



CALIFORNIA SUPREME COURT

Historical Society

NEWSLETTER • FALL/WINTER 2017



LAW  WALK: THE DOWNTOWN LA LEGAL HISTORY WALKING TOUR

A Legal Site-Seeing Tour of Downtown Los Angeles

BY BOB WOLFE*

THE ETYMOLOGY IS DISPUTED, but it can't be a coincidence that we refer to the floors of a building as *stories*. For that is what buildings are all about: a construction of stories — of the lives of people who lived or worked or shopped or visited there.

Downtown Los Angeles is as much a construction of legal stories as any set of casebooks you will find in a law library. Nearly every old building that still stands in the historic district has myriad legal stories to tell — about how we lived, the struggles we fought, the prejudices and biases we overcame, and those to which we succumbed.

A sort of greatest hits of U.S. legal history exists within the confines of just 12 square downtown blocks, places that gave rise to landmark decisions about interracial marriage (*Perez v. Sharp*, 1948), gay rights (*ONE, Inc. v. Olesen*, 1958), school desegregation (*Mendez v. Westminster School Dist.*, 1946), defendants' rights (*Griffin v.*

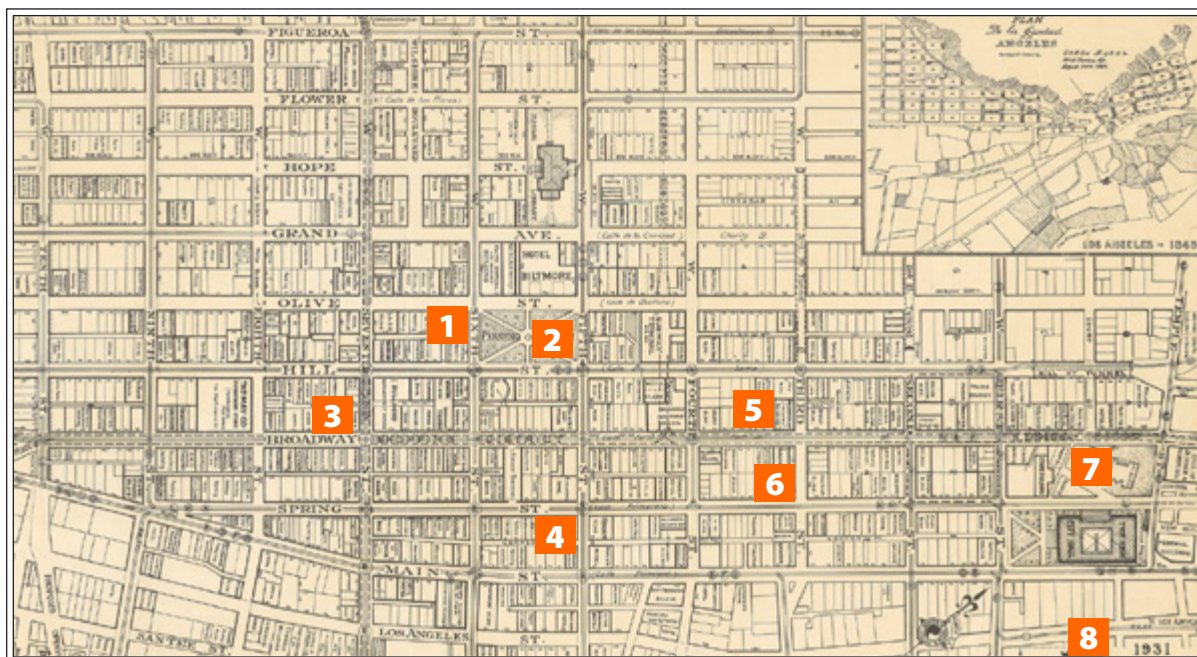
Calif., 1965), and seminal historical events that spilled over into courtroom battles — Teapot Dome, the execution of Julius and Ethel Rosenberg, the Chinese Massacre of 1871, and the St. Francis Dam collapse, the greatest American civil engineering failure in American history.

And since Hollywood and the myths surrounding moviemaking were birthed in downtown L.A., the central city also acquired a bit of tinsel, of glam and noir, of dark secrets, crime and corruption. Downtown was home to scoundrels like district attorneys Asa Keyes and Buron Fitts, and appellate Justice Gavin Craig, as well as transcendent legal heroes like Clara Shortridge Foltz, Y.C. Hong, John Aiso, Clifford Clinton, Mabel Walker Willebrandt, H. Claude Hudson, Biddy Mason, Sei Fujii and Octavio Gomez.

"We shape our buildings, thereafter they shape us," observed Winston Churchill in discussing the reconstruction of the war-damaged chambers of the House of Commons. The same holds true about the more prosaic structures on Broadway and Spring Street in downtown L.A.

In the next few issues of this newsletter, we'll act like urban archaeologists to unearth some of the legal story lines that emerge from the architecture of downtown L.A. We invite you to join in the dig. ★

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MAP: HEART OF LOS ANGELES, 1931. JAMES H. PAYNE, LOS ANGELES PUBLIC LIBRARY.

1 City National Bank Building/ Los Angeles Immigration Court



606 SO. OLIVE STREET
(DAN PALMER, 1968)

BEHIND THE L.A. 8-BALL, A 20-YEAR ODYSSEY

More than 70,000 square feet in the 24-story mid-century modern City National Bank building (TALL BUILDING ON LEFT, ABOVE) are leased to the U.S. Department of Justice to operate the Los Angeles Immigration Court, the busiest immigration court in the U.S. The court's 33 immigration judges handle an average of 1,700 outstanding cases per judge. With a backlog of some 45,000 cases, it's estimated it would take nearly 5 years to clear the court's docket.



The most celebrated case¹ to come out of the Los Angeles Immigration Court involves the so-called "L.A. Eight," 7 men and 1 woman (LEFT), who were arrested on Jan. 26, 1987, all pro-Palestinian activists, under the 1952 McCarran-Walter Act, which allowed for the deportation of non-citizen communists. It took 20 years for the case to make its way through the immigration system, four times ending up in the U.S. Court of Appeals for the Ninth Circuit (which declared the McCarran-Walter Act to be unconstitutional) and once in the U.S. Supreme Court.

U.S. Judge Ends 20-Year Case To Deport 2 Tied to Terrorists

The government never presented a case that any of the group had engaged in terrorist activities or committed a crime. The case, whittled down to two potential deportees, ultimately was thrown out of court in 2007, with Immigration Judge Bruce Einhorn calling the government's behavior "an embarrassment to the rule of law." "End to a Shabby Prosecution," headlined a *New York Times* editorial. "Better late than never, but we fear that there is little hope that the [government] will learn any lesson from this shockingly mishandled prosecution."

1. *Reno v. Arab-American Anti-Discrimination Comm.* (1999) 525 U.S. 471.

2 Pershing Square



532 SO. OLIVE STREET
(1866, REDESIGNED RICARDO LEGORETTA, 1994)

IRWIN EDELMAN: A SOAPBOX ORATOR BRIEFLY STOPS AN EXECUTION

Irwin Edelman moved to Los Angeles in 1948, where he tried to make a living by selling political pamphlets and giving speeches as a soapbox orator in Pershing Square, L.A.'s equivalent of London's Hyde Park. In December 1949, he was convicted and sentenced to 90 days in jail on a charge of vagrancy. At his trial, witnesses testified that he insulted the Pope and advocated violent revolution. The U.S. Supreme Court denied his certiorari petition by a 7-2 vote.

In the early 1950s, Edelman became obsessed with the case of Julius and Ethel Rosenberg² (RIGHT), who were convicted and sentenced to death for giving U.S. atomic secrets to the Russians. Edelman developed his own legal theories about why the death sentences should be overturned, but the Rosenbergs' lawyers thought he was a crackpot.



In June 1953, on the eve of the Rosenbergs' scheduled execution, a Tennessee lawyer, Fyke Farmer, read one of Edelman's pamphlets, and filed a brief on the Rosenbergs' behalf in the U.S. Supreme Court as a "next friend." Because the court was on summer recess, only Justice William O. Douglas remained in Washington, D.C. He granted the application for a stay.

Justice Douglas' actions triggered one of the most dramatic episodes in Supreme Court history. On Friday, June 19, 1953, a mob of 300 people chased Edelman (RIGHT) across Pershing Square, and into the Biltmore Hotel, where he ran for safety. That same day the Supreme Court, meeting in emergency session, lifted the stay and the Rosenbergs were executed before sunset.



2. *Rosenberg v. U.S.* (1953) 346 U.S. 273.

3 Loew's State Theatre



703 SO. BROADWAY (WEEKS & DAY, 1920)

PHIL GIBSON: A MAN OF SURPASSING CHARACTER



Phil Gibson Named State Court Justice

Phil Gibson (LEFT) practiced law in Suite 1204 of the Loew's State Theatre Building. In addition to his legal practice, Gibson also taught law at nearby Southwestern Law School; Stanley Mosk was one of his students while preparing for the California bar examination.

Gibson served as Chief Justice for 24 years, from 1940–1964, and is credited with widespread administrative reforms in the California judicial system. He was one of the few public officials to oppose the detention of Japanese Americans dur-

ing WWII. Among his landmark judicial decisions was *James v. Marinship* (1944) 25 Cal.2d 721, ruling that unions could not exclude blacks from closed shop workplaces.

**COURT BIDS UNION
TAKE IN NEGROES**

California High Tribunal Rules
Boilermakers Must End Its
Curbs in Closed Shop

4 Security Building



510 SO. SPRING STREET (PARKINSON & BERGSTROM, 1905)

A TEMPEST IN A TEAPOT

The Security Savings Bank first opened in L.A. in 1889 and moved into its new headquarters building in 1905.

Oil tycoon (RIGHT) Edward Doheny's Pan American Petroleum Co. had its offices on the 9th & 10th floors of the building.

In 1921, Doheny's son Ned withdrew \$100,000 in cash from Doheny's personal bank account, and delivered it to President Harding's interior secretary, Albert Fall. Ned was aided in delivering the cash by Hugh Plunkett, a close family friend and employee of Ned Doheny.



Shortly thereafter, Fall awarded Pan American lucrative leases to tap the naval oil reserves in Elk Hills, California.

In 1924, the U.S. filed suit in federal district court in L.A. to void the Elk Hills leases as obtained through bribery. Doheny contended the \$100,000 was not a bribe, but an unsecured loan. The Ninth Circuit³ affirmed the district court order canceling the leases. Doheny, his son Ned, and Fall were criminally indicted for bribery and conspiracy.

In February 1929, Ned Doheny and Hugh Plunkett were found dead in Ned's palatial family manse. Both men had been scheduled to testify before a Senate investigating committee. D.A. Buron Fitts, like the Doheny family, contended that Plunkett, suffering from a nervous breakdown, had "insanely" killed Ned and then committed suicide.

One of Fitts' own detectives advanced the opposite theory: Ned had killed Plunkett and then himself. Fitts, however, declined to investigate further.

Hearing almost the same evidence, one jury convicted Fall in 1929 for having accepted the bribe while another acquitted Doheny in 1930 of having given it.

3. *Pan-American Petroleum Co. v. U.S.* (9th Cir. 1926) 9 F.2d 761; *U.S. v. Pan-American Petroleum Co.* (9th Cir. 1932) 55 F.2d 753.

5 Homer Laughlin Building / Grand Central Market



315 SO. BROADWAY (JOHN PARKINSON, 1896)

WHO IS LIABLE FOR SIDEWALK ACCIDENT INJURIES?

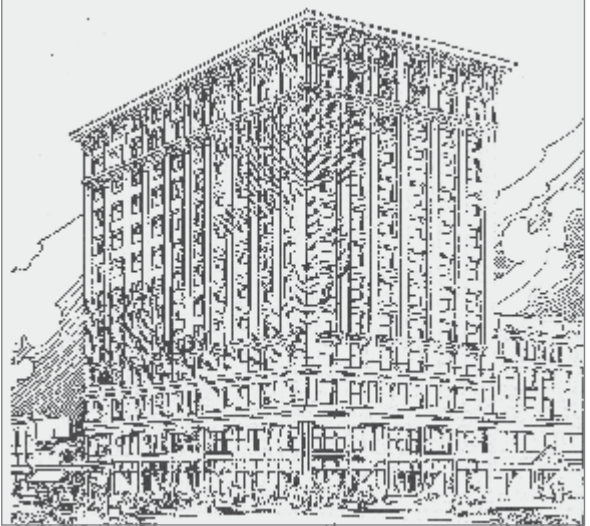
In 1917, the Grand Central Market replaced the Ville de Paris Dept. Store as the building's primary tenant, and has since been in continuous operation. By 1926, an estimated 40,000 people shopped at some 120 food stalls daily, with no fewer than 14 butcher shops.

Theresa Kopfinger, a 78-year-old woman, fell on a public sidewalk on Hill St., immediately outside the Grand Central Market, when she slipped on a flattened piece of meat gristle. The California Supreme Court reversed a nonsuit in favor of the market,⁴ holding there was sufficient evidence to show that the market breached a duty of care to clean debris that fell from their deliveries onto the adjacent public sidewalk.

4. *Kopfinger v. Grand Central Public Market* (1964) 60 Cal.2d 852.



6 Washington Building



311 SO. SPRING STREET (PARKINSON & BERGSTROM, 1912)

JUDGE-FOR-A-MONTH: THE REALLY SHORT TERM OF "PRESIDING" JUSTICE WALTER MIDDLECOFF

Walter M. Middlecoff (RIGHT) was a practicing attorney in the newly constructed Washington Building. Middlecoff decided to take advantage of a legal quirk to achieve his dream of becoming a justice of the Court of Appeal, for which he had run (and lost) in 1906. Presiding Justice Nathaniel P. Conrey had been appointed to fill out the expired term of a deceased justice, and was running for a new 12-year term, but there was a 60-day gap between the Nov. 3, 1914 election and the new January 1915 term.



Middlecoff was the only candidate in the November election for the short-term position, garnering 113,000 votes. For the long-term position, Presiding Justice Conrey defeated Judge Gavin Craig by 11,000 votes.

WHEN A JUDGE ISN'T A JUDGE.

On Nov. 21, 1914, Middlecoff showed up in Justice Conrey's chambers and demanded the keys. He was rebuffed since he could not produce his commission of election.

On Nov. 24, Middlecoff appeared at oral argument, took the presiding justice's seat and addressed the assembled lawyers. Associate Justices James and Shaw, on motion, thereupon continued all pending matters until the January 1915 calendar.

On Dec. 7, Middlecoff received his commission of election from Gov. Hiram Johnson. He took over Presiding Justice Conrey's chambers (and received his paycheck) for the rest of the month. Presiding Justice Conrey resumed his post on January 4, 1915.

7 Old County Hall of Records



320 WEST TEMPLE ST.
(HUDSON & MUNSELL, 1911; DEMOLISHED 1973)

LOVE BEFORE LOVING

In 1947 Andrea Perez and Sylvester Davis (RIGHT) went to the County Clerk's Office in the Hall of Records to get a marriage license. The couple had met five years earlier while co-workers at a Lockheed defense plant in Burbank. The deputy clerk refused to give them a license because Andrea was considered white (she was Mexican-American) and Sharp was black; California law prohibited interracial marriage.



Attorney Dan Marshall (RIGHT) agreed to represent the couple. In an unusual procedural move, Marshall filed a writ petition directly in the California Supreme Court, asking it to exercise its original jurisdiction.⁵



By a 4-3 vote, the Court struck down the California antimiscegenation statutes as unconstitutional — the first such judicial decision in the country. Speaking for the majority, Justice Roger Traynor (LEFT) stressed the fundamental right to marry the “person of [one’s] choice.” The California Supreme Court later heavily relied on *Perez v. Sharp* to recognize civil marriage rights for same sex couples.



The county counsel raised blatantly racist arguments against interracial marriages, citing “undesirable biological results.” And the three dissenting justices said the petitioners should be satisfied by marrying within their own racial groups.

5. *Perez v. Sharp* (1948) 32 Cal.2d 711.

8 Parker Center



150 NO. LOS ANGELES ST.
(WELTON BECKET & ASSOCIATES, 1955)

BIRTHING THE EXCLUSIONARY RULE

Construction for the new modernist police headquarters building began in 1952 and finished three years later. The building was later named for William F. Parker, who served as LAPD chief from 1950 to 1966.

Parker promoted a positive LAPD press image for professionalism rather than corruption. This included radio and TV series like “Dragnet.” Here, Parker is pictured with actor Jack Webb, who played Sgt. Joe Friday.



In 1953, Police Chief Parker personally authorized hidden microphones to be illegally placed to gather evidence against bookmaker Charles Cahan (RIGHT) by having police officers disguise themselves as termite inspectors, and by breaking into his house to plant bugs under his bedroom dresser.



In a 4-3 decision, the California Supreme Court reversed Cahan’s conviction and prohibited the use of illegally obtained evidence in California.⁶ “It is morally incongruous,” Justice Roger Traynor wrote, “for the state to flout constitutional rights and at the same time demand that its citizens observe the law.”

6. *People v. Cahan* (1955) 44 Cal.2d 434.

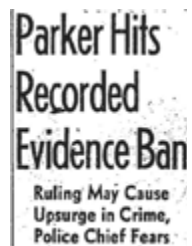


PHOTO CREDITS

Page 3, (LEFT, TOP TO BOTTOM) L. Mildred Harris, L. Mildred Harris Slide Collection/Los Angeles Public Library; UCLA Special Collections, Los Angeles Times Photographic Archives.

Continued on page 25

COLLEAGUES, FAMILY AND FRIENDS CELEBRATE

Justice Kathryn Mickle Werdegar's Retirement

BY MOLLY SELVIN*

"EVERY DAY, JUSTICE WERDEGAR BRINGS INTELLIGENCE, GRACE AND QUIET DIGNITY TO THE WORK WE DO. HISTORY WILL RECORD THAT KAY WERDEGAR IS ONE OF THE MOST ABLE JUSTICES EVER TO SERVE ON THIS COURT."

CALIFORNIA SUPREME COURT Associate Justice Goodwin H. Liu spoke for the approximately 150 colleagues, family and friends who gathered to celebrate Justice Kathryn Mickle Werdegar's retirement from the Court on August 2 in the Milton Marks Auditorium of San Francisco's Ronald M. George State Office Complex, where the Supreme Court is headquartered in the Earl Warren Building.

Elevated from the Court of Appeal, First District in 1994 by Gov. Pete Wilson, Justice Werdegar served 23 years on the high court, departing as the longest-serving justice on the current court.

Chief Justice Tani Cantil-Sakauye led off the afternoon celebration, which also featured remarks from former Associate Justice and UC Hastings Professor Joseph Grodin, and Jason Marks, one of Justice Werdegar's five staff attorneys. A video presentation included reminiscences and well wishes from Justice Werdegar's other Court colleagues — Justices Ming Chin, Carole A. Corrigan, Leondra R. Kruger, and Mariano-Florentino Cuéllar. Former Chief Justice Ronald M. George was also slated to speak but had to cancel due to illness; Jake Dear, the Court's chief supervising attorney, read George's remarks, adding his own comments as well.

* Molly Selvin is the newsletter editor and vice president of the California Supreme Court Historical Society.

One by one, the speakers praised Justice Werdegar's fairness, judgment, compassion, intellect and her values.

"I know good values when I see them," said Justice Grodin, paraphrasing U.S. Supreme Court Justice Potter Stewart, "and I see them in the opinions of Justice Werdegar."

"I see them in her opinions that reflect concern for the environment," Grodin continued, "for the challenges of the workplace, for privacy, for due process and for fairness of treatment and for the importance of protecting against discrimination, for the protection of consumers against faulty, dangerous products and . . . much, much more."

Several speakers noted that Justice Werdegar took particular pride in her dissenting opinions, a few of which, over her long tenure, eventually became the Court's majority position. And each of her colleagues attested to, what Chief Justice Cantil-Sakauye called, "your wit, your elegance and your kindness."

In addition to being a judicial role model for her younger colleagues, speakers told stories about Justice Werdegar's personal side. Jake Dear, reading former Chief Justice George's remarks, described Werdegar's long love of nature and the outdoors, remembering an afternoon hike he and Justice Werdegar took near her Marin home. The forecast called for rain but the two hikers proceeded anyway, getting drenched on the trail while their spouses chose to stay behind. Both jurists returned soaked and ate dinner while their hiking clothes tumbled in

BELOW, LEFT TO RIGHT:

Associate Justice Goodwin H. Liu, Chief Justice Tani Cantil-Sakauye, and former Associate Justice and UC Hastings Professor Joseph R. Grodin.

VIDEO IMAGES COURTESY OF JUDICIAL COUNCIL
OF CALIFORNIA



CLOCKWISE, FROM TOP LEFT:
Jason Marks, Jake Dear and
Supreme Court Justice Kathryn
Mickle Werdegar.



Justice Werdegar's dryer. George recalled the evening as "an early introduction to her stamina and determination."

Jason Marks described what it was like to work for the justice. He started by recalling the British adage that no man is a hero to his valet — and noting that, in a way, a staff attorney is a kind of "intellectual valet . . . helping the justice to put on the language needed for the occasion." However, Marks noted, the adage doesn't hold true in this case. "Justice Werdegar really was to me a hero and a model. She is one of the smartest people I've ever met."

Marks said he and his colleagues also greatly appreciated Werdegar's kindness, caring and interest in her staff as well as her flexibility about personal matters.

Jake Dear made the same point: "Judge, your combination of wit and elegance and respect for court staff have been greatly appreciated. And frankly, that's quite irreplaceable and we're going to miss you."

Justice Liu noted that when he joined the bench 6 years ago, Justice Werdegar had 35 more years of experience than he "but from the very first day she treated me as an equal and we became fast friends and close confidants," sharing a mutual love for piano and travel, and their experiences as parents.

"She is a judge who is liked and admired by all other judges," he continued, "no matter how young or how old, no matter how they lean on the issues of the day."

"JUDGE, YOUR COMBINATION OF WIT AND ELEGANCE AND RESPECT FOR COURT STAFF HAVE BEEN GREATLY APPRECIATED. AND FRANKLY, THAT'S QUITE IRREPLACEABLE AND WE'RE GOING TO MISS YOU."

Several speakers took note of Justice Werdegar's many accomplishments before joining the high court.¹ After transferring from UC Berkeley's Boalt Hall, where she was first in her class, she graduated as valedictorian of her George Washington University School of Law

class. Following law school and with few opportunities for women attorneys, she joined the Civil Division of the United States Department of Justice, where she worked on an amicus brief to help release Martin Luther King, Jr. from jail. After she and her husband David returned to California in 1963, Werdegar held a number of legal and teaching positions before she was hired in 1981 as a research attorney, first at the First District Court



of Appeal, and later for Supreme Court Associate Justice Edward Panelli, for whom she served as a senior attorney.

Justice Werdegar had the last word. "Your remarks are deeply touching to me," she said, visibly moved. "The court has been my home, my community and my extended family for . . . almost 30 years, if you allow me to include my time as a staff attorney."

"During my 23 years" on the Supreme Court, she continued, "I've had the privilege of serving with three outstanding chief justices and certainly our current chief justice is stellar. I've served with 11 different associate justices; the entire court has been replaced during my tenure."

"As I consider the court today," she concluded, "I cannot imagine a finer group of colleagues, both for their legal acumen and their personal warmth and collegiality. Thank you all, these have been wonderful years." ☆

ENDNOTES

1. For more on Justice Werdegar's early career, see Laura McCreery, "Kathryn Mickle Werdegar: A Singular Path to the Supreme Court," *CSCHS Newsletter*, Spring/Summer 2017, 12–14. <https://www.cschs.org/wp-content/uploads/2015/01/2017-Newsletter-Spring-Kathryn-Werdegar.pdf>.



Justice Kathryn Mickle Werdegar:

A STAFF ATTORNEY'S MEMOIR

BY GREG CURTIS*

WHEN JUSTICE KATHRYN MICKLE WERDEGAR took the oath of office as an associate justice of the California Supreme Court on June 3, 1994, the state was likely curious about what sort of jurist she would be. Justice Werdegar had served three years on the First District Court of Appeal — barely long enough to have made a ripple on the ocean of California law. Few then were aware of her historic achievements as a woman in law school, her early work in civil rights law at the United States Department of Justice, or her teaching career at the University of San Francisco School of Law. Some at the Supreme Court had known Kay Werdegar as a senior attorney for Justice Edward Panelli during the court's turbulent years under Chief Justice Rose Bird. Those former colleagues remembered her as brilliant but quiet and disinclined to share her personal views. She was taking retired Justice Panelli's seat on the court. Would she also assume his role in the emerging majority led by Chief Justice Malcolm M. Lucas, as some hoped? Or would she have a "personal epiphany" that led her in a different direction, as Justice Robert Puglia had sharply inquired during her confirmation hearing?

As citizens of the state, the Supreme Court's legal staff shared this general curiosity about the newest jus-

tice. As students of California law, some of whom had served the court under four chief justices, staff attorneys were also eager to learn how Justice Werdegar would approach the issues that were demanding the court's attention. For example, how did she stand on the perennial debate, then quite heated, over the role of the state Constitution as a source of fundamental law independent of the federal charter? Staff also wondered how Justice Werdegar's unique familiarity with the court's internal processes would affect her work. What sort of people would she hire to staff her chambers, and how would she interact with them?

Justice Werdegar may have inspired erroneous speculation about how she viewed her new role by hiring three attorneys who had worked for retired Justice Panelli in addition to one who had served with her on the Court of Appeal.¹ People unfamiliar with the inner workings of the Supreme Court sometimes assume that staff attorneys tend to mirror their justices' views and that the justices even prefer such people. Justice Werdegar herself mirrored no one's views and kept would-be sycophants at a polite distance. Instead, she was anxious to make sound and supportable decisions and grasped the need to understand all sides of a problem before resolving a case. Accordingly, she made her chambers a place in which reasoning and conclusions were rigorously subjected to every fair criticism. Only Justice Werdegar's implicit expectation of courtesy and civility allowed this idealistic venture to proceed without

* Greg Curtis was chief of staff (1994–2017) to Associate Justice Kathryn M. Werdegar (retired), and chief of staff (1993–1994) and staff attorney (1989–1993) to Associate Justice Edward Panelli (retired).

rancor. Her chambers were not a place to raise one's voice, but neither were they a place to keep good ideas to oneself.

Answers to questions about what sort of jurist Justice Werdegarg would be were not long in coming. She quickly claimed her place on the court as a strong, independent thinker willing to follow the law where it led. Take for example the year 1996, two years after she assumed office. In that year alone, Justice Werdegarg dissented from, and provided a fourth vote to rehear, a decision upholding a law requiring parental consent for a minor's abortion.² Justice Werdegarg also wrote the lead opinion in a case³ rejecting a landlord's claim that her religious beliefs permitted her to refuse to rent to an unmarried couple, despite the California Fair Employment and Housing Act's prohibition of discrimination based on marital status.⁴ And she wrote a majority opinion,⁵ unanimous on the dispositive point,⁶ concluding that the 1994 draconian sentencing laws known as "Three Strikes and You're Out"⁷ did not prevent judges from granting leniency by dismissing prior-conviction allegations in the furtherance of justice.

To have looked for a political or ideological pattern in these early opinions would have been a mistake. Their unmistakable significance, rather, was to identify Justice Werdegarg to scholars of California law as a preeminent member of their community, one who thought deeply about the issues and whose opinions reflected careful reasoning and integrity.

For example, Justice Werdegarg's 1996 dissenting opinion in *American Academy of Pediatrics v. Lungren*,⁸ highlighted one of the central theoretical problems of state privacy law: how does a court identify the rights protected by the state Constitution's privacy clause?⁹ The majority had upheld a former statute barring a minor from consenting to an abortion without

a parent's consent. The challenged law did not implicate a social norm protected by the privacy clause, the majority had concluded, because "the Legislature has in numerous areas curtailed an unemancipated minor's ability to make choices implicating privacy."¹⁰ Justice Werdegarg, in contrast, argued that the voters who had approved the 1972 privacy initiative¹¹ probably did not have "in mind a narrow right circularly defined by reference to statutory law."¹² Justice Werdegarg's dissent influenced the court's decision on rehearing to invalidate the parental consent law.¹³

In her lead opinion in *Smith v. Fair Employment & Housing Com.*,¹⁴ Justice Werdegarg addressed a claim under the state Constitution's distinctly worded free exercise clause¹⁵ at a particularly challenging time. A few years earlier, the United States Supreme Court had clarified that "the right of free exercise does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability'" on the ground of religious compulsion.¹⁶ Congress had reacted by requiring religious exemptions from state laws in a statute then being challenged in the federal high court as unconstitutional.¹⁷ Justice Werdegarg declined all suggestions to interpret the state free exercise clause by reference to federal law. Instead, she examined the challenged housing discrimination law under the test most protective of religious exercise (i.e., strict scrutiny), assuming its applicability merely for the sake of argument.¹⁸ This cautious approach preserved the court's ability in a future case to articulate "an as-yet unidentified rule that more precisely reflects the language and history of the California Constitution and our own understanding of its import."¹⁹ The court followed the same approach in a later majority opinion by Justice Werdegarg upholding a state law mandating that employer-sponsored pharmaceutical insurance plans include coverage for contraceptives.²⁰

In the last of the three notable opinions from 1996, *People v. Superior Court (Romero)*,²¹ Justice Werdegarg invoked the state Constitution's separation of powers clause²² to conclude that a sentencing judge could properly dismiss prior-conviction allegations in a Three Strikes case over the prosecutor's objection.²³ "[T]o require the prosecutor's consent to the disposition of a criminal charge pending before the court," she explained, "unacceptably compromises judicial independence."²⁴ Justice Werdegarg also employed the meticulous statutory analysis that would become a hallmark of her opinions to convince the entire court that neither the voters nor the Legislature had actually intended their respective versions of the statute to limit judicial power.²⁵ The overwhelming majority of the lower courts had reached the opposite conclusion.

These opinions brought Justice Werdegarg more public attention than she probably expected or desired. But the



Conference at Marathon Plaza in approximately 1997–1999 shows Chief Justice Ronald M. George at the head of the table; on the far side of the table (LEFT TO RIGHT) Associate Justices Kathryn Mickle Werdegarg, Ming W. Chin, Janice R. Brown; and on the near side of the table (LEFT TO RIGHT) Associate Justices Marvin R. Baxter, Joyce L. Kennard, and Stanley Mosk.

care with which they were expressed won her deep respect within the court. This esteem increased over time as Justice Werdegarr displayed the ability to find consensus in hard cases. For example, she wrote unanimous opinions addressing end-of-life decisions for gravely disabled, conscious conservatees,²⁶ deciding questions about wage and hour claims that had long eluded resolution,²⁷ and articulating rules to curb abusive practices associated with habeas corpus petitions in capital cases.²⁸ Justice Werdegarr also became known for identifying instances in which the Court's decisions seemed to be departing from the requirements of federal law. Opinions by the United States Supreme Court ultimately vindicated her dissents to decisions upholding warrantless searches of data in cell phones;²⁹ exercising specific jurisdiction in California over nonresident consumers' product-liability claims unrelated to the defendant's contacts with the state;³⁰ and permitting warrantless, nonconsensual blood testing on the theory that the need to preserve evidence in cases of driving under the influence constituted an exigent circumstance.³¹

Throughout her career, Justice Werdegarr continued to devote particular care to cases implicating the California Constitution. One additional example deserves mention. In *Golden Gateway Center v. Golden Gateway Tenants Assn.*,³² Justice Werdegarr dissented³³ from a plurality opinion concluding that the state Constitution's free speech clause³⁴ "only protects against state action."³⁵ Six years later, a majority of the court moved closer to Justice Werdegarr's view by holding that a privately owned shopping mall could not constitutionally enforce its policy banning expressive activity by a labor union, without attributing any significance to the apparent absence of state action.³⁶

The Supreme Court is a busy place with an unrelenting demand for legal writing. People new to the Court can be dismayed by the workload of petitions for review, granted cases awaiting decision, petitions for habeas corpus, automatic appeals in death penalty cases, and by the number of detailed memoranda that must be prepared to allow the Court to address these matters fairly. Each justice must find a way to carry a share of this burden. Justice Werdegarr asked of her staff only that their written work be fully researched, tightly and transparently reasoned, fair to both sides, and clearly expressed. For a staff attorney, no more challenging or rewarding environment can be imagined.

Justice Werdegarr wrote extraordinarily well, as her opinions show. She was also a perceptive editor. She



Then current and former justices at the dedication of the remodeled courtroom in San Francisco (in the Earl Warren Building) January 8, 1999. (LEFT TO RIGHT) Former Chief Justice Malcolm M. Lucas, Associate Justices Marvin R. Baxter, Kathryn Mickle Werdegarr, Chief Justice Ronald M. George, Associate Justices Ming W. Chin, Stanley Mosk, William P. Clark, Joyce L. Kennard, Cruz Reynoso, Janice R. Brown, and Joseph R. Grodin.

preferred to present her revisions in person, sitting side-by-side with a staff attorney at the work table in her chambers. Even the best attorneys sometimes employ rhetorical skill to conceal logical gaps in argument, or research that could be pursued further. At such times, the Judge (as her staff knew her) would typically have identified on her marked-up draft the precise sentence or phrase on which a difficult argument pivoted, and have circled the words that seemed to oversimplify a problem or evade a legitimate objection to the proposed conclusion. Pulling one frayed thread of argument in this manner could unravel pages of reasoning and days of work. Sometimes the Judge would leave her staff to struggle with the remnants as he or she saw fit. At other times the Judge might suggest an elegant solution with a sentence or two in fine cursive. Having corrected problems of substance, the Judge sometimes concluded an editing session by deleting anything the author could not show to be essential, whole paragraphs at a time. Among the staff attorneys who regularly shared this experience, the practice evolved to seeking one's colleagues' critical input before submitting written work, a collaboration for which the Judge often expressed gratitude.

When Justice Werdegarr was not prepared to accept the analysis or conclusions in a staff memorandum, she would typically invite the author to attempt to persuade her. Her patience undoubtedly reflected the former staff attorney's respect for and appreciation of staff work. But the Judge also understood that to give someone time to defend an honestly held position, whether or not ultimately tenable, can be a powerful tool for reaching consensus. In this and other ways, the Judge's interaction with her colleagues and subordinates at the court seemed to reflect the assumption that people who are trained in the law, fully prepared



California Supreme Court in Los Angeles, June 2017: (LEFT TO RIGHT) Associate Justices Mariano-Florentino Cuéllar, Carole A. Corrigan, Kathryn Mickle Werdegar, Chief Justice Tani Cantil-Sakauye, and Associate Justices Ming W. Chin, Goodwin H. Liu and Leondra R. Kruger.

through diligent study to address the case at hand, and free of obvious bias, should more often than not be able to agree on what the law requires. The assumption may be more aspirational than predictive. But there is no finer starting point for collegial work in a court. This is the example Justice Werdegar set for us. ★

ENDNOTES

1. Justice Werdegar later added at various times a former annual clerk for Justice Panelli, an attorney for retired Justice William Stein of the First District Court of Appeal, and a former attorney for retired Chief Justice Lucas.
2. *American Academy of Pediatrics v. Lungren* (1996) 912 P.2d 1148, 1197 (dis. opn. of Werdegar, J.), reh. granted May 22, 1996, and superseded by (1997) 16 Cal.4th 307.
3. *Smith v. Fair Employment & Housing Com.* (1996) 12 Cal.4th 1143, 1150 (plur. opn. of Werdegar, J.).
4. Gov. Code, § 12955, subd. (a).
5. *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.
6. See *ibid.* at p. 533 (conc. opn. of Chin, J.).
7. Prop. 184, approved by voters, Gen. Elec. (Nov. 8, 1994), and Stats. 1994, ch. 12, § 1 [codified as Pen. Code, former § 667, subds. (b)–(i), as subsequently amended].
8. *Supra*, 912 P.2d 1148, 1197 (dis. opn. of Werdegar, J.). See *ante*, fn. 3.
9. Cal. Const., art. I, § 1 [“All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and *privacy*.” Italics added.].
10. *American Academy of Pediatrics v. Lungren*, *supra*, 912 P.2d at p. 1025.
11. Prop. 11, approved by voters, Gen. Elec. (Nov. 7, 1972).
12. *American Academy of Pediatrics v. Lungren*, *supra*, 912 P.2d at p. 1197 (dis. opn. of Werdegar, J.). See *ante*, fn. 3.

13. See *American Academy of Pediatrics v. Lungren*, *supra*, 16 Cal.4th 307, 339 [“[I]t plainly would defeat the voters’ fundamental purpose in establishing a constitutional right of privacy if a defendant could defeat a constitutional claim simply by maintaining that statutory provisions or past practices that are inconsistent with the constitutionally protected right eliminate any ‘reasonable expectation of privacy’ with regard to the constitutionally protected right.”].

14. *Supra*, 12 Cal.4th 1143, 1150 (plur. opn. of Werdegar, J.).

15. “Free exercise and enjoyment of religion without discrimination or preference are guaranteed. This liberty of conscience does not excuse acts that are licentious or inconsistent with the peace or safety of the State.” (Cal. Const., art. I, § 4.)

16. *Employment Div. Ore. Dept. of Human Res. v. Smith* (1990) 494 U.S. 872, 879.

17. The Religious Freedom Restoration Act of 1993, Pub. L. No. 103-141 (Nov. 16, 1993), 107 Stat. 1489, codified as 42 U.S.C. § 2000bb et seq. and subsequently amended (RFRA). See *City of Boerne v. Flores* (1997) 521 U.S. 507 [holding RFRA unconstitutional in part].

18. *Smith v. Fair Employment & Housing Com.*, *supra*, 12 Cal.4th at p. 1179 (plur. opn. of Werdegar, J.).

19. *Catholic Charities of Sacramento, Inc. v. Superior Court* (2004) 32 Cal.4th 527, 562.

20. *Ibid.*

21. *Supra*, 13 Cal.4th 497.

22. Cal. Const., art. III, § 3.

23. *People v. Superior Court (Romero)*, *supra*, at pp. 509–518.

24. *Ibid.* at p. 512.

25. *Ibid.* at pp. 517–530. See *ibid.*, at p. 533 (conc. opn. of Chin, J.).

26. *Conservatorship of Wendland* (2001) 26 Cal.4th 519.

27. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004.

28. *In re Reno* (2012) 55 Cal.4th 428.

29. *People v. Diaz* (2011) 51 Cal.4th 84, 103 (dis. opn. of Werdegar, J.). See *Riley v. California* (2014) 573 U.S. ___ [134 S.Ct. 2473, 2481, 2493–2495] [effectively overruling *Diaz*].

30. *Bristol-Myers Squibb Co. v. Superior Court* (2016) 1 Cal.5th 783, 813 (dis. opn. of Werdegar, J.), revd. (2017) 582 U.S. ___ [137 S.Ct. 1773].

31. *People v. Thompson* (2006) 38 Cal.4th 811, 831–837 (dis. opn. of Werdegar, J.). See *Missouri v. McNeely* (2013) 569 U.S. 141 [effectively overruling *Thompson*].

32. (2001) 26 Cal.4th 1013.

33. *Ibid.* at pp. 1046–1049 (dis. opn. of Werdegar, J.).

34. Cal. Const., art. I, § 2, subd. (a).

35. *Golden Gateway Center v. Golden Gateway Tenants Assn.*, *supra*, 26 Cal.4th at p. 1031 (plur. opn. of Brown, J.).

36. *Fashion Valley Mall, LLC v. National Labor Relations Bd.* (2007) 42 Cal.4th 850.

PEOPLE V. HALL:

A POSTSCRIPT

BY JOHN S. CARAGOZIAN*

MICHAEL TRAYNOR'S EXCELLENT lead article in the CSCHS Spring/Summer 2017 Newsletter explores the infamous 1854 case of *People v. Hall*.

As the article recounts, defendant George Hall was convicted of murder, but the California Supreme Court reversed the conviction because three of the prosecution's dozen witnesses were Chinese. At the time, California's Criminal Proceedings Act provided, "No Black or Mulatto person, or Indian, shall be allowed to give evidence . . . against a white man." While the Act never mentioned Chinese witnesses, *Hall* held it to bar their testimony because (a) Chinese and Indians are of the same racial origins, (b) the word "Black" in the Act "means everyone who is not of white blood," and (c) as a matter of policy, the California Legislature could not have intended to allow Chinese to testify.¹

The postscript begins five years after *Hall*, when the California Supreme Court dealt with a similar case. In *People v. Elyea*, the defendant was convicted of murder, and a witness against him was a native of Turkey.² The defendant objected to the testimony, relying on the same Act, "based upon [the witness'] color and the fact that he is a native of Turkey, and was born of Turkish parents."³

The *Elyea* Court acknowledged *Hall* as settled but added, "[W]e cannot presume that all persons having tawny skins and dark complexions are within the principle of that decision."⁴ The Court then quoted the Act, which defined mulatto as a person "having one-eighth or more of negro blood" and an Indian as a person "having one-half of Indian blood."⁵ These definitions would allow testimony from a witness with less than the specified proportions — apparently even if the witness had dark skin — "thus rendering impossible the adoption of any rule of exclusion upon the basis of mere color."⁶

Elyea noted that, in Turkey, "the Caucasian [race] largely predominates" and affirmed the defendant's conviction.⁷

Hall and *Elyea* illustrated the difficulty of applying expressly racist laws — whatever twisted bases they might have elsewhere — in California, which had been multi-racial since before statehood.⁸ Indeed, various such laws

L. Sanders, Jr., for Appellant.

CORP, J. delivered the opinion of the Court — FIELD, C. J. and BALDWIN, J. concurring.

The defendant was convicted of murder in the first degree, and the errors assigned relate to the proceedings at the trial.

1. The first point made is, that the Court below erred in the instructions given to the jury. It is not stated in what particular the instructions were erroneous, nor does it appear that they were objected to at the trial. So far as the record is concerned, we are authorized to conclude that they received the assent and approval of the defendant. There is, however, no doubt of their correctness. They were confined to definition of the offense of murder, given nearly in the language of the statute, and a few simple directions to the jury in relation to their verdict, in which there was no error.

2. The second point is, that a witness for the prosecution was permitted to testify to a particular statement of the defendant, without being allowed to speak of other statements made by him at the same time. This point has no foundation in the record. The counsel here has evidently mistaken the point of the exception in the Court below. The question there, was not whether these statements were admissible, but whether it was competent to prove them by a written memorandum made by the witness at the time, and which he stated to be correct. The Court very properly decided that this paper could not be given in evidence, and to that decision, and to that alone, the defendant excepted.

3. The third and only remaining point is, that the Court erred in permitting one Martin to be examined as a witness. It is claimed that he was incompetent under the provisions of our statute (Cr. Pr. Act, sec. 14) precluding negroes and Indians from testifying either for or against a white person. The objection to his competency is based upon his color, and the fact that he is a native of Turkey, and was born of Turkish parents. It is incumbent upon the party alleging a disability of this character to prove it by clear and indubitable evidence. This we conceive has not been done in the present case. The indicium of color cannot be relied upon as an infallible test of competency under the statute. It may be a sufficient test in many cases, but only when it is so decided

VOL. XIV.—10

were struck down in California, in some cases decades before the United States Supreme Court followed suit.

Two twentieth-century cases of this pattern are particularly exemplary. The first began with a 1946 lawsuit, *Mendez v. Westminster School District of Orange County*.⁹ Several Mexican-American parents sued Orange County school districts that had long practiced assigning students of "Mexican or Latin descent" and "White or Anglo-Saxon children" to separate schools.¹⁰ The United States District Court enjoined this segregation, finding a denial of equal protection.¹¹

The school districts appealed to the Ninth Circuit, and the litigation attracted nationwide interest, including from Thurgood Marshall, who filed an amicus brief on behalf of the NAACP.¹² The Ninth Circuit, sitting en banc, unanimously affirmed the District Court.¹³ Judge William Denman (who would later become chief judge) concurred, eloquently explaining segregation's dangers, especially in California:

California is a state as large as France . . . All the nations of the world have contributed to its people. Were the vicious principle sought to be established in Orange and San Bernardino^[14] Counties followed elsewhere, in scores of school districts the adolescent

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minds of American children would become infected. To the wine producing valleys and hills of northern counties emigrated thousands of Italians whose now third generation descendants well could have their law-breaking school officials segregate the descendants of the north European nationals.

Likewise in the raisin districts of the San Joaquin Valley to which came the thousands of Armenians who have contributed to national prominence such figures as Saroyan and Haig Patigan. So in the coastal town homes of fishermen, largely from the Mediterranean nations, the historic antipathies of Italian, Greek and Dalmatian nationals could be injected and perpetuated in their citizen school children.

Or, to go to the descendants of an ancient Mesopotamian nation, whose facial characteristics still survived in the inspiring beauty of Brandeis and Cardozo — the descendants of the nationals of Palestine, among whose people later began our so-called Christian civilization, as well could be segregated and Hitler's anti-Semitism have a long start in the country which gave its youth to aid in its destruction.¹⁵

Not until seven years later, in 1954's landmark *Brown v. Board of Education* involving black/white segregation, did the United States Supreme Court invalidate school segregation throughout the nation.¹⁶

The second example was a 1948 challenge to California's anti-miscegenation law, California Civil Code section 60, which prohibited a white person from marrying "a Negro, mulatto, Mongolian or member of the Malay race."¹⁷ At the time, 30 of the then-48 states had anti-miscegenation laws, none of which had been invalidated.¹⁸

In *Perez v. Sharp*, the California Supreme Court explained the difficulties in applying this law in California:

[S]ection 60 . . . does not include "Indians" or "Hindus"; nor does it set up "Mexicans" as a separate category, although some authorities consider Mexico to be populated at least in part by persons who are a mixture of "white" and "Indian." . . . [Section 60] permits marriages not only between Caucasians and others of darker pigmentation, such as Indians, Hindus, and Mexicans, but between persons of mixed ancestry including white.¹⁹

The *Perez* Court continued by emphasizing some of the statute's "absurd results" in a multi-racial state:

[A] person with three-sixteenths Malay ancestry might have many so-called Malay characteristics and yet be considered a white person in terms of his preponderantly white ancestry. Such a person might easily find himself in a dilemma, for if he were regarded as a white person under [S]ection

60, he would be forbidden to marry a Malay, and yet his Malay characteristics might effectively preclude his marriage to another white person.²⁰

Indeed, the Court impliedly questioned the validity of any racial classifications:

[T]he Legislature has adopted one of the many systems classifying persons on the basis of race. Racial classifications that have been made in the past vary as to the number of divisions and the features regarded as distinguishing . . . each division. The number of races distinguished by systems of classification "varies from three or four to thirty-four." [S]ection 60 is based on the system suggested by Blumenbach early in the nineteenth century. . . .²¹

Even with valid classifications, is Section 60 "to be applied on the basis of the physical appearance . . . or . . . genealogical research"?²²

If the physical appearance . . . is to be the test, the statute would have to be applied on the basis of subjective impressions. . . . Persons having the same parents and consequently the same hereditary background could be classified differently. On the other hand, if the application of the statute to persons of mixed ancestry is to be based on genealogical research, the question immediately arises what proportions of Caucasian, Mongolian, or Malayan ancestors govern the applicability of the statute.²³

With one dissenter, *Perez* invalidated California's anti-miscegenation law on equal protection grounds.²⁴

Nineteen years later, the United States Supreme Court — in a case involving a black/white marriage — invalidated such laws nationwide.²⁵

California's diversity, then, has not just strengthened the state. It has also been a national beacon. ★

ENDNOTES

1. *People v. Hall* (1854) 4 Cal. 399, 400–01, 403–04.
2. *People v. Elyea* (1859) 14 Cal. 144, 145.
3. *Ibid.* at 145.
4. *Ibid.* at 146.
5. *Ibid.*
6. *See ibid.*
7. *Ibid.*
8. *See, e.g., Daniel Walker Howe, What Hath God Wrought: The Transformation of America, 1815–1848.* New York: Oxford Univ. Press, 2007, 821 ("California was the first state to be settled by peoples from all over the world. (Indeed, it remains the most ethnically cosmopolitan society in existence today.")). *See also ibid.* at 814–20.
9. *Mendez v. Westminster School Dist. of Orange County* (1946) 64 F.Supp 544 (C.D.Cal.).

Continued on page 25



Murals created by local students for the Santa Ana Courthouse depict actual published opinions.

ALL PHOTOS COURTESY FOURTH DISTRICT COURT OF APPEAL

History on the Walls:

THE SANTA ANA COURTHOUSE MURALS

BY ELEANOR DIERKING*

JUSTICE EILEEN MOORE isn't exactly sure how the idea of creating artwork for the walls of the Fourth District Court of Appeal came to her, but she suspects it may have been divine intervention.

When the court's Division Three moved in January 2010 to its new building in the Civic Center on Santa Ana Boulevard, Justice Moore had been asked by Presiding Justice David G. Sills to find artwork for the entrance hall, a seemingly straightforward task if she'd had a budget and staff for the job. But she had neither.

At first, she figured she would simply do what many American courthouses have done, that is, find museums with art languishing in their warehouses and display them on loan. When that, as well as an offer by Joan Irvine Smith, arts patron and great-granddaughter of

James Irvine, to display her plein air art in the courthouse raised ethical concerns, Justice Moore came up with the notion of a local art contest.

She asked William Habermehl, superintendent of the Orange County Department of Education (OCDE) if he would be interested in having students depict actual published opinions on canvas. Habermehl was more than enthusiastic.

"Mr. Habermehl told me that the whole way Orange County teaches art changed as a result of this project," Justice Moore said. "The kids were not, up until then, required to do any kind of critical thinking. This project required them to read these legal opinions and figure out . . . the best way . . . to render it on canvas."

Habermehl recruited OCDE's head art teacher, Ruth Rosen, who worked with Moore over eight months to produce 13 life-sized murals depicting local cases. The Division Three justices heard all but one of these; the remaining case, while arising in Orange County, was decided in the federal courts.

* Eleanor Dierking is a recent graduate of UC Davis. Her articles have appeared in the *Huffington Post UK* and UC Davis' student-run newspaper, *The California Aggie*, where she also served as the managing editor this past year.



In re Alexander L.
(2007) 149 Cal.App.4th 605

THE DEFENDANT WAS CONVICTED OF VANDALISM BY GRAFFITI, FOR THE BENEFIT OF A CRIMINAL STREET GANG. THE COURT OF APPEAL AFFIRMED THE VANDALISM CONVICTION BUT REVERSED THE FINDING THAT THE VANDALISM WAS COMMITTED FOR THE BENEFIT OF A CRIMINAL STREET GANG.



In re James Warner Eichorn
(1998) 69 Cal.App.4th 382

THE PETITIONER, A HOMELESS VIETNAM VETERAN, WAS CONVICTED BY A JURY OF VIOLATING A CITY ORDINANCE BANNING SLEEPING IN DESIGNATED PUBLIC AREAS. THE COURT OF APPEAL HELD THAT HE HAD PRESENTED EVIDENCE SUFFICIENT TO SUPPORT A "NECESSITY" DEFENSE, AND SET ASIDE THE CONVICTION.



People v. Protopappas
(1988) 201 Cal.App.3d 152

A DENTIST CAUSED THE DEATHS OF THREE PATIENTS THROUGH THE IMPROPER ADMINISTRATION OF GENERAL ANESTHESIA AND OTHER DEFICIENT MEDICAL TREATMENT. HE WAS CONVICTED OF THREE COUNTS OF SECOND DEGREE MURDER. THE COURT OF APPEAL AFFIRMED.

Rosen cast a wide net for mural artists, Moore recalled, suggesting "that a lot of the children who are arrested . . . do graffiti, and . . . that there was some real, genuine talent there among these kids." Rosen asked Moore if they could enlist students at Otto Fischer High School, a juvenile court school in Orange where Rosen taught art to incarcerated youth. As a result, seven of the 13 murals were assigned to students at traditional high schools in Garden Grove, Laguna Hills, La Quinta and one middle school in Aliso Viejo, and the remaining six were painted by the students at Otto Fischer High School.

According to Rosen, a large majority of the students inside juvenile hall had never picked up a paintbrush, let alone worked together to turn a blank canvas into a piece of courthouse art.

Justice Moore culled an initial group of 51 Division Three opinions and gave them to Rosen, who worked with the students and teachers at each school to select the final 13 cases. Rosen also taught basic painting skills to the students at juvenile hall, who ranged in age from 12 to 18 years.

"These kids are so extremely talented," Rosen said. "But the brainstorming part was mind blowing because we have so many analogies in the pictures — they're so deep rooted, the emotions. Plus, . . . they got to learn a lot about the law through it, and they're really interested because they're incarcerated."

In a dynamic mural depicting the opinion in *People v. Foranyic*, a bicyclist careens down the highway at 3 a.m., wielding an ax. The court in that case affirmed a lower court ruling holding that the police officer acted properly when he stopped the cyclist, reasonably suspecting that he was engaged in criminal activity.

The mural interpreting *Quigley v. First Church of Christ Scientist*, shows 12-year-old Andrew, who died as a result of complications from juvenile diabetes, carried to heaven by an ensemble of angels. Following his death, Andrew's mother sued the Christian Science church and church members, including his grandmother, who treated him with "spiritual healing methods," alleging that they had breached a duty of due care when they failed to refer the boy to conventional medical practitioners. The Court of Appeal called his death "tragic" but held that California law did not impose a legal duty to seek traditional medical treatment.

In *People v. Gilbert Garcia*, the court agreed with the defendant that he was improperly convicted of murder in light of exculpatory evidence that was illegally excluded from trial. The mural depicts 16 figures standing behind a large eyeball spanning the width of the canvas.

"The kids were learning the historical context of everything, which they should in the arts," Rosen said. "The reason that [the paintings] are done so



Quigley v. First Church of Christ Scientist
(1998) 65 Cal.App.4th 1027

A 12-YEAR-OLD DIABETIC BOY DIED AFTER BEING TAKEN TO CHURCH RATHER THAN A HOSPITAL TO BE TREATED BY “SPIRITUAL HEALING METHODS.” HIS MOTHER FILED A LAWSUIT ALLEGING THAT THOSE TREATING HIM “BREACHED A DUTY OF DUE CARE” WHEN THEY FAILED TO ADMIT HIM TO A HOSPITAL, EVEN AFTER IT WAS EVIDENT THAT THE SPIRITUAL METHODS WERE UNSUCCESSFUL. THE TRIAL COURT RULED AGAINST THE MOTHER; THE COURT OF APPEAL AFFIRMED.



People v. Gilbert Garcia
(2005) 134 Cal.App.4th 521

DEFENDANT WAS SENTENCED TO LIFE IN PRISON WITHOUT THE POSSIBILITY OF PAROLE AFTER BEING CONVICTED OF FIRST DEGREE MURDER, ATTEMPTED MURDER, AND BEING A CONVICTED FELON IN POSSESSION OF A FIREARM. HE CLAIMED THAT “A HEARSAY STATEMENT WAS IMPROPERLY ADMITTED BY THE TRIAL COURT,” AND THE COURT OF APPEAL AGREED WITH THE DEFENDANT AFTER FINDING THAT SEVERAL WITNESSES IDENTIFIED ANOTHER PERSON NAMED GARCIA IN PHOTOGRAPHIC AND LIVE LINE-UPS IN 1995 AFTER THE CRIME WAS FEATURED ON AMERICA’S MOST WANTED.



Hessians Motorcycle Club v. J.C. Flanagans
(2001) 86 Cal.App.4th 833

A SPORTS BAR DENIED ENTRANCE TO MEMBERS OF A MOTORCYCLE CLUB WHEN THEY REFUSED TO COMPLY WITH THE BAR’S POLICY REQUIRING THEM TO REMOVE THEIR “COLORS” BEFORE ENTERING. THE MOTORCYCLISTS SUED THE BAR, CLAIMING DENIAL OF THEIR CIVIL RIGHTS. THE TRIAL COURT DISMISSED THE ACTION AND THE COURT OF APPEAL AFFIRMED, NOTING THE BAR HAD A LEGITIMATE BUSINESS INTEREST IN EXCLUDING THE MOTORCYCLISTS SO AS TO PREVENT FIGHTS AND DISTURBANCES. THE COURT OBSERVED THAT THE BAR’S POLICY APPLIED EVENLY TO ALL, AND HENCE THE MOTORCYCLISTS COULD NOT SHOW THEY WERE SINGLED OUT FOR ARBITRARY TREATMENT.



People v. Foranyic
(1998) 64 Cal.App.4th 186

THE DEFENDANT WAS DETAINED BY POLICE AFTER BEING SEEN HOLDING AN AX AND RIDING A BICYCLE WHILE INTOXICATED DOWN A ROAD AT 3 A.M. HE PLEADED GUILTY TO POSSESSION OF METHAMPHETAMINE AFTER THE TRIAL COURT DENIED HIS MOTION TO SUPPRESS EVIDENCE AGAINST HIM SEIZED FOLLOWING HIS ARREST FOR INTOXICATION.

ALL PHOTOS COURTESY FOURTH DISTRICT COURT OF APPEAL



Mendez v. Westminster School District

(S.D. Cal. 1946) 64 F. Supp. 544, 545; aff'd, (9th Cir. 1947) 161 F.2d 774

MR. GONZALO MENDEZ AND OTHER LOCAL MEXICAN-AMERICAN FAMILIES FILED A LAWSUIT AGAINST SEVERAL ORANGE COUNTY SCHOOL DISTRICTS, AS WELL AS THE ENTIRE COUNTY, IN AN ATTEMPT TO END THE SEGREGATION BETWEEN SUBSTANDARD "MEXICAN SCHOOLS" AND THE SUPERIOR INSTITUTIONS THAT ONLY WHITE CHILDREN WERE ALLOWED TO ATTEND AT THE TIME. THE CASE WAS THE FIRST OF ITS KIND CHALLENGING THE SEGREGATION OF SCHOOLS IN THE U.S. AND IS OFTEN CITED AS FORESHADOWING *BROWN V. BOARD OF EDUCATION*.

well is because they understood what it was about. It really takes time to go through everything and understand . . . the story that you're telling so that you can tell it correctly and do it in a beautifully aesthetic way."

Kenny Gen-Kuong was an eighth grader at Aliso Viejo Middle School when he was recruited to work on the *People v. Garcia* mural.

"They gave us a lot of material to look at," Gen-Kuong said. "It was like a group project, and I had fun doing art."

Although Gen-Kuong, now 22 and pursuing a degree in geology at UC Davis, has not seen the mural since its completion eight years ago, he believes the project greatly benefited his artistic skills and understanding of legal history.

One mural depicts a landmark Orange County case — *Mendez v. Westminster School District* — that was resolved in 1947 by the U.S. Court of Appeals for the Ninth Circuit. This 8 by 6 foot mural, serving as the courthouse's centerpiece, illustrates the story of a local family's struggle to end Orange County's school segregation.

"To have that picture there in the court — how proud does that make me? How proud does it make the families

and everybody to know that there it is to show what's possible by following the law," said 81-year-old Sylvia Mendez, who was just nine when her family sued in federal court.

Each day, Mendez had passed the manicured lawn and well-maintained buildings of the school for white children to reach the two-building shack that she and her siblings were forced to attend. At the "Mexican school," as she called it, girls were taught cooking, cleaning, and sewing, while boys were taught gardening and woodshop.

Mendez's father and other local Mexican-American families filed a class action lawsuit against several Orange County school districts, as well the entire county, alleging that the forced segregation of Mexican-American students into separate "Mexican" schools was unconstitutional. The *Mendez* decision was the first federal court ruling against school segregation and foreshadowed the United States

Supreme Court's 1954 decision in *Brown v. Board of Education*.

Sylvia Mendez still talks to students about the importance of education. "The students, I know they get tired of hearing that they're the [future] leaders of this country but they are," she said. "We are all equal under God and we all deserve the same quality of education. . . . It makes me feel so happy that [the incarcerated students] were given this opportunity to learn about the history of California."

The *Mendez* mural was painted by six students from Otto Fischer High School. One of those students holds a special place in Justice Moore's heart.

"The child that did the original drawing of this — I just knew that his name was Andrew." Although Justice Moore did not see Andrew again, she later learned that he pursued art at Orange Coast College after being released from juvenile hall.

Rosen has since retired from OCDE, as have many other teachers involved in the project.

However, one thing remains unchanged: the art that hangs on the Orange County courthouse walls, an accomplishment not due to divine intervention, but to the perseverance and hard work of Justice Moore and her team. ★

Images of History:

THE MOSK FAMILY AUTOGRAPH COLLECTION

BY MARTHA NOBLE*

NEWSPAPERS OF ASSOCIATE JUSTICE RICHARD M. MOSK'S retirement from the California Court of Appeal, Second Appellate District in March of 2016 was followed, all too quickly, by the sad news of his passing at the age of 76.¹ The son of California Supreme Court Justice Stanley Mosk, the state's longest-serving Supreme Court justice, Richard Mosk shared his father's commitment to public service and his passion for politics and the law.² Both men also shared a keen interest in acquiring and preserving the autographs of influential figures in American history. In 2001, when the papers of Justice Stanley Mosk were transferred to the California Judicial Center Library, Richard Mosk retained the family's prized autograph collection and continued to care for and enrich it after his father's death.

The gift of the Stanley Mosk Papers, described in detail in an earlier article,³ spurred the development of Special Collections & Archives as a repository at the California Judicial Center Library and marked the beginning of collaborative efforts to describe, preserve, and provide access to this remarkable collection of papers documenting Stanley Mosk's unparalleled life of public service. As Special Collections & Archives staff discovered valuable original autographs within the Stanley Mosk Papers, preservation copies were made and original letters and documents were returned to Richard Mosk. Richard Mosk, in turn, provided the library with an index of the autograph collection and arranged to have materials that might be of interest to researchers scanned and delivered to Special Collections & Archives.

In June of 2016, just two months after Richard Mosk's passing, library staff learned that plans had been made to donate the Mosk family autograph collection and autographed books collection to the California Judicial Center Library where they would join the Stanley Mosk Papers in Special Collections & Archives. Under the guidance of Supreme Court Clerk/Administrator Jorge Navarrete, serving as the library's acting director, insurance was obtained for the collections and arrangements were made for their transfer from the Mosk residence in Southern California to the library in San Francisco. After the donation was formalized, Sandra Mosk, Richard Mosk's wife, graciously shared

some of her memories regarding her husband's emotional investment in the collections. Sandra Mosk's recollections appear below:

In 2001, not long after the death of his father Stanley Mosk, Richard Mosk had to determine the most efficient way to transport his beloved autograph collection from his father's San Francisco home to his own home in Los Angeles. He and his father initiated the collection together when Richard was a young boy. Looking back on it now, I am certain that Stanley had some ulterior motives for embarking on such a challenging undertaking with his son. Stanley hoped that the collecting of autographs of former presidents, vice-presidents, and Supreme Court members would not only offer a rich education in American history and government, topics about which he could become passionate, but also might inspire him to pursue a career in a related profession one day. Finally, and most significantly, their collaboration would provide cherished time together, father and son.

Richard was determined to be present during the movement of the collection from one city to the other. He and his father had committed so much time and energy to the collection that its value was priceless. Therefore, he enlisted the assistance of a close friend who owned and piloted a small plane. Together the two men flew to San Francisco to secure their prize, pack it in boxes, and load it onto the plane. What Richard wasn't prepared for was the task of weighing each carton before loading it onto the plane, then placing the boxes in such a way that the plane was exactly balanced. Of course, they also had to allow for their own body weights. It was an enormous task that took most of the day to complete. Early that evening I met the plane at the Santa Monica Airport. The boxes were carefully unloaded after arriving safely in Los Angeles. Mission accomplished!

Now housed in a secured area in Special Collections & Archives, the autograph collection and autographed books collection contain more than 3,000 autographs. Correspondence, documents, books and photographs within the collections represent both the sophisticated collecting interests of Stanley Mosk and his son as well as the intriguing range of personal friendships, political connections, and professional relationships developed by Richard and Stanley Mosk. The collections also include correspondence and inscriptions addressed to other members of the Mosk family. Richard Mosk's mother, Edna Mosk, and Stanley Mosk's brother, Edward Mosk, each appear to have had a hand in acquiring a portion of the collection's content.

Jacqueline Braitman and Gerald Uelmen give some attention to the early collecting activities of Stanley

* Martha Noble is a Special Collections & Archives librarian at the California Judicial Center Library and has been a member of the Academy of Certified Archivists since 2009.

Mosk in their recent biography, *Justice Stanley Mosk: A Life at the Center of California Politics and Justice*. Known as “Morey” in his youth, Stanley Mosk and his brother Edward reportedly wrote to elected officials, Supreme Court justices and other notable figures with the goal of adding to their collection of autographed envelopes of “first day covers” with newly issued postage stamps.⁴ Bearing dates as early as 1924, when Stanley Mosk would have been just 12 years old, these responses from elected officials are found throughout the collection.

A small card signed by Calvin Coolidge, the 30th president, and a concise letter to Morey Stanley Mosk from the honorable Hiram Johnson, U.S. senator and former California governor, are among the autographs that date from this period. These early treasures would later be joined by the autographs of another 44 U.S. presidents (many of which both Stanley and Richard appear to have purchased to complete the set of U.S. presidents),⁵ over 100 Supreme Court justices, authors, actors, prominent public officials, sports stars, and a host of other well-known figures.

Following Mosk’s appointment to the staff of California Gov. Culbert L. Olson in 1939, correspondence received by Mosk in relation to his professional activities begins to appear in the autograph collection. Signed

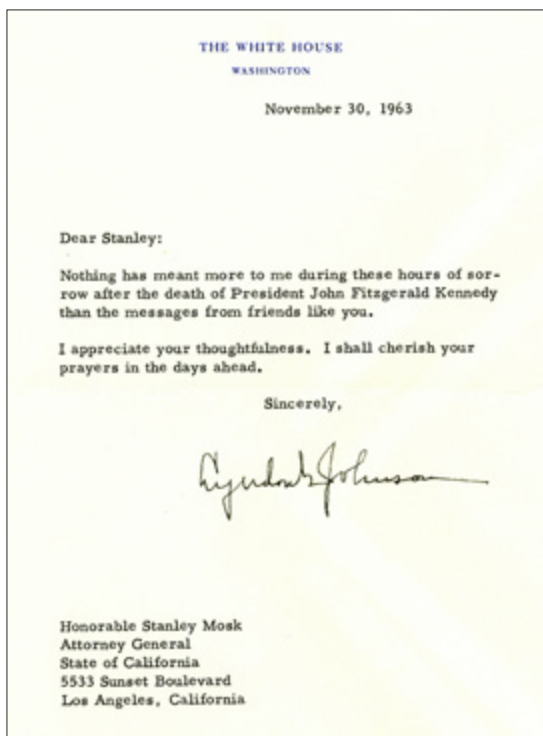
correspondence to Mosk from Earl Warren, California’s 30th governor, first appears in the collection in the 1940s. Over time, letters from Warren, by then the 14th chief justice of the U.S. Supreme Court, take on a warmth that speaks to the friendship that eventually developed between the two men.

Letters received by Mosk, then California’s attorney general, from Senator John F. Kennedy in the late 1950s also exhibit a congenial tone that suggests a friendship existed between Kennedy and Mosk prior to the 1960 presidential campaign. During that campaign, Stanley Mosk served as California’s Democratic Party National Committeeman and accompanied John F. Kennedy on his speaking tours throughout the state. President Lyndon B. Johnson’s letters to Stanley Mosk in 1963 provide a stark contrast between the last months of Johnson’s service as vice president and the days immediately following Kennedy’s assassination on November 22, 1963.

Under the leadership of the library’s new director, Donna Williams, Special Collections & Archives staff continue the work of indexing, assessing, and rehousing collection materials to ensure that they are fully accessible and preserved for the benefit of future generations. The generosity and foresight of the late Justice Richard Mosk is remembered with much gratitude. ★

ENDNOTES

1. “Courts Mourn the Passing of Justice Richard Mosk” *California Courts Newsroom*, April 18, 2016, <http://newsroom.courts.ca.gov/news/courts-mourn-the-passing-of-justice-richard-mosk>.
2. Jacqueline R. Braitman and Gerald F. Uelmen, “The Longest-Serving Justice: Highlights from a New Biography of Justice Stanley Mosk,” *CSCHS Newsletter*, Spring/Summer 2014, 2–14, <https://www.cschs.org/wp-content/uploads/2014/05/2014-Spring-Stanley-Mosk-Biography.pdf>.
3. Frances M. Jones, “The Stanley Mosk Papers,” *CSCHS Newsletter*, Fall/Winter 2008, 8–11, <https://www.cschs.org/wp-content/uploads/2014/08/2008-Newsletter-Fall-Stanley-Mosk-Papers.pdf>.
4. Jacqueline R. Braitman and Gerald F. Uelmen, *Justice Stanley Mosk: A Life at the Center of California Politics and Justice*, Jefferson: McFarland & Company, Inc., 2012, 18–19.
5. An autograph of President Polk was almost certainly purchased from a dealer. Presidents George W. Bush and Barack Obama are both represented in the collection, with Obama’s autograph appearing on a letter to Richard Mosk.



CLOCKWISE FROM TOP LEFT: An autographed photo of U.S. Supreme Court Justice David J. Brewer; a 1963 letter of thanks from President Lyndon B. Johnson to Stanley Mosk; and an autographed photo of President William Taft.

COURTESY CALIFORNIA JUDICIAL CENTER LIBRARY

Tooling Around Berkeley in a Yellow Jag:

A TRIBUTE TO PROFESSOR HERMA HILL KAY

BY RICHARD H. RAHM*

HERMA HILL KAY, after graduating third in her law school class at the University of Chicago, and clerking for California Supreme Court Justice Roger Traynor, in 1960 became the second woman to teach at Berkeley Law (then known as Boalt Hall) at the University of California at Berkeley. During her almost six decades on the faculty, Professor Kay attained numerous achievements and honors. She was appointed co-reporter of the Uniform Marriage and Divorce Act in 1968; co-authored the California Family Law Act in 1969; co-authored in 1974, with Kenneth M. Davidson and (then Columbia Law Professor) Ruth Bader Ginsburg, the first law school casebook on sex discrimination (now in its 7th edition); became the first woman dean of Berkeley Law (1992–2000); was named one of the 50 most influential female lawyers in the country by the *National Law Review* in 1998; received the Association of American Law Schools (AALS) Triennial Award for Lifetime Service to Legal Education and the Law in 2015; and was, undoubtedly, the first female law professor to regularly fly a plane and drive around Berkeley in a yellow Jaguar.

Professor Kay died on June 10 of this year at the age of 82. The California Supreme Court Historical Society previously published a 200-page oral history of Professor Kay.¹ Here, we remember Professor Kay with tributes from those in the legal profession who knew her.

* * *

FROM U.S. SUPREME COURT ASSOCIATE JUSTICE RUTH BADER GINSBURG, JANUARY 3, 2015:

Herma and I first met in a women-in-the-law conference in 1971. For the rest of that decade, she was my best and dearest working colleague. Together with Kenneth Davidson, we produced, in 1974, the first set of published course materials on sex discrimination and the law. Ever after that joint venture, Herma has remained my wise, brave and cherished friend. Before our first conversation, I knew Herma through her writing... Her extraordinary talent as a teacher, I knew as well, had garnered many awards, lecture invitations and visiting offers. I was also aware of Herma's



Herma Hill Kay

reputation as a woman of style who had a private pilot's license, flew a Piper Cub weekly and navigated San Francisco's hills in a sleek, yellow Jaguar. But Herma in person, I quickly comprehended, has a quality that cannot be conveyed in words. There is a certain chemistry involved when one meets her, something that magically makes you want to be on her side. Herma's skill in the art of gentle persuasion accounts, in significant part, for the prominent posts she has held in legal and academic circles. . . . Herma's appointment to the Berkeley faculty in 1960 was a momentous event. Her persistent effort

over a span nearing 55 years, has been to make what was once momentous, altogether commonplace — law faculties and student generations that reflect the full capacity, diversity, and talent of all our nation's people.²

FROM CALIFORNIA SUPREME COURT ASSOCIATE JUSTICE (RET.) AND BERKELEY LAW ALUMNA KATHRYN M. WERDEGAR, JULY 28, 2017:

It was the spring of our first year, 1960, when word came that starting the next fall Boalt was going to have a female professor. A female professor. Excitement reigned. Everyone was abuzz; not just the males in the class, but we two females as well. Most of us had never had a female professor, not even as undergraduates. So it came to pass in the fall of 1960 that Herma Hill arrived on campus. Young, attractive, soft spoken with a tinge of the South in her voice, always stylishly dressed, that first semester she taught us Marital Property. Only a year or two older than her students, if that, she was firm in her expectations, but open and accessible in her personality. One day she took me to meet the venerable Barbara Armstrong, then professor emeritus at Boalt. Herma never said why. She just did it. On reflection, I think she wanted me to see that there was a path in the law for women. This of course was typical. At every opportunity Herma went out of her way to encourage and advance women, always without fanfare. Her legacy is vast and will long endure.

FROM CALIFORNIA SUPREME COURT ASSOCIATE JUSTICE AND BERKELEY LAW PROFESSOR GOODWIN LIU, OCTOBER 5, 2017:

Herma Hill Kay was a giant in the law: law clerk to Roger Traynor, first woman to be dean of Berkeley Law, key

* Richard H. Rahm, an alumnus of Berkeley Law, practices employment law with Littler Mendelson in San Francisco.

architect of California family law, and an admired and beloved teacher to thousands. Her modest demeanor and understated style masked a piercing intellect and exceptional quality of judgment. I feel lucky to have been Herma's friend and colleague on the Berkeley faculty. Many years ago, she moved my admission to the U.S. Supreme Court bar, and the certificate in my chambers bears her name — a tangible reminder of all that is great and good in our profession.

FROM UNITED STATES NINTH CIRCUIT COURT OF APPEALS JUDGE AND BERKELEY LAW ALUMNA MARSHA S. BERZON, OCTOBER 9, 2017:

Herma was my Family Law professor, mentor, friend, and role model. She played a critical role in guiding younger lawyers and law professors in the 1970s and 1980s in developing legal theories designed to eliminate sex-based discrimination and advance the rights of women. I was sometimes among that group, and valued her wisdom — and equanimity, as doctrinal disputes raged — enormously.

I remember particularly her debut as a Supreme Court lawyer, in a case called *Hisquierdo v. Hisquierdo*,³ concerning whether, in light of California community property laws, a divorced wife was entitled to a portion of her husband's Railroad Retirement Act pension when he retired. Given Herma's background in community property and family law, she was a natural to represent the wife in the case. I wrote an amicus brief in *Hisquierdo*, so Herma invited me to a gathering of lawyers she put together to discuss the oral argument strategy — I do not remember if it was a formal moot court, although it might have been. What I do remember about that gathering — aside from Herma's and her husband Carroll's amazing apartment on Telegraph Hill, and the delicious dinner she served us all afterwards — was that after Herma received the advice of all present about the substance of the upcoming oral argument, she asked for guidance on what seemed to her a more pressing matter: What should she wear? (Herma was quite confident of her legal prowess, as she was quite right to be.) I believe the key attire question was whether her blouse should have a bow. The group duly weighed in on the issue — I think we came down for the bow. Whether she followed our advice I do not recall.

Herma's side lost, not because of her blouse, I am confident. She said afterwards that the problem was that the seven members of the Supreme Court who voted in the majority did not really understand community property law. Interestingly, Justice Rehnquist, the only member of the Court who had practiced in a community property state, joined Justice Stewart's dissent. So I suspect Herma was right about the source of the problem — as she pretty much always was.

I last saw Herma for a substantial conversation a year or two ago, when we had dinner at a San Francisco res-

taurant with Wendy Williams. Herma was her indefatigable self despite considerable physical challenges, her convictions, sense of humor, and deep wisdom intact. Then Wendy and I took her home to her still-glorious apartment — Carroll now gone, but the place still alive with their life together. I will miss her enormously.

FROM UNITED STATES NORTHERN DISTRICT OF CALIFORNIA JUDGE (RET.) MARILYN HALL PATEL, OCTOBER 10, 2017:

The closing stanza of one of my favorite poems, "Renaissance," by Edna St. Vincent Millay, speaks so aptly of my dear friend, Herma Hill Kay: "The world stands out on either side/No wider than the heart is wide/Above the world is stretched the sky/No higher than the soul is high." Herma had a breadth of vision and heart that was all-encompassing. She had a depth of spirit and soul that was genuinely magnanimous. She was a daughter of the South as evidenced in her soft accent and demonstrated in her gracious gentility. But be not misled, for hers was a steely gentility. How else could she have forged the unwalked paths that so many of us were fortunate to follow?

Professor Kay was a beacon, a mentor, a leader, the first among firsts. She led and she lived what she inspired in all of us. Not only women law students, women lawyers and women faculty members benefited from her leadership and scholarship, so did their male counterparts. Herma transformed the academy, the law, and the profession for all of us. Her leadership was inclusive. And she did it all with extraordinary grace.

We are indebted to Herma for her contributions to family law, antidiscrimination law and improving the landscape of the law for all us, civilians and professionals. We are fortunate to have known her and to be blessed with her wisdom and the generosity of her heart and soul.

FROM ERWIN CHERMERINSKY, DEAN, BERKELEY LAW, AUGUST 24, 2017:

Herma Hill Kay was a legendary figure in legal education and an enormously influential presence at Berkeley Law, where she taught for 57 years and was dean. One of the first things I did as the founding dean of University of California, Irvine School of Law was to create a board of visitors and Herma was one of the first people I asked. She participated in virtually every meeting and was invaluable in her thoughtful suggestions. She combined a stunning intellect with great personal warmth in a way that should be a model for all of us. ★

ENDNOTES

1. *Cal. Leg. Hist.*, 8 (2013): 1-206.
2. Ginsburg's remarks on presenting Kay with the AALS Section on Women in Legal Education's Ruth Bader Ginsburg Lifetime Achievement Award, reprinted in *Cal. Law Rev.*, 104 (2016): 575-578.
3. *Hisquierdo v. Hisquierdo* (1979) 439 U.S. 572.

John Van de Kamp: Man of Principle

BY KATHLEEN TUTTLE*

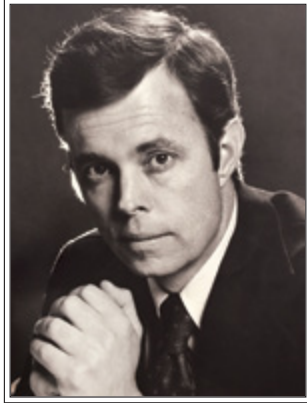
JOHN VAN DE KAMP, one of California's most distinguished legal and political figures, died on March 14, 2017 at the age of 81. Friends, family, clergy, colleagues from bench and bar, and official Los Angeles, gathered at his home parish of St. Andrew Catholic Church in Pasadena on March 30th to remember John.

Van de Kamp's calm and thoughtful manner brought him respect throughout his career, but the gush of appreciation and genuine affection expressed by several presenters at his memorial service were something else again. Father Paul A. Sustayta, principal celebrant and John's longtime pastor, called John "my treasured friend," spoke of his lifetime of good works, and said that his pioneering, forward-thinking record placed him far ahead of his time in the administration of justice.

Van de Kamp was the district attorney of Los Angeles County for six years, beginning in 1975.¹ Judge Stephen S. Trott of the U.S. Court of Appeals for the Ninth Circuit was a senior prosecutor in the DA's Office when Van de Kamp took charge. In his remarks at the service, Trott vividly recalled that many of his fellow prosecutors scratched their heads at Van de Kamp's appointment. How could someone who had spent the past five years as the federal public defender lead the DA's Office? But in fact, Trott said, Van de Kamp "revolutionized and improved every facet, every function" of the office.

Trott, whom Van de Kamp tapped to be his chief deputy, recited a litany of John's reforms: establishing innovative, dedicated units targeted at child abusers, career criminals, crime in the entertainment industry, sexual assaults, hardcore gang violence, elderly and nursing home abuse, the unique needs of crime victims, and the "Roll-out Unit" which dispatched a specially trained team of prosecutors and investigators to the scene of police shootings to independently investigate them.²

"Most lawyers are short on understanding people, and that set John apart," said Trott. "John started as a public defender, but he ended as a defender of the public."



John Van de Kamp

Upon election as state attorney general in 1983, Van de Kamp again introduced visionary changes including, California's first computerized fingerprint system, greatly enhancing law enforcement's effectiveness in crime-solving. He also created the Public Rights Division, which gave new emphasis to cases in specialized fields like antitrust, environmental law, consumer protection and civil rights. Such accomplishments helped Van de Kamp win re-election in 1986.

Los Angeles attorney Kevin O'Connell also shared memories of John. Their friendship dated back to 1963 when they were both young lawyers in the U.S. Attor-

ney's Office. They shared a love of the law, theater, music, and especially boxing fights at the Olympic Auditorium where a small group of lawyers would go after work every Thursday night. One of their favorite boxers was the famous Armando ("Mando") Ramos, whom they rooted for over drinks and cigars. O'Connell also recalled a memorable conversation he had with Warren Christopher, then in the Carter administration and charged with vetting candidates for FBI director. Van de Kamp was on a short list for the post and, while he didn't get the job, Christopher told O'Connell that John was "the most honorable person that ever lived."

Mickey Kantor, former U.S. trade representative and Department of Commerce secretary under President Bill Clinton, and John's longtime friend, political ally, and law partner, considered Van de Kamp "the perfect public servant," devoted to the public good to an unusual degree. Moreover, despite the demands of law practice, John "never missed a chance to counsel a younger person," or to share L.A.'s history. Much of Van de Kamp's career had been spent in the city's civic center. The Van de Kamp family, founders of the venerable Van de Kamp Bakeries and Lawry's Restaurants, was part of that early history, opening its very first retail venture — a potato chip stand — on South Spring Street in 1915. Kantor said John enjoyed taking law clerks on a four-hour walking tour of his favorite L.A. landmarks.

"Van de Kamp might have been governor if his principles hadn't gotten in the way," Kantor said, alluding to John's loss to then former San Francisco Mayor Dianne Feinstein in the hotly contested 1990 Democratic gubernatorial primary election. Feinstein ran blistering TV commercials attacking Van de Kamp as "trying to let

* Kathleen Tuttle is the deputy-in-charge, Antitrust Section, Los Angeles District Attorney's Office, and author of the upcoming book, *Lawyers of Los Angeles*. She knew John Van de Kamp through legal circles and writing projects, and as a fellow Pasadenan.

loose a killer.”³ The ads referred to the prosecution of Angelo Buono (called the “Hillside Strangler”), who was charged with the strangulation murders of ten women. As district attorney, Van de Kamp had agreed to drop murder charges against Buono.

Naturally there is more to that story, left unsaid at the service, but its telling fully illuminates Van de Kamp’s character. Kenneth Bianchi and his cousin Angelo Buono, Jr. committed rape and other crimes against ten women before killing them during October 1977 and February 1978. The men were called the “Hillside Stranglers” because many of the victims’ strangled, nude bodies were found — one at a time, every several days — along the hillsides in the Hollywood-Glendale area. Bianchi was apprehended first, and immediately reached a plea agreement, conditioned on being the prosecution’s star witness against Angelo Buono. Because little physical evidence linked Buono to the murders, Bianchi’s testimony was essential.

Bianchi repeatedly flip-flopped concerning his original confession and statements to the police, and even claimed to have multiple personalities. He wrote an “open letter to the world,” reported in the *Los Angeles Times*,⁴ repudiating his initial confession, available for all to see.

Deputies called for a meeting with Van de Kamp. They presented a lengthy summary of Bianchi’s inconsistencies, describing it as “self-immolation of his own credibility.”⁵ For them, this posed “an ethical problem . . . ethical concerns . . . in using a witness they themselves regarded as totally unreliable.”⁶ Van de Kamp evaluated, then ultimately concurred in their appraisal, deeming it “our best judgment considering the ethical principles that govern prosecutors.”⁷

In court, the deputies moved to dismiss the murder charges. Instead, they would prosecute Buono for the remaining non-murder charges as the quickest way to keep him off the streets and to protect the public. Despite Feinstein’s accusation to the contrary in the gubernatorial primary a few years later, prosecutors never contemplated “letting [Buono] loose.”

Judge Ronald M. George, then on the Los Angeles Superior Court and presiding over the trial, denied the People’s motion, declared that in the furtherance of justice the murder charges should be decided by a jury, and ordered the District Attorney’s Office to resume its prosecution.⁸ After further deliberation, Van de Kamp then succeeded in getting the state attorney general to take over the case, whereupon its deputies proceeded to trial, then the longest in U.S. history, and secured convictions in 9 of the 10 counts of first-degree murder.

Van de Kamp’s ethical concerns, his principles, drove his approach to the Hillside Stranglers. Regardless of what others thought then (or now), *he* took the expressed reservations of his top lawyers to mean that they did not believe in their case. It is problematic for a prosecutor to harbor reasonable doubt when asking a jury to return murder convictions.⁹

It was Van de Kamp’s strong conscience that placed him in a class by himself. That is why so many people and organizations throughout the years sought his advice and counsel and why, during his nearly three decades in private law practice, he was often asked to represent the public interest in complex legal matters. In 2006, the California attorney general appointed Van de Kamp as the independent monitor of the J. Paul Getty Trust, charged with investigating misuse of the Trust’s funds. In 2011, the City of Vernon retained Van de Kamp as an independent reform monitor to oversee the clean-up of its scandal-tainted city government. John also served a term as president of the State Bar of California.

John’s daughter Diana, the final speaker at the memorial, spoke movingly of her father, and she too stressed his dedication to principle. She urged the assembled to “carry on my dad’s torch in your own lives. Celebrate him by pushing for what’s right, not popular.”

Van de Kamp will be remembered most as a towering figure in California law and politics, but he was also a devoted family man. He and his wife Andrea were married for 39 years. Andrea’s well-recognized accomplishments in the arts and philanthropy, and John’s focus on law and public service, led them to interests and friendships that spanned the cultural and civic life of Pasadena and greater Los Angeles.

When the afternoon service concluded, the large crowd spilled out onto a sunny plaza for food and drink, including huge bowls of potato chips made from the famous original Lawry’s recipe. The air was thick with rich conversation of bygone campaigns, ballot proposition fights, legal cases and causes, and decades-old friendships. Guests — many now in their eighth and ninth decades — seemed reluctant to depart; so many dear friends had reconnected.

As I headed to the parking lot it struck me that, while we are a region often criticized for lacking social cohesion, depth, and regard for the past, celebrating John, the learned, Ivy-League educated scion of a revered century-old L.A. family, brought out a proud sense of community.

The testimonials to John’s integrity and commitment to public service undoubtedly made many feel inspired, yet wistful, for we may not see his like again. ★

ENDNOTES

1. The Los Angeles County Board of Supervisors appointed Van de Kamp to complete the unfinished term of L.A. County District Attorney Joseph P. Busch, who had died in office. Van de Kamp then won election to a four-year term in 1976.
2. The Roll-Out Unit was triggered in part by a shooting in early 1979. Eula Love was an African-American woman who lived in South Central Los Angeles and failed to pay her gas bill. When gas company employees came out to terminate service, allegedly there was an altercation that only escalated once police were called to the scene. Love threw a kitchen knife toward officers, and police shot and killed her. Community outrage and

Continued on page 25

JOHN VAN DE KAMP MAN OF PRINCIPLE

Continued from page 24

questions about what actually occurred ensued. No officer was prosecuted. Henceforth, the designated team was to respond to the scene immediately, interview witnesses, and objectively assess whether any officers present should be prosecuted.

3. “Feinstein Goes for TV Jugular with Hillside Strangler Ad,” *L.A. Times*, June 1, 1990, OCA3.

4. “Bianchi Now Denies Role in Murders,” *L.A. Times*, October 22, 1980.

5. “Dismissal of Buono Murder Counts Asked,” *L.A. Times*, July 14, 1981, 1.

6. “Memos Cite Holes in Strangler Case,” *L.A. Times*, July 26, 1981, 1; “D.A. Asks State to Study Taking on Buono Case,” *L.A. Times*, July 27, 1981, 1.

7. *L.A. Times*, July 28, 1981, A1.

8. “Judge Refuses to Drop Buono Murder Charges,” *L.A. Times*, July 21, 1981, A1.

9. The Los Angeles County District Attorney’s Office *Legal Policy Manual* (2017, 24) provides, *inter alia*, “A deputy may file criminal charges only if various requirements are satisfied.” Among the conditions: “The deputy, based on a complete investigation and a thorough consideration of all pertinent facts readily available, *is satisfied the evidence proves the accused is guilty of the crime(s) to be charged*; and, [t]he deputy has determined that the *admissible evidence is of such convincing force* that it would warrant conviction of the crime(s) charged by a reasonable and objective fact finder after hearing all the evidence available to the deputy at the time of charging and after considering the most plausible, reasonably foreseeable defense(s) inherent in the prosecution’s evidence.” (Emphasis added.)

A SITE-SEEING TOUR OF DOWNTOWN L.A.

Continued from page 6

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PEOPLE v. HALL POSTSCRIPT

Continued from page 14

10. *Ibid.* at 545, 550.

11. *See ibid.* at 547–48, 551. The District Court dealt with the U.S. Supreme Court’s *Plessy v. Ferguson* (1896) 163 U.S. 536, 551–52 — which had (a) held “social equality” to be unprotected by the Fourteenth Amendment and (b) countenanced separate but equal—by boldly proclaiming, “A paramount requisite in the American system of public education is social equality. It must be open to all children by unified school association regardless of lineage.” 64 F.Supp at 549; *see also ibid.* at 550 & n.7.

12. *Westminster School Dist. of Orange County v. Mendez* (1947) 161 F.2d 774 (9th Cir.).

13. *Ibid.* at 781. The Ninth Circuit distinguished *Plessy*, but on narrower grounds than the District Court. *See supra*, note 11. The Ninth Circuit acknowledged that amicus parties had urged it to “strike out independently on the whole question of segregation,” but, instead, the Court held only that (a) lawful segregation could not be established by the defendant school districts’ “administrative or executive decree” (as opposed to legislation), and (b) the districts’ practices were “entirely without authority of California law” and therefore deprived the Mexican-American schoolchildren of due process and equal protection. *See* 161 F.2d at 780–81.

14. “San Bernardino” refers to *Lopez v. Secombe* (1944) 71 F.Supp. 769, 771–72 (C.D.Cal.), in which the City of San Bernardino had been enjoined from barring Mexican Americans from a public pool.

15. *Ibid.* at 783 (Denman, J., concurring).

16. *Brown v. Board of Education* (1954) 347 U.S. 483, 486, 495.

17. *Perez v. Sharp* (1948) 32 Cal. 2d 711, 712.

18. *Ibid.* at 747 (Shenk, J., dissenting).

19. *Ibid.* at 721 (citations omitted).

20. *Ibid.* at 731.

21. *Ibid.* at 729 (citation omitted). The uncertainty of Section 60’s racial classifications was previously illustrated in *Roldan v. Los Angeles County* (1933) 129 Cal.App. 267. A Filipino man applied for a license to marry a Caucasian woman; the Los Angeles County Clerk refused to issue the license but the Superior Court ordered issuance because — at the time — Section 60 barred a white from marrying, *inter alia*, “a Mongolian” and made no mention of Filipinos (also termed Malays). *See ibid.* at 268. The Court of Appeal of California affirmed, finding that Malays were not within the definition of Mongolian. *Ibid.* at 272–73. “Without delay,” the Legislature amended Section 60 to additionally bar a white person from marrying a “member of the Malay race.” *Perez v. Sharp*, 32 Cal.2d at 747 (Shenk, J. dissenting). The California Supreme Court subsequently viewed the term “member of the Malay race” with substantial “uncertainty.” *See ibid.* at 730.

22. 32 Cal.2d at 730.

23. *Ibid.*

24. *Ibid.* at 731–32.

25. *Loving v. Virginia* (1967) 388 U.S. 1, 2, 11–12.

How Adversarialism Triumphed—and What It Wrought

BY REUEL E. SCHILLER*

AMALIA D. KESSLER

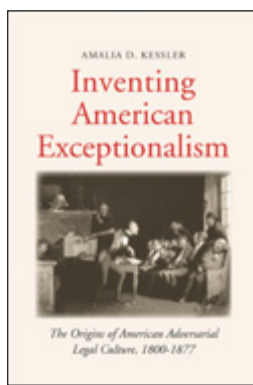
INVENTING AMERICAN EXCEPTIONALISM:
THE ORIGINS OF AMERICAN ADVERSARIAL
LEGAL CULTURE, 1800–1877

464 pages, \$35.00 (paperback) \$85.00 (hardcover)
\$16.99 (Kindle)

New Haven: Yale University Press, 2017.

ONE OF THE first things that every would-be attorney learns in law school is that American courts resolve disputes in an “adversarial” manner. Each side in a case is responsible for generating its own evidence and its own interpretations of the law. Lawyers then present this information to passive, neutral adjudicators — judges and juries — that resolve the dispute. Much civil and criminal procedure is based on this foundation of adversarialism: responsive pleadings, party-led discovery, examination and cross-examination of witnesses, shifting burdens of proof, voir dire, impassioned opening and closing statements to juries. In the United States, judges and juries may render the final verdict, but the lawyers for the parties define the shape and structure of a case.

At some point in school, a law student may learn about an alternative approach: an “inquisitorial” system in which judges take a more active role in the litigation. In such a system the judges dictate the direction of the case. They develop the factual record themselves, perhaps with the aid of a judicially-controlled bureaucracy of masters, commissioners, and examiners. Occasionally, a student may get to debate the relative merits of the adversarial and inquisitorial systems, perhaps in a comparative law class in which American adversarialism is contrasted with the more inquisitorial systems of continental Europe. While this debate may raise questions about the wisdom of one system or another, it does



not challenge one basic assumption: that adversarial adjudication is the bedrock of the American legal system. It’s as American as baseball, hot dogs, apple pie, and Chevrolet.

Amalia D. Kessler’s fascinating, erudite book, *Inventing American Exceptionalism: The Origins of American Adversarial Legal Culture, 1800–1877*, tells a very different story. Adjudication American-style, she persuasively argues, is not inherently adversarial. Instead, nineteenth-century America saw a battle between proponents of both adversarial and inquisitorial systems. Her detailed, well-told narrative explains why the adversarial system triumphed to such a degree that its existence now seems foreordained rather than the product of a specific, historical process.

Kessler starts *Inventing American Exceptionalism* by recapturing the lost tradition of inquisitorial adjudication in the United States. The first place she looks are the early nineteenth-century courts of equity in New York State. These courts were not simply vehicles for the pallid fragments of equity that still waft through our contemporary court systems. Instead, they had a completely different way of resolving disputes. Judges, assisted by other officials, who may or may not have been lawyers, developed a written record by presenting witnesses with interrogatories. The parties were not entitled to cross-examine witnesses, or even have lawyers. Indeed, the specifics of the proceedings were secret, in order to ensure the candor of witnesses. The orality we associate with common law trials was rare. Judges then rendered their decision based on the record that they themselves created.

Nor were courts of equity the only inquisitorial institutions that Kessler uncovers. She describes the conciliation courts of territorial Florida and California. These courts were designed to quickly and efficiently resolve disputes in an informal manner. Lawyers were not necessary, nor were specific legal causes of action. Instead, these courts empowered respected members of the community to paternalistically render decisions in disputes that would ease social tensions and enforce community norms. Although conciliation courts failed to take root in the United States, Kessler demonstrates that they were heatedly debated by mid-nineteenth-century legal reformers. Adversarialism, she shows us, was not taken for granted in the decades before the Civil War.

According to Kessler, America’s last great bout of inquisitorial adjudication occurred immediately after

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the Civil War, in the form of the tribunals established by the Freedmen's Bureau to resolve disputes among recently freed slaves and between those freed people and their former masters. As with courts of conciliation, these tribunals, which frequently adjudicated disputes informally without the aid of lawyers or specific procedural requirements, were designed to promote social stability rather than to serve as forums for the enforcement of legal rights. The leaders of the Bureau saw them not as adversarial courts, but as institutions designed to teach the freed slaves and white southerners the value of racial harmony and free labor.

These experiments in inquisitorial adjudication were not successful. The promotion of the Field Code in 1848 subsumed equitable forms of action into common law's adversarial procedures. Indeed, even before then, New York's equity courts were behaving in an adversarial manner, with lawyer-driven, oral examinations and cross-examinations of witnesses. Conciliation courts, while debated, were never implemented, and Freedmen's Bureau tribunals disappeared with the end of Reconstruction.

Kessler convincingly demonstrates why these various inquisitorial experiments failed. In the first place, inquisitorial equity courts required large bureaucratic staffs that were not forthcoming in relatively stateless early nineteenth-century America. Additionally, the interests of the legal profession were not furthered by inquisitorial adjudication. The fact that these courts deemphasized the use of lawyers did not please the profession in either a purely financial sense or with respect to its ability to affect the outcome of cases. Kessler also demonstrates that the oral emphasis of the adversarial system allowed lawyers to increase the status of the profession by portraying themselves in a classical mode: as virtuous leaders, instructing the people through oratory in the model of Cicero or Quintilian.

Inquisitorial tribunals faced other difficulties as well. Kessler recounts how they became enmeshed in many of the political battles in the nineteenth century. This was most obvious in respect to the Freedmen's Bureau, which quickly became a victim of the politics surrounding the end of Reconstruction. Similarly, Kessler demonstrates how early nineteenth-century equity courts managed to make enemies on both sides of the political aisle. To Jacksonian Democrats, they were elitist engines of tyranny with unelected chancellors bent on using equitable doctrines to assist corporations and the rich. To the Jacksonians' Whig

opponents, they were a source of the worst sort of Jacksonian corruption as venal politicians handed out jobs as examiners, commissioners, and magistrates to their unqualified political allies.

Finally, Kessler brilliantly demonstrates how the proponents of adversarial justice linked their preferred system to emergent elements of American political culture. In particular, they portrayed access to adversarial adjudication as an element of individual freedom. Statist, paternalist, inquisitorial adjudication was a system unfit for men bred to liberty in the United States. Similarly, inquisitorial adjudication's supposed disdain for the rule of law and its preference for conciliatory outcomes undermined the legal predictability that was necessary for free men to act in the emerging market economy. The triumph of adversarial adjudication, according to its proponents, was necessary to promote individual freedom and dynamic economic growth.

Kessler has written a compelling, convincing book. It is also a master class in the use of difficult source material in an effort to see beyond how law is portrayed in statutes, case law, and learned treatises. Her deep dive into the day-to-day operations of the New York courts of equity, the conciliation courts of Florida and California, and the Freedmen's Bureau, as well as the experiences of the people who appeared before them, give the reader a true sense of how the law operated in the lives of litigants in nineteenth-century America.

Nor does Kessler's story satisfy only antiquarian concerns. She argues that we live in a world where the adversarial system is broken. Access to the system is profoundly limited by its cost. Private settlement of legal disputes has become the norm. The use of compulsory arbitration clauses in consumer and employment contracts has made a mockery of the genuine benefits of even a properly functioning adversarial system. In this context, *Inventing American Exceptionalism* can serve an important purpose beyond its superb illumination of the past. It can help us cast aside the historical and ideological blinders that suggest adversarialism is the inevitable product of America's political and legal DNA. In fact, Kessler writes, "our present-day procedural landscape is the legacy of social and ideological struggle." Adversarialism is not a foreordained inevitability. Instead, as Kessler shows us, other models of adjudication have a historical legacy in the United States, and that fact should "help to free our imaginations as to what might be possible" as we seek to reform our collapsing system of civil justice. ★

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2017 STUDENT WRITING COMPETITION WINNER ANNOUNCED

Winning author Michaela Goldstein (CENTER) is congratulated by Chief Justice Tani Cantil-Sakauye (CENTER LEFT), Justice Kathryn Mickel Werdegard (LEFT), who retired from the Court on August 31 but remains on the Society's Board of Directors, Society President George Abele (RIGHT), and Selma Moidel Smith (CENTER RIGHT), who initiated and conducted the competition — in the Chief Justice's chambers in Los Angeles, September 25, 2017.

(PUBLISHED IN THE SAN FRANCISCO AND LOS ANGELES EDITIONS OF THE DAILY JOURNAL ON OCTOBER 3, 2017)

THE CALIFORNIA SUPREME Court Historical Society is pleased to announce the results of its 2017 Selma Moidel Smith Law Student Writing Competition in California Legal History.

The winner is Michaela Goldstein, a 2017 graduate of Loyola Law School, Los Angeles, now a member of the California Bar and an associate at Sheppard Mullin Richter & Hampton LLP in Los Angeles. She receives a prize of \$2,500 and publication in the Society's annual scholarly journal, *California Legal History*. Second and third place winners were not selected this year.

Goldstein's paper is titled, "California's No-Duty Law and Its Negative Implications," and she argues for a new approach to the prevailing "no-duty" rule in negligence cases. She begins by outlining the historical development of negligence law in the United States and California during the nineteenth and twentieth centuries and then focuses on the evolution of California's no-duty rule in recent decades.

She contends that California courts have turned away from an earlier view of negligence that presumed a duty of reasonable care by all persons to all others, creating in its place "narrow and complex exceptions to the duty element." Her principal claim is that the "no-duty" rule often leads courts to decide in summary judgment whether a duty exists, rather than proceeding to trial to determine whether the duty has been breached. She argues that this

converts a question of fact to one of law — and with a specific consequence: "Because the element of duty is a matter of law for the court to determine, California has essentially removed negligence cases from the jury by deciding these cases on whether a duty exists."

Goldstein illustrates her discussion with two cases that were pending before the California Supreme Court at the time of her paper. *Regents of the University of California v. Superior Court*, which is still pending, asks whether UCLA had a duty to protect a student from a foreseeable attack by another student. In *Vasilenko v. Grace Family Church*, which was decided on November 13, 2017, the Court ultimately held that the church had no duty to protect a visitor from injury while crossing the busy street between the church and its designated overflow parking lot. In each case, the trial court had cited the no-duty rule in finding for the defendant, and in each the judgment had been reversed by the appellate court prior to review being granted by the Supreme Court.

The Society's annual competition is open to all law students. Papers must be written during law school enrollment and may address any aspect of California legal history, ranging from the justices and decisions of the Supreme Court itself to local events of legal and historical importance, at any time from 1846 to the present. The students' papers are judged by a panel of legal historians and law professors. ★

PRESIDENT'S NOTE

AS PRESIDENT OF the California Supreme Court Historical Society, and on behalf of its Board of Directors, I am honored to welcome the Society's first student chapter, from UC Hastings. I am thankful for these young women (Simona Bandong, Katherine Burgess, and Natalie Dreyer), who not only conceived of the idea for a student chapter of the Society, but also took the initiative to ask the Board to create one, where none previously had existed. The energy and commitment of these UC Hastings students inspires all of us to continue the good work of the Society: recovering, preserving, and promoting California's legal and judicial history, with a particular emphasis on the State's highest court. The creation of our first student chapter will help us to instill the importance of that history in the State's newest lawyers, enabling them to carry the message to future generations. We welcome the UC Hastings chapter of the California Supreme Court Historical Society with open arms, we look forward to working together with them, and we are excited to expand the student chapters to other law schools throughout the State. Congratulations, UC Hastings, on blazing the trail!

Student membership is now open to all currently enrolled law, undergraduate and graduate students. Members will be invited to upcoming Society events and also receive electronic copies of our fall and spring newsletters. Join online here: <https://my.cschs.org/membership>.

We welcome you to the Society.

— GEORGE ABELE

STUDENT CHAPTER OF THE SOCIETY
BEGINS AT UC HASTINGS

BY SIMONA BANDONG*

THE UC HASTINGS chapter of the California Supreme Court Historical Society registered as a student association in August and is the Society's first student chapter.

The idea for the new chapter came from three Hastings law students: Natalie Dreyer, Katherine Burgess and myself, and the proposal to charter student chapters won approval from the Society's Board of Directors at its June meeting.

Our goal is to promote interest in California legal history among Hastings law students.

We first thought of forming the group after we met with Justice Kathryn Werdegar last March as part of a Court tour that six of my law school classmates and I won as a silent auction prize at the Hastings Public Interest Law Foundation Gala.



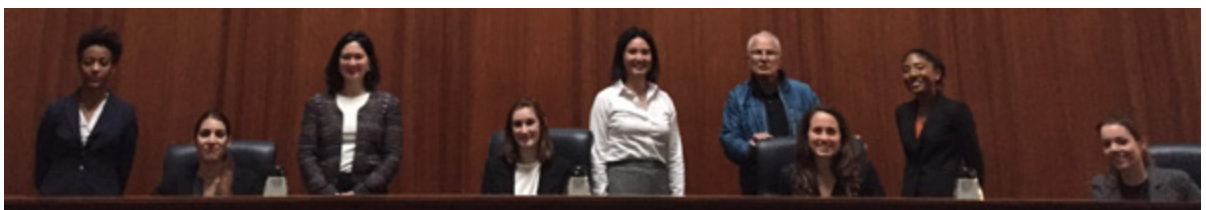
Jake Dear, the Court's chief supervising attorney, and Hastings professor and former Justice Joseph Grodin were our tour guides. Among the highlights for us: entering the courtroom through the robing room, viewing the courtroom from the justices' elevated seats, and looking down on the Civic Center plaza from the justices' chambers.

Student Elisa Vari particularly liked hearing about how the justices witnessed some of San Francisco's biggest celebrations from their offices, including those for the Giants' World Series victories in 2012 and 2014 and the California Supreme Court's 2008 decision legalizing gay marriage.

The Court building, "its architecture, and . . . the story of the lost mural and how the new one found its final place in the Supreme Court" was particularly fascinating to Natalie Dreyer. She also enjoyed Jake Dear's narration of the photographs of former justices that line the courthouse walls, including the rise and demise of court "commissioners" between 1880–1905 and his description of how the justices' facial hair evolved over the decades. I enjoyed hearing Justice Grodin explain some of the historical mementos exhibited in the building rotunda. I liked the historical jokes, for example the dirty sneaker in one of the glass cases that com-

Law students, with tour guide UC Hastings Professor Joseph R. Grodin (4TH FROM RIGHT), view the courtroom from the Justices' elevated seats.

* Simona Bandong is a second year law student at UC Hastings.



memorates a dismissive statement Justice Mosk made about the John Birch Society in 1961.

When we visited her chambers, Justice Werdegarr showed us past issues of California Supreme Court Historical Society newsletters and encouraged us to join the organization. We asked Jake Dear about forming a student chapter soon after the tour and he put the idea before the Society's board.

Justice Werdegarr also showed us her mementos, including a plaque listing the justices who occupied her office before her. She announced her retirement the week following our visit. It did not occur to me at the time that she may have also been looking at the blank space below her name, wondering about her successor.

I wonder what it would be like to contemplate retirement while showing a group of law students the chambers of a Supreme Court justice — awestruck students who only know stories about what it was like to practice law in the 1960s when attitudes towards women attorneys were different and legal research was done using library books. I hope Justice Werdegarr thinks she's leaving the profession in good hands.

The tour gave me a new appreciation of how much of California life is decided here. The justices loom large in their commanding robes and their big offices and their opinions become part of the state's historical record. I imagined the weight of writing those opinions, knowing every word will be scrutinized and preserved. By forming a student group, I hope we can spread the word that UC Hastings sits in the shadow of a treasure trove.

When law school resumed in August, we publicized the new student chapter at the UC Hastings Student Life Fair, displayed the Society's newsletter and journal, and advertised the Selma Moidel Smith Law Student Writing Competition in California Legal History. We also plan to invite speakers on California legal history for informal lunchtime seminars. ★

DAN GRUNFELD TAKES LEADERSHIP ROLE AT PARDEE RAND GRADUATE SCHOOL

FORMER SOCIETY PRESIDENT and current Board Member Daniel Grunfeld has joined RAND in a newly created position with the Pardee RAND Graduate School in Santa Monica.

Pardee RAND, the largest public policy Ph.D. program in the nation, is in the midst of a comprehensive effort to redesign policy graduate education and policy analysis to make it more relevant and responsive to contemporary problems. In his new position as executive vice dean for strategy and partnerships, Grunfeld will help guide that effort, working particularly to develop the school's impact, partnerships and philanthropic support.



Dan Grunfeld
RAND PHOTO/DIANE
BALDWIN

"This is a challenging time for policy makers, policy research and policy education," he noted. "I'm excited and honored by the opportunity to be part of this important endeavor."

Grunfeld had served on Pardee's governing board for more than eight years before joining the school's leadership "so RAND is an organization that I know very well and have a deep appreciation and respect for," he said.

"Dan's deep commitment to public service and his belief in the need for RAND's work and in Pardee RAND's ability to educate our graduates to thrive in a rapidly changing world will greatly enhance our efforts," said Pardee Dean Susan L. Marquis.

Most recently, Grunfeld headed West Coast litigation for Morgan, Lewis & Bockus LLP. Earlier, he had served as deputy chief of staff for policy under former Los Angeles Mayor Antonio Villaraigosa. Before that, he was president and CEO of Public Counsel from 1998–2008.

Pardee was founded in 1970 as one of the original eight graduate programs in public policy analysis and is the only program specializing in Ph.D. studies. It is also the only program housed in a public policy research institute.

RAND is a non-partisan, non-profit think tank that developed many of the analytical methods and tools of public policy analysis. The research organization currently pursues solutions to public policy challenges in a number of areas, including healthcare, education, national security, climate change, criminal justice and aging. RAND is headquartered in Santa Monica with offices in Washington, Boston, Pittsburgh, New Orleans, Australia and Europe. ★

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E
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S

<i>Law Walk: A Legal Site-Seeing Tour of Downtown Los Angeles</i> BOB WOLFE	2	<i>The Mosk Family Autograph Collection</i> MARTHA NOBLE	19
<i>Colleagues, Friends and Family Celebrate Justice Kathryn Mickle Werdegar's Retirement</i> MOLLY SELVIN	7	<i>A Tribute to Professor Herma Hill Kay</i> RICHARD H. RAHM	21
<i>Justice Kathryn Mickle Werdegar: A Staff Attorney's Memoir</i> GREG CURTIS	9	<i>John Van de Kamp: Man of Principle</i> KATHLEEN TUTTLE	23
<i>People v. Hall: A Postscript</i> JOHN S. CARAGOZIAN	13	<i>How Adversarialism Triumphed</i> REUEL E. SCHILLER	26
<i>History on the Walls: The Santa Ana Courthouse Murals</i> ELEANOR DIERKING	15	<i>2017 Student Writing Competition</i> . .	28
		<i>CSCHS Student Chapter Begins</i> SIMONA BANDONG	29
		<i>Dan Grunfeld Takes Leadership Role at Pardee</i> RAND	30
		<i>Membership Donors 2016–2017</i> . . .	31