

REPORTS OF CASES
DETERMINED IN
THE SUPREME COURT
OF THE STATE OF CALIFORNIA

January 2, 1987, to November 2, 1987

ROBERT E. FORMICHI
Reporter of Decisions

VOLUME 43 - 3d

San Francisco
BANCROFT-WHITNEY COMPANY
1988

In Memoriam

HONORABLE PAUL PEEK

Associate Justice of the Court of Appeal, Third Appellate District, 1942-1961;
Presiding Justice of the Court of Appeal, Third Appellate District, 1961-1962;
Associate Justice of the Supreme Court of the State of California, 1962-1966.

The Supreme Court of California met in its courtroom, Library and Courts Building, Sacramento, California, November 3, 1987.

Present: Chief Justice Lucas, presiding, Associate Justices Mosk, Broussard, Panelli, Arguelles and Eagleson, and Keith F. Sparks, Associate Justice of the Court of Appeal, Third Appellate District, sitting under assignment; Gill, Clerk; Williams, Rodgers and Kinney, Bailiffs.

CHIEF JUSTICE LUCAS: As a memorial, we pause now to honor former Associate Justice Paul Peek, whose contributions to this court and the People of California are marked by his opinions and his adherence to those high standards of scholarship and integrity that are indispensable to the functioning of our system of justice in this free society.

On behalf of the court, I welcome Justice Peek's wife, Elizabeth, and his family and friends who are with us today. First, Justice Mosk, who served with Justice Peek, will speak on behalf of the court.

JUSTICE MOSK: Thank you, Mr. Chief Justice, for having this memorial recognition of the late Justice Paul Peek. I appreciate the opportunity to say a few words on behalf of you and members of the court.

Paul Peek served with great distinction as a Justice of the Supreme Court of California from 1962 to December 1966. During that time he wrote his share of significant opinions and participated actively in those written by the other giants of the era: Justices Phil Gibson, Roger Traynor, Raymond Peters and Mathew Tobriner.

Justice Peek came to this court with a wealth of experience. I cannot recall any other individual, at least in modern times, who served California in all three branches of government: legislative, executive and judicial. He began his career as an Assemblyman from Long Beach in the turbulent Depression days. His leadership and effective manner of working with colleagues soon resulted in his becoming Speaker of the Assembly and then being elected Secretary of State. Thereafter his judicial career began with

appointment to the Court of Appeal here in Sacramento and culminated with elevation to the Supreme Court.

In every capacity, he distinguished himself for competence and devotion to the public welfare.

I had the honor of serving with Justice Peek for the two years that our terms on this court overlapped. He was a delight to work with in solving problems, to discuss matters with and even to argue with. And there were tense moments when his pleasing sense of humor came to the fore.

Justice Peek's opinions were always well reasoned, and therefore frequently cited, and they are mercifully brief—a lesson some of us could learn today. His very first opinion for this court was a simple statute of frauds case concerning a real estate broker's commission. In one of his next opinions, *Meyer v. Blackman* (1968) 59 Cal.2d 668, he made it clear that, in general, cases should be decided on the merits rather than on mere technicalities. In another early opinion, he upheld the right of the Public Utilities Commission to impose safety regulations for municipal buses and streetcars to protect the consuming public.

I cannot truthfully state I was always happy with Justice Peek's opinions. After all, as Attorney General, it was my duty to represent the state and to try to have criminal convictions affirmed. Yet, on occasion, Justice Peek would write an opinion reversing a conviction. That was consistent with one of his noteworthy characteristics: the ability to follow the law while retaining an abiding concern for human beings—to be both just and compassionate.

Justice Peek wrote many splendid opinions for the court during his tenure, but none received more attention than his classic opinion in *Mulkey v. Reitman*, decided in May of 1966 (64 Cal.2d 529). By an initiative measure known as Proposition 13, supported by certain property interests, our state Constitution was amended to provide that neither the state nor any subdivision or agency thereof could in any way limit the right of any person to sell, lease or rent his property to anyone he chose, or to decline to do so. That was a none-too-subtle method of perpetuating housing discrimination. The issue arose as to whether this measure violated federal civil rights provisions and the 14th Amendment of the United States Constitution.

Justice Peek upheld that among the rights protected from discriminatory state action was the right to acquire, enjoy, and dispose of property. He declared that the state, which cannot discriminate directly, may not take action to encourage such discrimination by private parties. As he put it,

“We cannot realistically conclude that, because the final act of discrimination is undertaken by a private party motivated only by personal economic or social considerations, we must close our eyes and ears to the events which purport to make the final act legally possible.”

Mulkey v. Reitman became a cause celebre during the civil rights activities of the Sixties, and the case ultimately went to the United States Supreme Court where it was argued by some of the legal giants of that day. Representing real estate interests trying to upset the California decision, were Samuel Pruitt and William French Smith. Defending the California opinion were Joseph Ball and Attorney General Tom Lynch. The then Solicitor General, Thurgood Marshall, entered as amicus curiae in support of the Paul Peek opinion.

The Peek view was upheld on May 29, 1967, in an opinion written by Associate Supreme Court Justice White. He concluded that the initiative “. . . was intended to authorize and does authorize racial discrimination in the housing market . . . The California Supreme Court believes that the section will significantly encourage and involve the state in private discrimination. We have been presented with no persuasive considerations indicating that these judgments should be overturned.” (387 U.S. 369, 381.)

The judgment of Paul Peek was thus completely vindicated. His inherent belief in the equality of all human beings, his distaste for bigotry and discrimination in any form, prevailed.

Paul Peek was not only a distinguished public servant, he was a warm, kind, thoughtful person and a valued friend. He was devoted to his wife, Elizabeth—who is with us today—and to his family. He loved his state and his country, and tried to leave them a little better for his having been here. I am convinced that he did.

CHIEF JUSTICE LUCAS: Thank you Justice Mosk for those excellent remarks. We will now call upon Francis Dillon for additional remarks and he may well be introducing additional speakers.

MR. DILLON: Thank you sir. Chief Justice, Your Honors, I am deeply honored and delighted to have been chosen with Justice Mosk to have the pleasure of introducing to this court the family of Paul Peek: his wife of 56 years, Elizabeth Peek; his daughter Diane Guzman, his son Phillip Peek and his grandson, Jeff Wilcox.

I am also honored to have been called upon to speak briefly to the memory of Paul Peek. Justice Hugh Evans of the Third District Court of Appeal will join me in that capacity.

My first contact with Justice Peek was in 1941 when he was Speaker of the Assembly. I was a clerk with Fred B. Wood, the Legislative Counsel at that time. Mr. Wood's office faced the Assembly chambers. Paul Peek was a large man—tall, dark-haired, sparkling. He was always surrounded by friends. The one thing that stood out at all times was his complete respect and regard, his complete consideration for every person with whom he came in contact. This was true in his capacity as Secretary of State in the executive branch and most particularly in his capacity sitting on the Third District Court of Appeal and on this most honored bench.

He was born in Iowa in 1905. His family moved to Long Beach, California when he was a boy. He was educated in the Long Beach school system. He was a fine athlete and a prime football player. He received a scholarship to the University of Oregon and at that institution met Elizabeth Nash. Elizabeth Nash resided in Pasadena, California. She and Paul fell in love, they were married, and he was admitted to practice law. They raised two fine children.

In 1936, as pointed out by Justice Mosk, he stood for election to the Legislature of this State. In 1939 he was Speaker of the Assembly. In 1942 he became Secretary of State and thereafter was elevated to the Third District Court of Appeal in 1943.

His path crossed with another young man who, in 1946, returned from distinguished service to his country in World War II. That young man entered law school and was admitted to practice in 1953. After his admission he had the privilege of serving as law clerk to Paul Peek. After entering private practice where he was highly successful, he was appointed to the superior court bench in Sacramento and thereafter elevated to the Court of Appeal, Third Appellate District, where he now sits as an Associate Justice.

It is my pleasure to introduce to you that young man, Justice Hugh Evans, who will speak to Paul's memory.

JUSTICE EVANS: Thank you Mr. Dillon. Chief Justice Lucas, members of the court, members of Justice Paul Peek's family: I find as I attend more and more of these meetings in memory of a relative, friend, or a loved one that the more affection and respect in the community, the more there is repetition in the words that are spoken; to the extent that I am going to be repetitious of what Justice Mosk has said, that repetition is out of affection and respect for the man.

On April 7, 1987, the judicial and legal communities of California were deeply saddened to learn of the passing of Justice Paul Peek. I lost a good

friend and a valued mentor. Justice Peek contributed a lifetime of distinguished public service to California. Twenty-four of those years were devoted to the judicial system. His impact on that system, I think, will long survive all of us. I was fortunate enough to have had the privilege of serving as one of his law clerks on the Third District Court of Appeal, following my graduation from law school. During that period of service, I recognized Paul Peek's compassion for people, determination to accomplish goals, and his profound intellect that motivated his professional and personal life. It was during that period of time that I became instilled with the belief, and I quote, "that the law is reason unaffected by desire." Justice Peek's approach to the judicial task was always predicated upon that truth.

Professionally, Justice Peek's career was one of completeness. He began as a successful attorney in Long Beach, California, and with that success, accepted the challenge of politics and was elected to the California Assembly, ultimately rising to the office of Speaker; from there, his talents were utilized in the Executive Branch as the Secretary of the State of California. In December 1942, then Governor Culbert Olson appointed Paul Peek to the position of Associate Justice of the Third District Court of Appeal, commencing a distinguished judicial career that spanned 24 years, ending with his retirement in 1966 from the California Supreme Court.

Throughout his lifetime of work, Paul's warmth and love of family never diminished nor was it neglected. His many friends and family are going to miss him as I will. However, memories of prior experiences will keep kindled the memory of an outstanding jurist, a true servant of the people, and above all, a fine human being and friend. We will miss you but not forget you, Justice Paul Peek.

CHIEF JUSTICE LUCAS: Thank you very much Justice Evans. This concludes the memorial service in honor of Associate Paul Peek. Thank you ladies and gentlemen.

In accordance with our custom, it is ordered that this memorial be published in the Official Reports and that a copy of these proceedings be sent to Mrs. Peek.