, to observe and to examine without seeking to influence.”<sup>1</sup>

This observation was made by Harold Laski in 1931, in which he described that supreme fellowship which reaches back to the endless past in which men have sought a place for plan and order in human affairs. Gaius, Ulpian, Mansfield, d’Agneseau, Marshall, Savigny, Maitland, and Holmes. I believe that they would surely welcome the company of Justice Marshall Francis McComb.

As a lawyer and a teacher of law, I feel especially privileged to be able to participate in this tribute to the memory of Justice McComb, who dedicated his life’s work to the law and to the judiciary in the State of California. When we reflect that his 50 years of service as a judge contrasts with only 200 years of American law, we can begin to appreciate the true significance of his contributions to our legal institutions, our profession and society.

As Justice Richardson and Justice Lillie have noted, Justice McComb was appointed to the Superior Court of Los Angeles County in 1927, and as Presiding

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<sup>1</sup> Mr. Justice Holmes (F. Frankfurter ed. 1931) pages 139-140.

Judge of that court will be remembered for his creative and energetic contributions to judicial reform in his work to improve the efficiency and effectiveness of that court. Justice McComb was appointed Associate Justice of the District Court of Appeal in 1937 and served on that court until his appointment to the Supreme Court by Governor Goodwin Knight in 1956. Governor Knight viewed his appointment of Justice McComb as one of his "proudest accomplishments."

During his years on the California Supreme Court Justice McComb would write 314 majority opinions, 77 concurring opinions, and 339 dissenting opinions. His concurring and dissenting opinions help to sharpen our analysis and our focus of those cases. His majority opinions were clear, lucid and succinct, and often years ahead of their time. If one attempts to analyze his opinions, contradictions seem to appear, for while Justice McComb could be characterized as a law and order judge, he applied his sense of obedience to the law to citizen and governmental official alike.

But more than a judge to whom we might attempt to fix labels, Justice McComb was always a servant of the law. His basic judicial philosophy might well be illustrated in his opinion in *In re Keddy*,<sup>2</sup> where he wrote, "No individual or public official is above, beyond or exempt from the mandates of the Constitutions, state and federal. If judicial officers do not abide by their solemn pledge to protect and defend the Constitution, as well as to observe the limitations prescribed thereby, we must expect from the average citizen only contempt for our most cherished institutions and legal concepts."

Justice McComb's opinions reflect this philosophy and demonstrate his deep concern for constitutional principles of separation of powers, his strong deference to the findings and conclusions of trial judges and his deep commitment to insuring greater protection of the public from crime. These strong convictions, which would cause him to be regarded as a strict constructionist, were tempered by similar concerns with constitutional limitations on governmental access which were reflected in numerous other opinions.

Throughout his life, Justice McComb remained a student of the law. For years he shared his knowledge with students at UCLA, Loyola and Southwestern. He was always interested in the observations of people whose vantage points were different from his. He truly enjoyed all people, but especially the relatively young, uneducated, and unaccomplished. Whether it was as a student, teacher, lawyer, public servant or jurist, Marshall McComb spent his life listening and learning.

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<sup>2</sup> (1951) 105 Cal. App.2d 215, 220 [233 P.2d 159, 162].

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His contributions to the judiciary were acknowledged by two Presidents. In 1973 President Richard M. Nixon wrote, "For more than half a century, Justice McComb has been a bright star in California's constellation of distinguished attorneys. He has graced the bench with an enlightened judgment and stabilizing influence. I well remember his brilliant effectiveness as an appellate court judge when I practiced law in Southern California. Since then he has immeasurably enriched his enduring contribution both to the body of California law and to the strength of American jurisprudence." Following Justice McComb's death, President Ronald Reagan wrote in his final tribute, "Marshall McComb's philosophy and legal opinions will stand for eternity as exemplars of judicial restraint and discipline for which I shall forever respect him."

As significant as these presidential memorials are, Justice McComb is remembered finally by his colleagues and friends as a man who was courteous to everyone, proud, patriotic, and gentlemanly, amiable, agreeable and civil, articulate and positive in his thinking, kind and encouraging, and a man who never said an unkind word about anyone. Never took himself too seriously, and was amusing, good company, and pleasant to be with, quite simply a warm and giving friend. Could there be a finer tribute?

Our profession is a strong and noble one and from it only a select few are chosen to administer our system of justice, and fewer still to sit in final judgment as members of this honorable court. The lawyer's task as advocate pales in light of the awesome role we assign the judiciary, with its responsibility for ensuring that the fragile fabric of our society continues to be held together by the twin threads of the role of law and the continuing quest for justice. It is quite understandable then, as Justice Cardozo would comment, that the task of judging is one to baffle the wisdom of the wisest. Yet, too often we seek Solomonic decisions and correct opinions and lose sight of the greater importance of the legal process and the integrity of our judicial officers, factors which transcend the merits of any case.

Clearly, Justice McComb was a man of devotion, integrity and principle, a man with a total and abiding love for our concept of justice and equality under law. His lifetime commitment represents for all of us the finest example of professionalism and service. We could seek no finer qualities for ourselves, our children, or for the generations of law students, lawyers and judges yet to come.

At Southwestern University School of Law we will ensure that the Marshall McComb Senate of the Delta Theta Phi Legal Fraternity, the Marshall McComb Library and the Marshall McComb Scholarship Fund serve not only as fitting memorials, but also permit those generations to come to appreciate so worthy an exemplar. As Roger Grace wrote, "It is fitting that he be honored



and that a tribute thus be paid him by students who are seeking to join him as servants of the law. For there has been no more faithful servant and no more diligent servant than Justice Marshall McComb."<sup>3</sup>

While all of us are especially saddened by the loss of such a fine friend, a fine man, a fine teacher, and a fine judge, Justice Marshall Francis McComb's contributions to our profession and to society will endure, and I feel especially honored to be given the opportunity to express my appreciation to a man who gave us all so much.

Thank you.

CHIEF JUSTICE BIRD: Thank you, Dean Taylor. I thank all of the speakers here today for their remarks. In accordance with our custom, it is ordered that this memorial be spread in full upon the minutes of the court and published in the Official Reports, and that a copy of these proceedings be sent to his widow, Mrs. Marshall McComb. The court is adjourned.

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<sup>3</sup> Grace, *Justice Marshall F. McComb: A Tribute* (1973) 5 Sw. U.L. Rev. 221.