

ORAL HISTORY

JUSTICE  
JESSE W. CARTER

CALIFORNIA SUPREME COURT  
(1939-1959)

*Oral History of*  
**JUSTICE JESSE W. CARTER**

**INTRODUCTION**

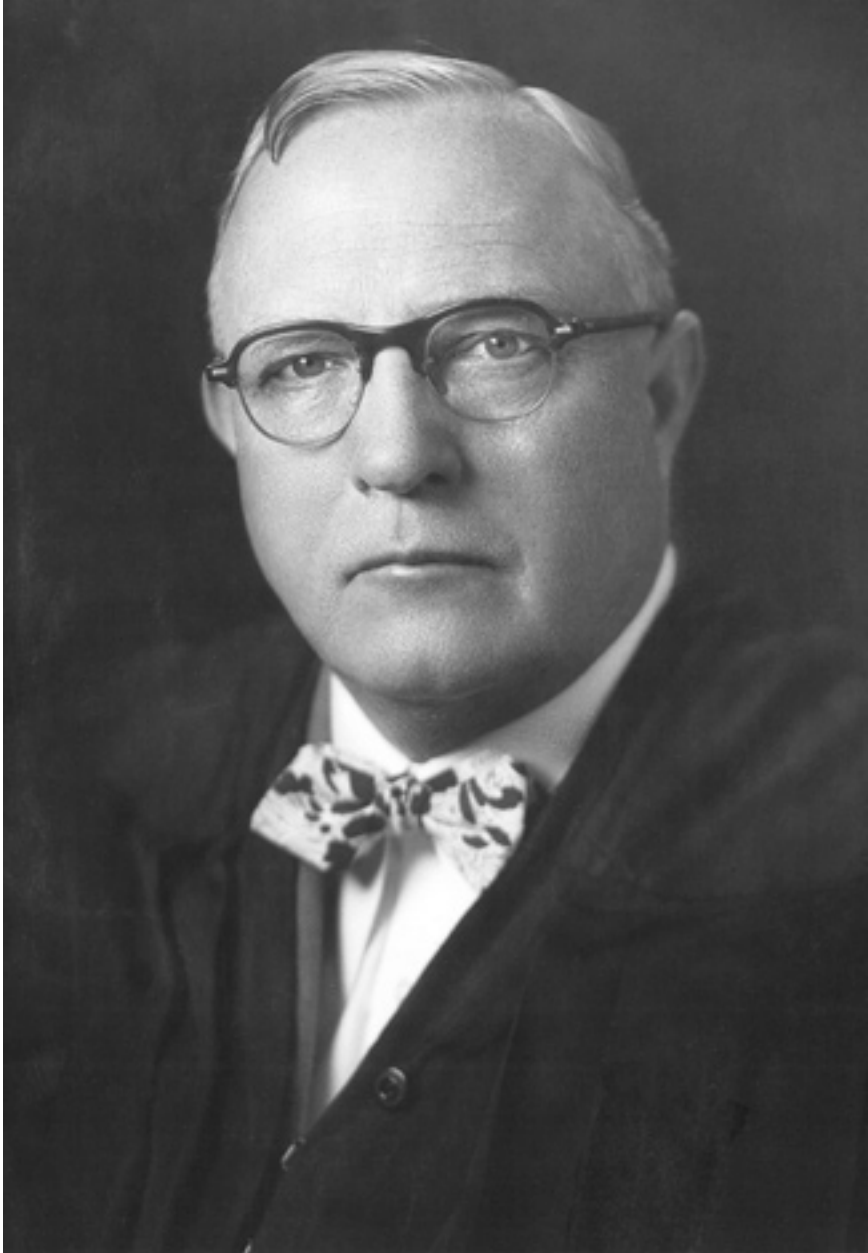
JOSEPH R. GRODIN\*

Jesse Carter came to the California Supreme Court by appointment of Governor Culbert Olson in 1939 — at a critical time in the Court’s history. Up to that point, the Court had been entirely competent, but not yet as recognized nationally as it later came to be. Carter’s appointment was followed in rapid succession by the appointments of Phil Gibson and Roger Traynor, and, in the decades that followed, the California Supreme Court gradually came to be a leader in the development of new approaches in a variety of areas — criminal procedure and consumer protection, among others.

It is Gibson and Traynor, both of whom became chief justice, who typically get the credit for the Court’s preeminence, and certainly their reputations as legal giants are well deserved. Carter played an important role, however, and his role has been largely ignored. In large measure that is because Carter authored few majority opinions of prominence. His contribution lay mainly in his frequent dissents (510 of them, if one counts dissents from denial of hearing), sometimes joined by others but

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JESSE W. CARTER,  
ASSOCIATE JUSTICE OF THE CALIFORNIA  
SUPREME COURT, 1939-1959.

*Courtesy J. Scott Carter.*

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often solo, which asserted positions that in a significant number of cases came to be embraced by the majority of the Court, or (where federal law was implicated) by the U.S. Supreme Court. Carter's dissents were often vitriolic<sup>1</sup> — he was taken to task by no less a personage than Roscoe Pound for his lack of collegiality — and were often characterized by expressions of righteous indignation, but if one focuses upon substance rather than style, his position on the frontier of legal change is readily discernible, and quite remarkable.

His dissent in *People v. Gonzales* is an example. The issue was whether illegally obtained evidence should have been rejected in the defendant's criminal trial. The majority opinion, authored by Traynor and joined by all but Carter, held that it should not. Carter's dissent insisted that, whatever the rule might be under the federal Constitution (and at the time the rule was unclear), "the provision in our state Constitution compels the rule that evidence obtained in contravention thereof shall not be competent or admissible." Permitting such evidence to be used, he argued, is "an invitation and encouragement to law enforcing officials to violate the Constitution."<sup>2</sup>

This opinion deserves recognition as a landmark in the development both of the rationale for an exclusionary rule and of the significance of state constitutions as an independent source of rights. Thirteen years later, in *People v. Cahan*,<sup>3</sup> the Court in an opinion by Justice Traynor came to accept Carter's reasoning as to the need for an exclusionary rule, as well as his argument for grounding that requirement in the state Constitution. Justice Traynor's *Cahan* is widely acclaimed both for its prescience in requiring exclusion of illegally obtained evidence before the U.S. Supreme Court's opinion in *Mapp v. Ohio*,<sup>4</sup> and for its impetus

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<sup>1</sup> In a 1953 case in which the majority rejected a finding by the Industrial Accident Commission that the employer was guilty of "serious and willful misconduct," Carter's dissent characterized the majority's view as "the old story of the people and the legislature being defeated by reactionary court decisions." Carter responded to criticism by saying that a conference of appellate judges "is not a prayer meeting where everyone is expected to nod 'Amen.'"

<sup>2</sup> 20 Cal.2d 165, 174-175 (1942).

<sup>3</sup> 44 Cal.2d 434 (1955).

<sup>4</sup> 367 U.S. 643 (1961).

to the later development of independent state constitutional analysis. Meanwhile, Justice Carter's contribution has gone virtually unnoticed.

Equally ignored have been the cases in which a Carter dissent was subsequently "validated" by the U.S. Supreme Court, either through direct reversal or subsequent disapproval. In *Takahashi v. Fish and Game Commission*,<sup>5</sup> Carter authored a dissent, in which Traynor and Gibson joined, disagreeing with the majority's conclusion, reversed by the U.S. Supreme Court,<sup>6</sup> that it was constitutionally permissible for California to exclude aliens from offshore fishing. In *Rochin v. California*,<sup>7</sup> the U.S. Supreme Court held that the due process clause of the Fourteenth Amendment required a state court to exclude evidence obtained by pumping the defendant's stomach, and reversed a California Court of Appeal decision which allowed the evidence,<sup>8</sup> the California Supreme Court had denied hearing, with only Justice Carter voting to grant. In *San Diego Building Trades Council v. Garmon*,<sup>9</sup> the U.S. Supreme Court held that, under federal preemption principles, a state court had no jurisdiction to grant relief against union activity arguably prohibited or protected by the National Labor Relations Act, and reversed a contrary decision by the California Supreme Court, from which Carter, joined by Traynor, had dissented.<sup>10</sup> In *California v. Taylor*,<sup>11</sup> the U.S. Supreme Court in effect disapproved of a prior California Supreme Court decision holding that the Railway Labor Act had no application to a state-owned railway in *California v. Brotherhood of Railroad Trainmen*.<sup>12</sup> In the prior decision, Carter's had been the only dissent. And in *Konigsberg v. State Bar of California*,<sup>13</sup> the U.S. Supreme Court reversed an order of the Supreme Court of California, from which Carter had dissented, denying Konigsberg's admission to the California Bar based upon alleged communist affiliations.

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<sup>5</sup> 30 Cal.2d 719 (1947).

<sup>6</sup> 334 U.S. 410 (1948).

<sup>7</sup> 342 U.S. 165 (1952).

<sup>8</sup> 101 Cal.2d 140 (1950).

<sup>9</sup> 353 U.S. 26 (1957).

<sup>10</sup> 45 Cal.2d 657 (1955).

<sup>11</sup> 353 U.S. 553 (1957).

<sup>12</sup> 37 Cal.2d 412 (1951).

<sup>13</sup> 353 U.S. 252 (1957).

Carter's dissents in these cases, along with others, reflect a strong-willed commitment to a constellation of values that include self-reliance, individual liberty, procedural fairness, distrust of the state, the importance of juries, protection of the underdog, and collective bargaining. It is a constellation which cannot easily be characterized as "liberal" or "conservative," but against the backdrop of Carter's life experiences, reflected in part in this oral history, the constellation takes shape as the expression of a fiercely independent spirit.

From this oral history we learn of Carter's pioneering forebears; of parents who were small farmers and miners in the California northwest; of Carter's birth, the seventh of eight children, in a log cabin on the Trinity River; and of his early education — at home until the age of eight, because the nearest school was seven miles away, but an avid reader and intellectually curious. We learn how he left home at the age of fourteen, and worked in mines and logging camps in order to earn enough money to go to San Francisco and enroll in Wilmerding School; how he went to work for United Railroads, repairing electric motors in the day and taking night classes at YMCA (later Golden Gate) Law School; how he became politically active in the Progressive Movement, and later in the New Deal, but always, it seems, with reservations stemming from his own independent thought. Carter had a colorful career as a plaintiff's lawyer, a defense lawyer, a district attorney, a city attorney, and a state senator before his appointment directly to the Supreme Court.

Not long before his death in 1959, I remember seeing a newspaper story about Carter's involvement in a dispute with Marin County officials and his neighbors over a dam he had constructed on his ranch. The county insisted the dam was unsafe, and demanded it be removed. There was a picture of Carter, standing outside his ranch house, holding a rifle, and quoted as threatening to shoot "the first S.O.B. who sets foot on my property." But after several engineers testified the dam had been made safe and was no longer a hazard to nearby residents, the dam was allowed to stand. Carter's last dissent ultimately prevailed.

*Oral History of*  
**JUSTICE JESSE W. CARTER**

**EDITOR'S NOTE**

The oral history of Justice Carter was recorded in five interviews in the spring and summer of 1955 during his tenure as a member of the California Supreme Court. The interviews were conducted by Corinne L. Gilb, PhD (1925-2003), founding director of the Regional Cultural History Project (later, Regional Oral History Office — ROHO) at UC Berkeley. In Gilb's introduction to the original transcription, she indicated that Justice Carter was interviewed in his chambers in San Francisco on April 14 and 27, May 19, and June 6 and 27, 1955. Thereafter, Justice Carter supplied a number of exhibits to document subjects he had discussed, which approximately doubled the length of the transcription. The oral history itself is presented here in its entirety, but for reasons of space, only a few of the most notable exhibits have been included.

The oral history has been reedited for publication. Citations have been verified or provided. A few of the section headings added by the interviewer have been modified. Notations in [square brackets] have been provided by the editor. The oral history and exhibits are reprinted by permission of The Bancroft Library at UC Berkeley. The original transcription may be viewed at the Library or online at [http://bancroft.berkeley.edu/ROHO/collections/subjectarea/law/ca\\_supremecourt.html](http://bancroft.berkeley.edu/ROHO/collections/subjectarea/law/ca_supremecourt.html).

The Table of Contents of the oral history also serves as a concise biography of Justice Carter. For a personal remembrance of Justice Carter, see Daniel S. Carlton, "In Memoriam — Jesse W. Carter: He Died As He Lived — Fighting," *Hastings Law Journal* 10:4 (May 1959) 353-359. In the companion article by Leon Green, "He Never Declined to Do Battle for His Convictions," *Ibid.*, 360-369, the author examines the contribution of Justice Carter's opinions and dissents to the field of tort law. Additional biographical information may be found in the following articles: Corinne Lathrop Gilb, "Justice Jesse W. Carter, An American Individualist," *The Pacific Historical Review* 29:2 (May 1960), 145-157; and J. Edward Johnson, "Jesse W. Carter," in *Justices of California, vol. II: 1900-1950* (San Francisco: Bancroft-Whitney Co., 1966), 161-169.

Jesse Carter's advocacy for farmers' water rights, during his earlier legal practice, is the subject of a new article by historian Douglas R. Littlefield for this issue of *California Legal History*, to be found immediately following the oral history.

A significant collection of Justice Carter's papers is available in the Law Library of Golden Gate University in San Francisco. Information about the collection is available at <http://www.ggu.edu/lawlibrary/jesseccarter>.

Photographs credited to "J. Scott Carter" are courtesy of Jesse Scott Carter, son of Harlan Carter, and grandson of Justice Jesse W. Carter. He is a retired instructor of history at Shasta College and former mayor of Redding, California.

Photographs credited to "Scott H. Carter" are courtesy of Scott Henry Carter, Esq., of Napa, California, from the collection of his father, John H. Carter, son of Henry Carter (brother to Jesse W. Carter).

—SELMA MOIDEL SMITH



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## THE CARTER FAMILY

CARTER: My father, Asa Manning Carter, was born at Bowling Green, Kentucky, in 1846. His father was born in Virginia and had moved to Kentucky where he was engaged in farming. My father was born on his father's farm there. The family was divided on the slavery question, and at the age of seventeen my father ran away from home and enlisted in the Union Army in Iowa in 1863. He fought in several battles of the Civil War, including Antietam and Vicksburg and some of the lesser battles. I think he referred to Twin Oaks. At the time the war ended, his enlistment had not expired so he was assigned to a regiment which was sent west to suppress the Indians through the Rockies and in northern California and southern Oregon.

GILB: Was he a private all this time?

CARTER: He was a private. I don't think he attained any rank, either commissioned or noncommissioned. He was in the cavalry and he told me, when I was a boy, about some of his experiences coming through the Rocky Mountains, killing buffalo and elk. He finally arrived in southern Oregon and came down into Siskiyou County and was mustered out at Fort Jones in Siskiyou County in 1865. He was allowed a day's pay and a day's ration to return to his place of enlistment, in southern Iowa. He returned there by horseback, overland.

He then organized a caravan consisting of about twenty wagons, oxen and horses and piloted that caravan to California in 1866. He went into the mountains of Trinity and Siskiyou counties and engaged in mining.

He met my mother at Carrville in Trinity County in 1872. She was born in San Francisco in 1852. Her father came from Maine, around the Horn, and arrived in San Francisco by boat about 1849. Her mother came from Ireland and arrived in San Francisco about the same time. They were married in San Francisco in 1850 and my mother was born here in 1852. About two years later they emigrated to Siskiyou County and my mother lived near Callahan in Siskiyou County where she attended the public schools. She was visiting at Carrville in Trinity County when she met my father in 1872.

GILB: Was your father looking for gold up there?