



Living Through It

BY KENT L. RICHLAND

"History never looks like history when you are living through it." JOHN W. GARDNER (1914-)

My membership in the California Supreme Court Historical Society has exposed me to some colorful and complex historical characters who served as justices of the California Supreme Court. For example, one of our court's first justices was David Terry, who packed both a pistol and a Bowie knife while on the bench, was captured by vigilantes in San Francisco, shot and killed United States Senator David Broderick, and lost his own life in a confrontation with the body guards of California and then United States Supreme Court Justice Stephen Field.

And there was the brilliant early 20th century Justice Frederick Henshaw, a scandal magnet who at various times was accused of: conspiring to frame a member of the IWW labor union with the infamous 1916 Preparedness Day Parade bombing; deliberately casting an invalid vote on a petition for review of the criminal conviction of San Francisco's powerful political boss Abe Ruef; and accepting a \$410,000 bribe in exchange for altering his vote on rehearing of a suit contesting the will of Senator James Fair.

By comparison, things certainly seem dull today. I have long suspected, however, that the present is just as chock full of fantastic figures as the past, and that our romanticization of earlier times is a function of an inescapable lack of perspective. We're simply too close to current events to see the remarkable things taking place before our eyes.

It turns out I'm old enough now to put this hypothesis to a test. The other day I realized I've been practicing before the California Supreme Court for 30 years. So I pulled a 1973 volume of California Reports to see who was on the Court at that time—and from the perspective of 30 years that Court had more than its fair share of remarkable characters.

The Chief Justice was Donald Wright. Chief Justice Wright had one of the toughest judicial acts to follow in history—Chief Justice Roger Traynor. A crusty appointee of Governor Reagan, Chief Justice Wright shocked the world (and no one more than the governor who appointed him) when he authored the majority opinion in *People v. Anderson* (1972) 6 Cal.3d 628, holding that the death penalty was inconsistent with contemporary standards of civilized society and therefore violated the California Constitution's "cruel or unusual punishment" clause. It took a constitutional amendment—enacted by initiative—to overrule *Anderson*. (Incidentally,

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The Fruits of Generosity

BY DONNA SCHUELE

I didn't approach the dessert bar at the Anaheim Hilton's restaurant during the 2003 State Bar Annual Meeting with the idea of increasing the Society's membership support, but it was a sweet result nonetheless.

This story actually begins with the contributions that the California Supreme Court Historical Society received in 2003 from about 9,000 generous attorneys who donated via their State Bar fee statements. The Board of Directors voted at its Spring 2003 meeting to create a new category of membership at the Associate level, to include the vast majority who gave the suggested amount of \$25.

Associate members would receive an electronic version of the CSCHS *Newsletter* (upon the Society's receipt of their e-mail address), along with an invitation to Society events held at the State Bar Annual Meeting. They would also be offered the opportunity to upgrade their membership to the Judicial level (\$50-99) or above in order to receive additional benefits, including Ben Field's jurisprudential biography of Chief Justice Roger Traynor.

After we welcomed our new Associate members into the Society, quite a few chose to upgrade, including the attorney that I met at the Hilton. I'll bet that he also didn't approach the dessert bar intending to write a check on the spot, but there you have it!

The revitalization of the Society has even encouraged our long-time members to increase their support, and we have been gratified to hear from onetime members seeking to reestablish their ties to the Society. All of this activity has served to make the CSCHS the largest court-based historical society in the country, and we have you, our members, to thank for that distinction.

But the real significance of our increase in membership rests in our ability to expand the programs underwritten with Society funds. That a number of these projects were previously supported with public resources no longer available renders our members' generosity all the more crucial. In this newsletter issue, we begin a series of articles highlighting these projects.

With seed money from the Society, The Bancroft Library's Regional Oral History Office is preparing to conduct an oral interview of former Supreme Court Justice Joseph Grodin. Interviewer and editor Germaine LaBerge provides us with insight into the oral history process and details the various memoirs of Supreme Court Justices that have been completed over the past 40 years and are now available to researchers. The oral history of Justice Grodin will surely make a fine addition to the

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one of the appellate lawyers for the prosecution in the *Anderson* case was a young deputy attorney general who no doubt himself will have a fair claim to historical status—Ronald M. George.)

And then there was the senior member of the Court, Justice Marshall McComb. As a trial judge in the 1930s, he became nationally recognized as a court reformer for his invention of the master calendar system. By the time I encountered him, Justice McComb was as bald as Yul Brynner and wore coke-bottle-bottom eyeglasses. I never heard him speak at oral argument except once, when he ignored the attorney who was arguing to confirm a lunch appointment with a friend who was in the audience. He was famous for succinct majority opinions that followed a uniform, Socratic approach: as to each issue, the opinion would first formulate a one-sentence “Question”; the opinion would then answer the question either “Yes” or “No”; and a brief explanation would follow. Dissenting opinions were even shorter, sometimes comprising no more than one or two sentences. In 1977, the aged Justice McComb became the first and only justice removed from the California Supreme Court because of an inability to carry out his duties.

The junior member of that Court was Justice William Clark. Justice Clark was almost as laconic at oral argument as Justice McComb, but his opinions

were recognized as both graceful and literate. A close (some say the closest) confidant of Governor Reagan, Justice Clark left the Court for Washington when the Governor was elected President. There Clark played a key role in the Reagan administration in a number of capacities: first, as Deputy Secretary of State; then, as National Security Advisor; finally, as Secretary of the Interior. Few individuals in the history of the country have wielded so much power in such a variety of positions.

Of course, at the time I had no idea of the historic stature of the justices before whom I was appearing. And so it undoubtedly is today. We are certainly surrounded by individuals who will be esteemed and reviled by history; we just are in no position to appreciate who precisely they are and whether history’s thumb ultimately will be up, down or somewhere in the middle.

An important part of the mission of the California Supreme Court Historical Society is to preserve the history of California’s judicial system, including preserving the important papers and recollections of contemporary figures. For that reason, the Society is playing a major role in supporting such projects as the archiving of the Stanley Mosk Collection and the oral history of former Justice Joseph Grodin. Thus each of us, as members of the Society, can be assured that our efforts will help future generations appreciate the remarkable individuals who are making history today—even while our own appreciation is limited by the fact that, rather than looking back on that history, we are living through it.