

# PERSONAL REMINISCENCES OF THREE STATE BAR LEADERS

## EDITOR'S NOTE

In 1989 the former State Bar Committee on the History of Law in California recorded the reminiscences of twenty-three past presidents of the State Bar, spanning the years 1937 to 1988. They appeared in a limited-circulation booklet titled, *The Story of the State Bar of California*, prepared under the chairmanship of John K. Hanft. Three of these have been selected for presentation here. They appear with the permission of the State Bar of California and have received light copyediting for publication. The first discusses a special occasion in State Bar history, the second highlights the founding of the California Appellate Project, and the third offers a first-hand account of the Bar's origins and early years.

— SELMA MOIDEL SMITH

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### WILLIAM P. GRAY<sup>1</sup>

#### *President of the State Bar, 1962–1963*

The highlight of 1963 was the annual meeting in San Francisco when we had the members of the Supreme Court of the United States in attendance as our guests.

As we began to plan for the meeting, in the spring of 1963, we became aware that the meeting would occur at just about the tenth anniversary of Earl Warren's becoming chief justice of the United States. With the approval of the board, I wrote to the chief justice and invited him and Mrs. Warren to come to the annual meeting and join with us in celebrating this anniversary. We were delighted to receive his prompt acceptance, and we set about to plan the program.

In the previous summer, the American Bar Association had its annual convention in San Francisco. At one of the general sessions, the president of the ABA, John Satterfield of Mississippi, had two members of the Supreme Court on the stage and took that occasion to excoriate the Supreme Court for some of its recent decisions in the field of civil rights and desegregation.

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<sup>1</sup> Born, Los Angeles, 1912; B.A., UCLA, 1934; LL.B., Harvard; President, Los Angeles County Bar Association, 1956; U.S. District Judge 1966–1991; died, Los Angeles 1992.

All of us felt that this was an insulting performance and we determined that the theme of our convention would be to do honor to the Supreme Court of the United States and the Supreme Court of California and to the other members of the federal and state judiciary. We visualized this as an opportunity to give a response by the members of the State Bar to the “impeach Earl Warren” campaign that was then at its height through the efforts of the John Birch Society.

The Board of Governors concluded that the lawyers of California would be delighted to contribute the money that would make it possible for us to invite all of the members of the Supreme Court, with their wives, to come to San Francisco, enjoy the facilities of the Fairmont Hotel during the week of the convention, and participate in all of the activities of the convention as the guests of the members of the bar. Arthur Connolly, one of our third-year members from San Francisco, was designated chairman of the Arrangements Committee for the convention, and he and I were sent by the board to Washington to meet with the chief justice, describe our plans to him, obtain his approval, and ascertain his own desires with respect to the meeting. On March 26, 1963, Art and I found ourselves in the Supreme Court Building. In the morning, we went through the memorable ceremony of being sworn in as members of the bar of the Supreme Court, and in the early afternoon we had our meeting with the chief justice. He readily agreed to the program that we presented, which included his making a major address at a general session. He embraced our plan to invite his colleagues to attend, and he also agreed to share honors with Chief Justice Gibson and the members of the California Supreme Court. That afternoon, Art and I went to the nearby Senate Office Building where we met with Senators [Thomas] Kuchel and [Clair] Engel and invited them to participate in the anticipated celebration. They readily agreed to come.

Upon my return to Los Angeles, I set about to prepare letters to the associate justices of the Supreme Court which would tell them of our plan and invite their participation. I worked rather hard on the letter, going into some detail as to what would occur on each of the days, in order that the justices would know what to expect and be attracted accordingly. Inasmuch as I had been acquainted previously with Justice Brennan, I directed the first letter to him and then simply told my secretary to prepare similar letters to each of the other justices. The letters were prepared and signed

and mailed. The next day, I looked over the office copies and almost fell out of my chair. One of the letters was addressed to Honorable John M. Harlan, Supreme Court of the United States. And then in about the second paragraph it read, "and we of the State Bar of California would very much like to have you and Mrs. Brennan come to San Francisco and spend a week at the Fairmont Hotel."!! I telephoned Justice Harlan's chambers and asked his secretary if she had heard from me in the morning's mail. I told her that she would receive a letter shortly and advised her as to what it contained. She laughed and asked if I wanted her to destroy it. I said, "No, tell the justice that we would like to have him bring his own wife and that Mrs. Brennan would otherwise be taken care of."

When the time for the annual meeting came, all of the justices and their wives came to San Francisco, with the exception of Justice Harlan, who expressed his sincere regrets but was obliged to attend a meeting of the Judicial Conference of the Second Circuit. A member of the Board of Governors had previously been assigned as individual host to each of the justices, and specially picked members of the San Francisco bar were given similar assignments as local hosts. Rule number one that we imposed upon the justices was that they were to do whatever they wanted to do and were not to do anything that they would prefer not to do. With that qualification they were invited to, and did, sit in on the meetings of the Conference of Delegates, were present throughout the general session of the bar on Wednesday [September 24], attended the various law school luncheons, went shopping, played golf and tennis, attended Kelly's (Justices Brennan and Stewart proved to be very good assistant bartenders), and had a good time in general.

On Thursday evening there was a general session to which the public was invited. It began with several musical renditions by the Men's Glee Club of the University of California at Berkeley. As they left the stage, they disclosed, seated behind them, Chief Justice Warren, seven of his active colleagues (and retired Justices Reed and Whitaker), Chief Justice Gibson and each of his six colleagues of the California Supreme Court, and the five officers of the State Bar. Each of the justices was introduced, along with his wife who was sitting in the audience with the local host. Welcoming remarks were made by Governor Pat Brown and formal speeches were presented by Chief Justices Warren and Gibson.

At the end of the meeting, my wife and I walked back to the Fairmont Hotel with Chief Justice and Mrs. Warren. As we emerged from the auditorium, members of the John Birch Society were marching up and down the sidewalk carrying “impeach Earl Warren” signs. The chief justice approached one of the women and said, “Why do you want to impeach me; what do you have against me?” The woman got a rather puzzled look on her face and finally responded, “Well, if you don’t know, I’m not going to tell you!”

On Thursday evening there was a black-tie dinner attended by the justices and their wives, Governor and Mrs. Brown, and the members of the Board of Governors and the local hosts and their respective wives. This was followed by a formal reception in the ballroom of the Fairmont Hotel, where each of the justices and his wife were presented at an individual receiving line, which was followed by dancing. On Friday evening the justices and wives were taken by their hosts to a performance by the San Francisco Opera in which Leontyne Price sang the leading role.

We believe that the entire affair was worthwhile because it caused the justices to realize that the members of the State Bar of California had great respect for the institution of the Supreme Court and had regard for the individual members as warm human beings.

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## ANTHONY MURRAY<sup>2</sup>

### *President of the State Bar, 1982–1983*

#### PRESIDENTIAL OUTREACH

Throughout the year, I made approximately one hundred speeches up and down California on a variety of subjects, principally judicial independence and legal services for the poor. I spoke to as many local bar associations as I could reach. Many speeches were made to small county bar associations where a State Bar president had never spoken. In addition to bar associations, I spoke in numerous public forums such as Town Hall in

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<sup>2</sup> Partner, Loeb & Loeb LLP; President, California Appellate Project (1983 to present); Fellow, American College of Trial Lawyers; Life Fellow, American Bar Foundation.

Los Angeles, the World Affairs Council in Los Angeles, and service groups such as Rotary clubs. Coupled with speaking engagements were dozens of press conferences and radio and television appearances to maximize the effectiveness of the outreach program.

## CALIFORNIA APPELLATE PROJECT

In 1983, the governor [George Deukmejian], over opposition of the State Bar, the Supreme Court and most Courts of Appeal in California, reduced by 50 percent the budget of the State Public Defender. The reduction threatened to create a crisis in the representation of indigents in capital appeals before the Supreme Court. The Supreme Court asked the State Bar for help. The president's committee, consisting of the members of the third-year class on the board, convened and discussed a solution.

The result was formation of the California Appellate Project (CAP), a nonprofit corporation designed to recruit and train competent lawyers to handle capital appeals. CAP has been an outstanding success. It has been heralded in California and other states as an innovative and effective model that can be emulated across the nation. In 1984, CAP received the Harrison Tweed Award from the National Legal Aid and Defender Association and the Standing Committee on Legal Aid and Indigent Defendants of the American Bar Association. The award recognized and commended CAP for its public service in providing competent legal representation to indigent persons accused of capital crimes.

Today [1988], CAP operates an eight-lawyer office in San Francisco and an eight-lawyer office in Los Angeles that will soon expand to thirteen or fourteen lawyers. The lawyers in both offices recruit and assist lawyers from the private bar in representing indigents. The work of the San Francisco office is limited to handling cases before the Supreme Court. The Los Angeles office works with cases in the Second District Court of Appeal; in 1988, it will handle approximately 75 percent of the Second District appeals, some 1300–1400 cases.

I am the president of CAP. The other members of the board of directors are the other four members of my class on the Board of Governors and Herbert Rosenthal, executive director of the State Bar.

## PRIVATE CLUBS

In May of 1983, the board adopted a resolution to sponsor federal legislation prohibiting discrimination based on race, religion, color or national origin in private clubs which derive substantial income from business sources. The board's position has since been vindicated by decisions of the United States Supreme Court.

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## GILFORD G. ROWLAND<sup>3</sup>

*President of the State Bar, 1937–1938*

### ADMISSION TO THE BAR

Prior to 1927, the qualifications for admission were minimal. Anyone who was a citizen of the United States, a resident of California, twenty-one years of age, of good moral character, and had studied law for at least three years in the manner and subjects prescribed by the Supreme Court could be admitted. Until 1919, the examination was oral by the justices of a district court of appeal. Attorneys who were admitted under that system have told me that the examination by the justices was brief and quite inadequate to ascertain the legal ability of the applicant. One attorney who had been examined by the justices of the third district court of appeal told me that there were twelve or fifteen in the group, lined up before the justices. He was fourth or fifth in the line. Justice Hart asked the applicant next to him "What is a negative pregnant?" The applicant did not know and the question was repeated down the line and back to my friend who was able to answer the question because he had accidentally stumbled upon it when he had opened his Blackstone the night before. This was the only question asked of him. In 1919, the Legislature authorized the Supreme Court to appoint a board of bar examiners consisting of three attorneys who were directed to conduct the examination, which could be wholly or in part

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<sup>3</sup> Born, Sheraton, Iowa, 1899; A.B. Stanford 1923; J.D. Stanford Law School, 1925; admitted August, 1925; private practice (retired 1985); dean, McGeorge College of Law (1933–1937); died, Sacramento, 1989.

written. By 1925 when I took the examination, there was a brief oral interview followed by two days of written examination.

## CREATION OF AN INTEGRATED BAR

Prior to the State Bar, about the only time that an attorney was ever disbarred or suspended followed a conviction of a crime. By statute, an attorney could be removed or suspended after conviction of a crime involving moral turpitude, for willfully disobeying an order of court involving his duties as an attorney or willfully and without authority appearing as an attorney for a party or lending his name to be used as an attorney by a person not admitted, and for the commission of any act involving moral turpitude, dishonesty or corruption. The procedure for enforcement of these rules required a verified accusation held by a trial in and conviction by a court.

The inadequacy of existing laws and procedures to enable the bar to meet the problems facing the profession led the leaders of the legal profession in California to rally behind the movement for the establishment of an integrated bar, and the State Bar Act was enacted in 1927. The tasks facing the first Boards of Governors were monumental but they wasted no time. The Committee of Bar Examiners was appointed and directed to conduct the bar examinations. Rules of professional conduct were adopted and for the first time violation of these rules could lead to discipline. Local administrative committees were appointed and the procedure for discipline was publicized. And last but not least in importance, the sections and committees of the State Bar to study and promote the science of jurisprudence and the improvement of administration of justice were appointed and directed to proceed.

## DISCIPLINE

The inadequacies of the old system were demonstrated quickly after the local administrative committees were ready to receive complaints. The dedication of the bar to the weeding out of the unfit in its ranks was amply demonstrated by the many volunteers who spent untold hours in performing the unwelcome task of hearing and investigating these complaints.

Joseph J. Webb, the first president of the State Bar, declaring that a license to practice law is intended to be and should be a guarantee that

the lawyer is qualified as to learning — but of more importance — that he is an honest man, urged the disciplinary committees to weed out the dishonest practitioners. I was told by members of the earlier boards that often the calendar of disciplinary matters consumed almost all of the time of the monthly meetings. A large proportion of the complaints were without merit and were dismissed. The records will show that as many as forty-five to fifty disciplinary recommendations would be on a single board meeting calendar. By the time I went on the board the backlog had been reduced and the board had more time to consider other pressing matters.

## UNAUTHORIZED PRACTICE

In the late 1920s, the unlawful practice of law was rampant. Banks and trust companies advertised that they would prepare wills and trust instruments, would probate estates and administer trusts. Title companies and real estate companies advertised that they would prepare deeds, mortgages, deeds of trust, contracts of sale, and all other title documents. Adjusters licensed by the state to represent insurance companies in the settlement of fire and other casualty matters claimed that their license entitled them to solicit and represent personal injury and property damage claimants. Actions were filed to enjoin the unlawful practice of law, but it was soon found that the required litigation would be beyond the resources of the State Bar. Separate committees were appointed to enter into negotiations with banks and trust companies, with title companies, with the adjusters' organizations, and with other groups engaged in the unlawful practice of law. They tried to agree upon the legitimate activities of the banks, trust companies, title companies, and others, and reduce the unlawful practice of law. Before my term as president began, agreements were reached with these various groups and the unlawful practice of law was substantially eliminated.

## ATTEMPT TO ABOLISH THE INTEGRATED BAR

During the first decade, there were numerous attempts to curtail the functions of the State Bar or to destroy it. Assemblyman William Hornblower of San Francisco gutted any increase in the educational qualifications for admission to the bar by securing the passage of a bill which prohibited the

Supreme Court or the State Bar from imposing any educational qualifications. James Brennan, an assemblyman from San Francisco, was elected to the Board of Governors and worked on the board and in the Legislature to repeal the State Bar Act. He and Assemblyman Hornblower were able to induce the Assembly to create a committee to conduct a plebiscite of the attorneys on the question, "Do you favor repeal of the State Bar Act?" The plebiscite was conducted in April, 1935, and resulted in the overwhelming approval of the State Bar by the attorneys. There were 1,899 yes votes and 5,457 no votes.

The State Bar was enthusiastically supported by a vast majority of the attorneys. The Legislature sought its advice and help with legislation involving procedural matters, court reform and matters involving the administration of justice. Alfred L. Bartlett, the tenth president of the State Bar, was able to report in his last message that the State Bar and the act which formed it had weathered every kind of storm. All phases of the act had been subjected to the scrutiny of the courts. The State Bar itself has been the subject of legislative investigation. Two years ago [1986], a committee of the Legislature took a plebiscite of all lawyers of the state to determine their attitude, and the vote overwhelmingly endorsed the State Bar.

## BAR EXAMINATION

In 1933, the son of one of the justices of the Supreme Court flunked the bar examination and this triggered a full scale investigation of the bar examination procedures and content by the Supreme Court. I am happy to report that the Committee of Bar Examiners came through this investigation with flying colors. I wish that I could adequately express my admiration for the giants of the legal profession who preceded me and for the diligence and intelligence which they devoted to the solution of the problems which confronted them.

## CONFERENCE OF DELEGATES

The first meeting of the. Conference of Delegates was in 1934. It gained popularity as attorneys and local associations recognized that it provided the means by which they could secure consideration of their ideas and

programs. When it created the conference, the board feared that as time went on, the conference would seek to make its action on resolutions binding on the board. During its brief existence, these fears had begun to be realized and the board, during my regime, felt compelled to remind the conference officers that the board considered resolutions adopted by the conference in the nature of recommendations only.

## LAWYER EDUCATION

The Committee for Cooperation Between Law Schools and the State Bar presented to the 1937 convention at Del Monte a proposal that the State Bar assume the responsibility for referring the newly-admitted lawyers to a system of postgraduate instruction. For a number of years, the Stanford Law Society had sponsored such a program for the newly-admitted Stanford graduates. The board enthusiastically approved and authorized me to appoint a committee to work out a plan. I appointed a committee composed of representatives from the law schools and attorneys who had experience in the bar examination procedures and in legal education. This committee worked out the plan which was the forerunner of the present Continuing Education of the Bar program.

## JUDICIAL APPOINTMENTS

The election of supreme and appellate court justices became history when our present system of appointment and confirmation was adopted. The board, during my tenure and for some time afterwards, advocated the adoption of the so-called Missouri Plan, under which a committee composed of lawyers, judges, and laymen would select three qualified attorneys for each vacancy and the governor would be required to appoint one of these three candidates.

## PUBLIC RELATIONS

In an address to the Long Beach Bar Association in the fall of 1934, President Norman Bailey pointed out that public relations was a job of every lawyer. His concluding remarks were:

Let us be our own publicity agents for a while. We must sell the bar to ourselves before we can sell it to anyone else. We must live our ideals twenty-four hours a day, 365 days in the year. We must, one and all, become active parts in the civic life of our several communities. We must preach the State Bar of California and its work throughout the length and breadth of this state. When we live and do these things, we need have no worry about public relations, but until we do that, all the publicity agents in the world will do us no good.

Those who favored a State Bar public relations program continued their efforts, and resolutions demanding action by the board were adopted by the annual conventions.

President Alfred Bartlett, my immediate predecessor, appointed a committee on public relations and it recommended that the State Bar create a department of public relations. The advocates of State Bar action on this subject never presented a concrete proposal. Some wanted group advertising, some wanted radio programs explaining the role of attorneys in the administration of justice, and others wanted to promote favorable publicity in the news programs of newspapers and the radio. The board authorized me to appoint a committee to make recommendations on the subject.

Ewell D. Moore of Los Angeles was appointed chairman. The members of the committee were appointed from the principal geographical locations of the state. While this committee was deliberating, the board created a department of public relations, with the secretary of the State Bar as its administrative head. At that time, our dues were \$5 per year and our budget was about \$130,000 annually. These funds were barely enough to pay for our mandated activities. Nothing could be spared for new programs. The Moore Committee presented a resolution to the 1938 annual meeting requesting that dues be increased from \$5 to \$10 per year and \$2.50 of that be earmarked to finance a public relations department. The resolution was not adopted and the next year the board changed the name of the public relations department to the Committee on Bar Activities but, without a budget, it withered.

## LEGISLATION

In those days, the Committee on Administration of Justice determined what matters would be put on the legislative program of the State Bar, and

that committee was instructed that legislation should be confined to procedural matters and that substantive legislation, particularly that involving social or political issues, should be avoided.

By the time I was elected to the Board of Governors, the State Bar had gained the respect and confidence of the legislators, and its program was generally successful. The Legislature did not meet during my term as president. We spent a great deal of time on the consideration of the measures which would be a part of the State Bar's legislative program at the 1939 session. We were very careful to avoid involving the State Bar in political and social issues and so long as it followed that policy, it was respected and its opinion was given due consideration. However, when it became involved in such social and political issues, as evidenced by advocacy of no-fault insurance, legalization of prostitution, legalization of marijuana, and sanctions against South Africa, the bar lost respect and invited attacks by those who held opposing views.

In my opinion, the difficulties which the State Bar has encountered in the Legislature in the 1980s are almost entirely due to the fact that it has not confined its legislative program to procedural matters. Having said that, I must say that I have no regard for the attorneys in the Legislature who have attempted to change State Bar policy by holding it hostage on its dues bill.

## LOCAL BAR ACTIVITIES

During my tenure, I visited all of the local bar associations in my district and urged bar members to attend the annual meetings and become interested in State Bar affairs. During my term as president, I notified all of the local bar associations that my successor on the Board of Governors would be elected at the election in 1937 and urged them to canvass their membership to ascertain whether there was anyone interested in becoming a candidate. Sacramento has the largest lawyer population of any community in our district and there is a tendency for attorneys in the smaller communities to feel that they would have no chance against a candidate from Sacramento. Unfortunately, we have had very few governors from other cities in this district and I feel that that has lessened the interest in the State Bar in the outlying communities. It is unfortunate that there have not been more governors from such communities as Stockton, Vallejo, Napa, Santa Rosa, and Woodland.

I feel that each governor should canvass the sentiment in all communities of his district and try to get more widespread interest in State Bar affairs.

In the early days, each *State Bar Journal* reported local bar association activities. I believe it would be helpful if the *California Lawyer* would devote the required space to report local bar association activities.

## SACRAMENTO BAR ASSOCIATION

It has been suggested that I might tell about the history of my involvement with the State Bar and how I happened to become president. I will do so, not because it will reflect credit upon me, but because I believe it reveals a weakness in the method of selection of members of the Board of Governors. I have given considerable thought to possible changes but have been unable to come up with any that I thought would be satisfactory.

When I started to practice in Sacramento in 1925, the Sacramento County Bar Association was an organization in name only. The annual meeting was held in a justice's courtroom in the basement of the courthouse, and the old officers would suggest a slate of new officers and they would be elected. Nothing would happen until the next annual meeting when the process would be repeated. Shortly after I began to practice, the president refused to call a meeting to elect his successor. A small group of the younger practitioners thought they might breathe some life in the Sacramento County Bar Association and formed an organization called the Sacramento Inns of Court. This group was finally able to unearth a copy of the constitution and bylaws of the Sacramento County Bar Association and was able to call a special meeting and oust the old president. No one could understand why the old president wanted to continue. In Sacramento County, the president of the bar association is chairman of the county library committee, and when this president passed away, it was discovered that his library was made up mostly of county library publications.

## ELECTION TO THE BOARD

Arch Bailey, from Woodland, was the member of the Board of Governors from our district. He announced that he would not seek another term as he would run for judge of the Superior Court of Yolo County. The younger

attorneys in the Inns of Court thought that an attorney from Sacramento should succeed Mr. Bailey. Several of us were appointed to a committee to inquire of the older and more prominent attorneys in Sacramento whether they would be interested in running for election to the office and we made inquiries through friends in Stockton, Vallejo, Santa Rosa, and other communities, and found that no one appeared to be interested.

At a meeting of the board of directors of the Inns of Court, we reported that we had been unable to find any of the older attorneys who were interested. Finally, one of the other attorneys on the committee said, "Gil, why don't you run?" After discussing the situation with my wife and determining that we could scrimp by financially, I agreed to make the effort. I was elected to the board in the fall of 1934. At the time of my tenure on the board, rivalry between San Francisco and Los Angeles was deep-seated and the board had adopted a policy that the presidency would be alternated between the north and south. And when the election in 1937 approached, it was the north's term to have the presidency. Most all of us on the board wanted Webster Clark of San Francisco to run for president but he positively refused. Other than Webster, it developed that I was the only northern member, and I was elected president at the board meeting at Del Monte in 1937. This was the greatest honor that was ever bestowed upon me during my sixty-odd years of practice.

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