



THE CALIFORNIA SUPREME COURT

Historical Society

NEWSLETTER · AUTUMN/WINTER 2003

A Colleague's Fond Memories of California Supreme Court Justice Marcus Kaufman

BY JOYCE KENNARD

Associate Justice Marcus M. Kaufman was appointed to the Court by Governor George Deukmejian in 1987, following the retention election in 1986. Justice Kaufman grew up in Los Angeles, obtained his bachelor's degree from UCLA and graduated first in his law school class at USC in 1956. After clerking for then-Associate Justice Roger J. Traynor, Kaufman entered private practice. In 1970, he was appointed to the Fourth District Court of Appeal in San Bernardino, where he served until being named to the state's highest court. Justice Kaufman retired from the Supreme Court in 1990 and returned to private practice in Southern California.

They say that true death is to be eternally forgotten. Never to be forgotten will be California Supreme Court Justice Marcus Kaufman, who died on March 26, 2003, at the age of 73 after a long illness. His family and many friends will forever keep alive the cherished memories of this brilliant jurist and wonderful man.

I first met Justice Marcus Kaufman in April 1989, when I became his colleague on the California Supreme Court, to which Governor George Deukmejian had appointed him in 1987.

I still remember that balmy April day in San Francisco when Marc came by my chambers to welcome me to the court. I already knew of his formidable intellect, and I had heard of his occasional sternness on the bench when his booming voice would in no uncertain terms express his utter disappointment with an attorney's inability to respond to a critical question. Based on these impressions, I expected Marc to be a gruff and imposing figure. When I met him, he indeed looked imposing and distinguished. But readily apparent were his warmth, his kindness and, yes, his gentleness. I immediately lost a chunk of my heart to him. My admiration and affection for Marc never wavered during our tenure on the court.



Former staffers fondly remember their beloved Justice Kaufman. Invariably they talk about his thoughtfulness and his loyalty. Beverly Gong, his former and my current secretary, has described how, after he had announced his retirement from the state high court in 1990, Marc lobbied his successor, Justice Armand Arabian, to retain Marc's staff attorneys. When Justice Arabian said he would, Marc walked into Beverly's office and called his wife to tell her the good news. Beverly recalled that there were tears of relief on his face.

A couple of weeks earlier, Marc had lobbied me to fill a vacant chief-of-staff position with one of his staff attorneys, Terry Mead. I'm glad I listened to Marc. Bringing Terry on my staff, and later Beverly, were among the best decisions I have made in my career.

I was devastated by the news of Marc's retirement. His brilliance as a jurist, his pursuit of excellence, his independence, and his devotion to duty had added luster to the state's highest court. But I knew how much he and his wife Eileen missed Southern California, where their children and grandchildren lived. I knew how much his family mattered to Marc.

After Marc's retirement, my December holiday cards to him and Eileen invariably would have this postscript: "Marc, I still miss you." Today, I would add: "I always will."

This past January, I had the pleasure of having Marc's grandson, Evan Granowitz, a law student at UC Berkeley's Boalt Hall, join my staff as an intern. Shortly after Evan came on board, I called Marc and Eileen to tell them how impressed my attorneys and I were with Evan's high intelligence, his dedication to the job at hand, his thoughtfulness, and his capacity for hard work, the same qualities so evident in his grandfather. I recall

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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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Remembering Justice Kaufman

BY JO LARICK

The State of California lost a leading light of California jurisprudence upon the recent death of Marcus M. Kaufman, 73, a former Associate Justice of the California Supreme Court and, earlier, of the Fourth District Court of Appeal.

Justice Kaufman often played down the brilliant intellect that was the hallmark of his career, once calling himself “just a common person blessed with some certain talents.” He had an unwavering passion for the things that mattered most to him: the love of family and the cause of justice under law. Although his passion sometimes led to impatient outbursts – he was famous for his booming and pointed questions at oral argument – it was nonetheless informed by an impeccable integrity. His legal colleagues might disagree with him, but his decisions were always based upon principle.

A big man with a big heart, Justice Kaufman was devoted to his family, friends and community. A true portrait of the man would be incomplete without acknowledging the contributions of his wife of 52 years, Eileen. She was his partner in every sense of the word. When in 1957 the young Kaufman expressed regret upon leaving his clerkship with then-Associate Justice Roger Traynor at the California Supreme Court, it was Eileen who reassured him, “Don’t worry, you’ll come back some day.” He did, in 1987, when he was appointed to the Court by Governor Deukmejian. Eileen was right there with him, his biggest fan and cheerleader. Unlike some of the other court members from Southern California, Justice Kaufman took up full-time residence in San Francisco upon his appointment. There, he and Eileen could be seen taking a walk around the block, holding hands like high school sweethearts.

Justice Kaufman was a compassionate, as well as a passionate, man. Professionally, his background shaped him. His parents, first-generation Americans, had run several small businesses while he was growing up. He helped out, doing part-time maintenance in his parents’ small hotel. He not only became ingrained with an indefatigable work ethic, he also saw the effects of World War II-era governmental regulation on his parents. The laws put onerous demands on them, and their naiveté left them unable to negotiate effectively with the government against the inflexible regulations.

Ever after Justice Kaufman was determined not to let what he felt were similar injustices befall others. As a result, he saw himself as the champion of the “little guy,” often siding with the individual against large

institutions or groups. Upon his departure from the Supreme Court, he criticized the effect of certain trends in the Court’s decisions, closing off whole classes of cases from the courts. He feared that congestion in the courts at all levels had led to the elimination of numerous legitimate claims, such as those of wrongfully terminated workers or victims of insurance bad faith, in the name of efficiency. He lamented that, “You’re defeating the whole purpose of the system, ultimately.”

Personally, Justice Kaufman was unfailingly generous and loyal. He extended a helping hand to many young lawyers beginning their careers. Anyone who had earned his friendship felt uniquely blessed by the warmth and sincerity of a truly special relationship.

Although Justice Kaufman was devoted to the law, his family was his first love. When he retired from the Supreme Court in 1990, he explained that he and Eileen had felt keenly the privations of being away from the rest of their family in Southern California. Their elderly parents required care, and their adult daughters had young families; the Kaufmans naturally wanted to spend time with their children and grandchildren while they were still youthful enough to enjoy them. The earlier devastation of their son’s death in 1977, as well as Justice Kaufman’s own brush with colon cancer in 1988, made even more imperative their desire to return to family life and recreation. Soon after Justice Kaufman’s retirement, he took his grandson on a fishing trip to Alaska and reported that “the fishing was great and the bonding even better – the trip of a lifetime.” A family friend remarked that Justice Kaufman was never so proud of any title as he was of the appellation “Zaydie” – Grandpa.

Justice Kaufman’s scrupulous devotion to duty, his careful and thorough scholarship and his record of public service were exemplary. He was a complete human being, with a full range of emotions, virtues and faults. He never pretended to be anything he wasn’t; that was part of his considerable charm. Justice Kaufman remarked at his Supreme Court confirmation hearing that his tastes ran far more to beer than to champagne. He kept the common touch, saying, “I don’t think being on the Supreme Court elevates us at all.” He nonetheless strove zealously for truth, justice and excellence. Thus, his example has shown us that from humility comes genuine greatness.

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The Future of California's Courthouses

BY CHIEF JUSTICE RONALD M. GEORGE

The following are edited remarks delivered by Chief Justice George on the occasion of the California Supreme Court Historical Society's educational panel, Temples of Justice: The Past, Present and Future of California's Courthouses, held at the California State Bar Annual Meeting in Monterey on October 11, 2002.

Our state's 451 court locations include mid-nineteenth century Greek revival "temples of justice," and the only courthouse designed by the eminent architect Frank Lloyd Wright, as well as an assortment of indifferent and often dilapidated public buildings of indeterminate lineage.

Soon after becoming Chief Justice in 1996, I undertook a tour of the courts in all 58 counties of California. In the year that followed, I traveled more than 12,000 miles across the state. I consistently encountered dedicated judges and staff interested in improving the administration of justice and in better serving the people of their local communities. These individuals often were stymied, however, by the uncertain flow of resources, barriers restricting reallocation of personnel and functions, and court locations that were inadequate, if not totally inappropriate, to meet current demand.

Two major reforms since the time of my tour have had an unprecedented effect on the court system's ability to tackle innovative and wide-ranging projects designed to improve court operations and to respond more effectively to the public's needs. The first, of course, was the 1997 enactment providing for a shift from a bifurcated system of funding for the trial courts – split between the state and the individual counties – to a system of state funding. As a result, the state has been providing a steady, consistent source of income for the courts, permitting planning and efforts to make reforms that improve court operations.

The Judicial Council, the constitutionally mandated body (that, as Chief Justice, I chair) with responsibility for setting policy for the statewide administration of justice, has ultimate responsibility for the budget and allocation process, a function that has permitted us to tackle issues on a broader and more effective level. Although our state and our nation currently face difficult economic times, it appears that the state funding system is enabling the courts to weather this fiscal crisis far better than we would have fared under the county-based system.

The second key reform was unification of the trial courts, authorized by an overwhelming majority of the voters in 1998. By the end of that year, courts in 50 of our 58 counties had unified, and by early 2001 every



Built of native stone in 1917, the Lassen County Courthouse remains in use and is listed on the National Register of Historic Places.

county in the state had a unified trial court. The resulting increased flexibility in the use of judicial and administrative resources has led to an outburst of innovation in the courts, including specialty courts addressing domestic violence, drug use, and juvenile mental health; increased outreach to local communities and constituencies; improved services for self-represented litigants; and closer coordination with local bar associations and social services providers.

On the statewide level, the Judicial Council has expanded its services to the courts, and has set new directions and created new initiatives in areas including jury reform, uniform rules, improved family court services, and the improved use of technology. The Council's role in assisting the local courts continues to develop. It has enabled our branch to assume far greater responsibility for its future and to be accountable to the public and our sister branches of government.

Following these reforms, there remained one area of deep concern – one in which I had gained direct experience during my visits around the state: the condition of court facilities. For some time, the condition of courthouses in many counties had languished. There was no mechanism accurately to detail present or projected needs statewide, and counties often placed courthouse renovations or additions at the bottom of their to-do lists.

The problem of deteriorating and inadequate court facilities was exacerbated once responsibility for the courts' operation shifted from a shared responsibility with the counties to the sole responsibility of the state. The counties were left to maintain facilities for government functions over which they no longer had control.

Courthouses in California have played a unique role in our state's history. *California Court Houses*, a publication of the California Supreme Court Historical Society, catalogues some 60 of these structures. My wife, Barbara George, who serves as Chair of the California Arts Council – a government entity – ensured that an allocation of funds for art was made

when the Supreme Court's historic home in San Francisco was renovated and a new building was erected by its side.

One project she undertook, with the assistance of individuals from the Supreme Court and the Administrative Office of the Courts (the Judicial Council's staff arm), was to obtain photographs of historic courthouses from each of the 58 counties. This had never been done before, and proved to be an unexpectedly complicated and time-consuming venture. Persistence and patience paid off, however, and the results were remarkable. A complete pictorial history of California's courthouses now can be found in the lobby of the Judicial Council's boardroom and in the hallways of the Supreme Court.

In her introduction to *California Court Houses*, Barbara wrote: "These courthouses are monuments to the way the people of California saw themselves at an earlier time, when the state was young and ideals of the democratic society were not only embraced, but also enshrined in what was often the grandest building in town." I would add that these buildings symbolized the key role that the judicial system played not only in our nation's self-image, but also in its aspirations. These buildings were monumental – not so much inviting as commanding.

Much has changed. Of the 60 courthouses that were catalogued in this publication, only 32 remain in existence today, with 21 designated national historic places and 22 still in use by the courts. In some communities, the symbolic significance of these structures seems to have abated, but local communities are being urged to recognize not only the architectural value of these remaining courthouses, but also their cultural significance as emblematic of the role of justice in our democratic society. Perhaps in an era in which skyscrapers and monster malls are commonplace, majestic court buildings have lost some of their immediate power to impress and focus the community.

Nevertheless, these historic models are important to remind us of the continuing place of a strong and independent judicial system in our state's history, and also of the future need to provide adequate sites in which justice properly can be administered. We must invest wisely in restoring and building our state's court facilities now. By doing so, we will support and encourage recognition – by current and future generations of Californians – of the critical role that meaningful and equal access to justice plays in our society.

When state funding became a reality, the question of how to allocate responsibility for courthouses was set aside for a later day. In order to understand the scope and nature of the tasks involved, the Legislature created the Task Force on Court Facilities. With members



Completed in 1921, the Plumas County Courthouse remains in official use, having been preserved in nearly its original state.

from each of the three branches of state government and representatives of the counties and trial courts, the task force undertook a comprehensive three-year examination of court facilities in the state – the first time such a survey had occurred.

The task force issued its report in October 2001. Its key recommendation was to transfer responsibility for facilities from the counties to the state. Its findings reveal the basis for its recommendation.

The task force compiled a complete current inventory of trial court facilities. Ten million useable square feet of court space are located in 451 buildings. Of these locations, 29% were built before 1960, and 70% before 1980.

Given their age, the amount of use these buildings endure, and the changes in responsibility for court operations, it is no surprise that the task force found that significant maintenance, repair or renovation is needed in 90% of existing court structures. It identified 187 buildings as potentially requiring seismic upgrades based on age and type of structure.

Fifty-four percent of courthouse space is in buildings rated either functionally deficient or marginal; leaving only 46% of space in buildings rated physically and functionally adequate – not necessarily excellent or good, but merely adequate. And 56% of court buildings are marginal or deficient for overall building security alone.

In short, the task force reached the basic conclusion that trial court facilities throughout the state are in poor condition and that new facilities are needed to meet growing demand.

Conditions differ across the state. Support for the courts has varied greatly from county to county, due to factors ranging from poor relationships between local court leadership and the county board of supervisors to marginal fiscal conditions in an individual county in the face of competing demands for other public services. By the mid-1990s, it was not uncommon to find court-

rooms housed in trailers; jurors without an assembly room, forced to wait in stairwells or corridors; courtrooms carved out of former storage rooms or even bathrooms; insufficient perimeter and courtroom security; and the full panoply of physical problems encountered in any building that has not been properly maintained.

During my travels across the state, I visited a courtroom with stacks of law books piled around the judge's bench to serve not as a resource for scholarship, but rather as a replacement for a bullet-proof shield. I witnessed prisoners being led through the clerk's office or public corridors on their way to a courtroom; water-damaged ceilings and walls; judges' chambers the size of broom closets; and juvenile facilities unfit for any child or adult. At one point, during a visit to Los Angeles, I arrived in the courthouse as the floors were still being mopped to remove the blood from a fatal shooting that had taken place in the hallway, arising out of a family law matter.

The lack of county investment in facilities has continued in many locations – due not only to stretched resources, but also, in the wake of the shift to state funding, to a lack of strong incentive to invest in facilities that support programs that are the responsibility of the state.

After thoroughly reviewing the present system, the Task Force on Court Facilities concluded that the judiciary should have the authority, responsibility, and financial capacity for all functions related to its operations and staff, including facilities. The task force observed that controlling both operations and facilities best ensures that all costs are considered together when decisions are made. Doing so will help bring about economical, efficient, and effective court operations.

Equal access to justice is the paramount goal of the Judicial Council. The task force concurred, and concluded that the state can best ensure uniformity of access to all court facilities in California by placing control of court facilities under the judiciary's control.

The task force's conclusions were carried forward in the Trial Court Facilities Act of 2002 (SB1732), authored by Senator Martha Escutia. The success of this measure was touch-and-go until the very end, but it finally was signed into law by Governor Davis on September 30, 2002.

The Act will permit our branch for the first time, on a statewide basis, to consider the full range of issues relating not only to the condition of our courthouses, but also to the manner in which court locations can affect the overall administration of justice for which the judiciary is responsible.

For example, the new act will facilitate the judicial branch's focus on increased security needs. All individ-

uals – judges, staff, litigants, jurors, witnesses, lawyers, and members of the public – should be safe from harm within the confines of a courthouse in which justice is dispensed. And that includes not only the prevention of harm from weapons and assaultive conduct, but also the provision of seismically safe and environmentally sound structures that meet public accessibility requirements. In addition, a proper facility should provide separate circulation paths for the public, court staff, and prisoners.

Our branch also will now be able to focus on ensuring that court facilities can meet current and future needs. These include adequate jury rooms, space for alternative dispute resolution, wiring for technological services, accommodations for specialized courts, and planning to incorporate the benefits made possible by court unification to the delivery and distribution of judicial services.

Courts are not asking for palaces nor are they asking that the buildings in which they operate be constructed to outshine any other structure in the area in which they are located. They are asking simply that courthouses be designed and maintained to provide an adequately equipped and accessible location sufficient to provide needed services to the public, consistent with maintaining the independence and strength of the judicial system.

I do not view this new Facilities Act as a burden — although it does impose a wide range of new responsibilities on the judicial branch. Instead, I see it as an enormous opportunity. Our judicial branch now will have the full range of tools available to set the course for the administration of justice in our state. We are fortunate. We have a history of excellence to rely upon, and a future of unlimited possibilities to look forward to – as well as the talent and dedication of thousands of judges and court employees who remain eager to continue their efforts to improve how we serve the public.

This is a truly historic time for our state and for our courts. Our judicial system has experienced change to an unprecedented extent during the past several years. Because so much is in flux, it is a time in which an individual can have an important impact on our judicial branch's ability to administer justice. I urge each of you to join the courts in building our system's future.

California Court Houses, *edited by Barbara George and published by the CSCSHS, is provided as one of the many benefits of Society membership at the Judicial level and above. To become a member of the Society or upgrade your membership, mail the membership form printed in this newsletter or join on-line at director@cschs.org.*

*Preserving the Past Through Oral History:
Conversations with
Former Supreme Court Justices*

BY GERMAINE LABERGE

What does a Supreme Court Justice do all day? For the past forty years, interviewers at The Bancroft Library's Regional Oral History Office (ROHO) have been asking this question of Justices of the California Supreme Court.

Even in our highly technological society of the 21st century, there remain gaps in the written record. Oral history provides an ideal process for filling those gaps and enhancing our understanding of the past. It creates firsthand accounts of important events in history through tape-recorded recollections of the people who observed and participated in them. The personal and anecdotal material gathered in the interviews illustrates how decisions are made, what motivates actions, how individuals influence the course of history – behind-the-scenes information that might otherwise be lost.

But recording an oral history can be very resource-intensive. Interviewers are highly-trained professionals who are skilled in making the subject feel comfortable and eliciting interesting and important information. However, even prior to conducting the interview, they must spend hours in preparation, becoming familiar with the interviewee's life and work. Then, after the interviews are recorded, they are transcribed, edited and indexed, before being made available to researchers in written form.

Thanks to initial funding that ROHO has recently received from the California Supreme Court Historical Society, former Justice Joseph Grodin is set to become the latest of many California Supreme Court Justices whose reminiscences, reflections and observations have been preserved for future generations.

The oral histories of Justices Jesse Carter, Phil Gibson, Frank Newman, Allen Broussard, and Stanley Mosk are put to constant use at the Bancroft. Jesse Carter's interview, recorded in 1955, covers the 1927 State Bar Act and the 1932 Democratic convention, in addition to documenting his twenty years on the Court. This wide-ranging interview includes his observations on the *Chessman* case, judicial dissent, civil liberties, statism and private property. Phil Gibson's interview is shorter, as it is one of four in a volume entitled *California Constitutional Officers, 1956-1966*. It focuses on his time in the California Department of Finance (1938-1939), but also includes his reflections on judicial reform.

A segment of Allen Broussard's oral history was published in the CSCHS's 1998-1999 *Yearbook*. The



Louisiana native discusses the impact of racial segregation and his legal education and early career (including clerking for Justice Raymond Peters), in addition to his years on the Supreme Court. In particular, Broussard candidly comments on three of his opinions: the Mono Lake decision (*National Audubon Society v. Superior Court of Alpine County*, 33 Cal.3d 419 (1983)), *Calfarm Insurance Company v. Deukmejian* (48 Cal.3d 805 (1989)), and *Carlos v. Superior Court of Los Angeles County* (35 Cal.3d 131 (1983)).

The oral histories of Frank Newman and Stanley Mosk were conducted under the auspices of the California State Archives State Government Oral History Program. Frank Newman talks about his time at UC Berkeley's Boalt Hall as professor and dean, his international human rights work, the Constitutional Revision Commission, and the 1978-1979 investigation of the Court by the Commission on Judicial Performance. Stanley Mosk, who was the longest-serving Justice on the California Supreme Court (from 1964-2001), spoke about his most famous cases, the state constitutional "Mosk doctrine" (or independent state grounds), collegiality on the Court, and the styles of the many chief justices under whom he served.

A recently completed interview with Peter Belton, the senior research attorney to Justices B. Rey Schauer and Stanley Mosk, sheds more historical light on the years 1960-2003. In *A Senior Staff Attorney Reflects on Four Decades with the California Supreme Court (1960-2001) and a Lifetime with Disability*, Mr. Belton details how an opinion is drafted, comments on his work with the Judicial Council, and discusses his life experiences as a polio survivor. In addition, Belton describes the 1978-1979 hearings by the Commission on Judicial Performance from the viewpoint of a member of the Supreme Court staff and discusses the 1986 retention elections. An avid photographer, Belton has provided many photos from different stages of his life which are bound in the volume.

The Regional Oral History Office is currently recording an oral history of former Justice Cruz Reynoso, now Professor of Law at the UC Davis School of Law. The prospective memoir of Joseph Grodin will add greatly to the documentation of the California Supreme Court in this same era, during the 1970s and 80s under Chief Justice Rose Bird. (Unfortunately, we were unable to persuade former

Chief Justice Bird to record her recollections before her untimely death.)

ROHO funds each oral history individually from sources outside of the University of California, relying on both public and private resources. For example, the Broussard oral history was funded by the University of California Black Alumni Club and the California Judges Association, among other groups and individuals, while the Reynoso interview was funded by the California State Archives State Government Oral History Program. ROHO is very grateful for the seed money provided by the CSCHS, which has allowed it to begin the preparation for interviewing Justice Grodin, and it hopes to raise additional funds for this oral history in the months ahead.

The Regional Oral History Office welcomes individual and corporate contributions to complete the Grodin

memoir and fund interviews with additional jurists. To make a contribution, please contact the Assistant Director, Regional Oral History Office, (510) 642-7395. Since 1954, the Regional Oral History Office (ROHO), a division of The Bancroft Library, University of California, Berkeley, has been documenting the lives of significant participants in historical events in California, the West, and the nation. Over 1500 volumes have been completed in many fields, including legal history and jurisprudence. To learn more about our collection, please visit our website at: <http://library.berkeley.edu/researchprograms/>.

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Living Through It

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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.

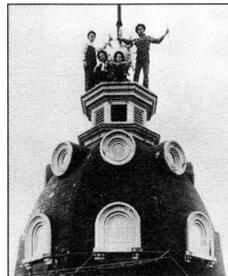
The junior member of that Court was Justice William Clark. Justice Clark was almost as laconic at oral argument as Justice McComb, but his opinions

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.

Courthouses of California: An Illustrated History



Californians have been renting, buying, building, remodeling and tearing down courthouses for 150 years. Some are modest utilitarian structures; others are magnificent architectural treasures. Using the courthouse as its focus, *Courthouses of California* illustrates the evolution of California from a sparsely settled frontier to its current position as the largest, most diverse state in the nation.

LAVISHLY ILLUSTRATED, with over six hundred photographs, some taken by acknowledged masters, such as Dorothea Lange and Carleton Watkins, others the work of talented contemporary photographers.

ENTERTAINING, with legends and anecdotes of judges, lawyers, politicians and highwaymen that are by turns amusing, dramatic, shocking, and poignant.

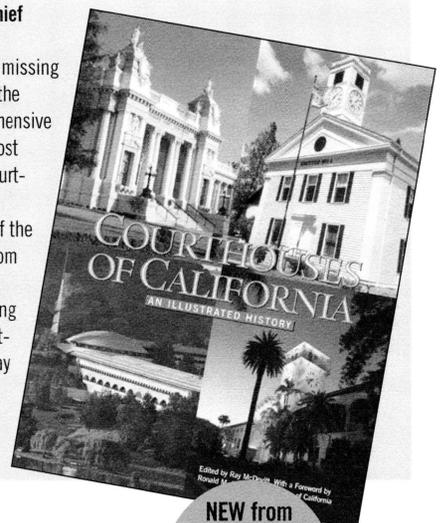
INFORMATIVE, with a foreword by Chief Justice Ronald M. George and essays contributed by distinguished judges, architects and historians. The editor, Ray McDevitt, is a partner at a San Francisco-based law firm and a member of the California Supreme Court Historical Society.

At the heart of the book are the photographs. The formal "portraits" of historic courthouses are complemented by others recording courthouse scenes as varied as a hanging in the 1880s, Joe DiMaggio and Marilyn Monroe's wedding in the 1950s, and a Black Panther Party demonstration in the 1960s. Courthouses are shown under construction, ablaze with holiday lights, consumed by fire and crumbling beneath the wrecker's ball.

From the Foreword by California Chief Justice Ronald M. George:

"This welcome volume contributes a missing chapter in the extraordinary story of the Golden State and gives us a comprehensive survey of what are quite likely our most significant public buildings—the courthouses of California. In this rich and unprecedented collection, the story of the state unfolds in its architecture—from Spanish colonialism to statehood to postwar internationalism. The wedding of architecture and justice has resulted in buildings that have much to say about the values and aspirations of our citizens over the years."

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Judicial Creativity and the Jurisprudence of Chief Justice Traynor

BY DONNA SCHUELE & SHOOHRAT ISAEV

Chief Justice Roger Traynor might have taken a bit of exception to the title of Ben Field's recently-published biography, *Activism in Pursuit of the Public Interest: The Jurisprudence of Chief Justice Roger J. Traynor*. As a law professor at Boalt Hall in the 1930s, Traynor was ever mindful of the charges that had been leveled at the anti-New Deal United States Supreme Court. Thus, with his appointment to the California Supreme Court in 1940, Traynor claimed to embrace not judicial "activism" but judicial "creativity." In doing so, Field asserts, Traynor launched a golden era for the Court, so that by the time he was elevated to Chief Justice in 1964 the state's highest court was reputed to be the most prestigious in the country.

While the stature of the Traynor Court is well known among jurists, lawyers and even law students, Field embarked on his biographical project believing that Traynor's career and contributions called out for more scholarly attention than they had previously received. He explains, "Justice Traynor is worth learning about not only because of the substantive reforms he initiated, but also because of his approach towards judging. He teaches us a great deal about judicial decision-making."

The publication of this book emerges out of a collaboration between UC Berkeley's Institute for Governmental Studies and the California Supreme Court Historical Society. As Dr. Harry Scheiber, a member of the Society's Board of Directors, explains in the Foreword, the Society has sought "to expand the scope of legal-history writing on California to embrace the interrelationships of law with society, with the processes of economic change, with politics and ideology and culture." *Activism in the Pursuit of the Public Interest* fulfills this goal admirably.

The model for Field's study is the classic text by Leonard Levy, *The Law of the Commonwealth and Chief Justice Shaw*. According to Field, Levy's work was "foundational" for his study. "I believe I asked better questions about the relationship between Traynor's innovative decisions and his political environment because of Levy."

In fact, Levy's and Field's volumes serve as interesting bookends for the history of the development of American law and jurisprudence. Levy focused on a pivotal Massachusetts state court judge in the early nineteenth century, Lemuel Shaw, to illustrate the development of common law doctrines, especially in the area of tort, at a time of increasing interdepend-



ence of the citizenry. In doing so, Levy showed us how Shaw's jurisprudential beliefs reflected his understanding of the need for the law to respond to that increasing interdependence.

Follow the movement of Americans westward and fast forward to the mid-twentieth century. Now it would be California and another influential state court judge, Roger Traynor, who would develop a jurisprudence to respond to modern forms of social and economic interdependence, where entrenched common law doctrines were proving inadequate to protect the rights of consumers and political minorities. And, like Lemuel Shaw, this chief justice would also achieve his reforms with a particular sensitivity to the larger environment in which his court operated.

In addition to judicial opinions, Field's biography relies on a variety of sources, including archives at Boalt Hall and Hastings College of the Law, casefiles housed at the State Archives, and the myriad publications that Traynor authored, first as a Ph.D. in political science, then as a law student and law professor, and later as a member of the Court.

Field also conducted interviews with colleagues of Traynor. These included Don Barrett, the senior staff attorney for the Court and a close friend of Traynor who, Field says, proved to be "an excellent source of information," and Herma Hill Kay, professor and former dean at Boalt Hall who served as Traynor's law clerk as a young lawyer. Regretting that so many of the people who worked with Traynor are now deceased, Field wishes that his study could have been informed by additional oral histories.

After recounting Traynor's early life and career, Field focuses on four different areas of case law development. With the anti-miscegenation case of *Perez v. Sharp*, 32 Cal.2d 711 (1948), Field transports us back to the world of race relations in the 1940s and the particularly complex racial and ethnic environment in California. In doing so, Field embeds Traynor's development of legal doctrine in the social setting of the times.

No controlling legal precedent supported Traynor's position that California's anti-miscegenation statute was unconstitutional. All courts, state and federal, that had considered the issue had upheld statutes against racial mixing. To overturn such a statute would certainly leave a court open to charges of judicial activism and encroachment on legislative prerogative.



Field's interview with Don Barrett reveals that he had advised Traynor to appeal to sweeping constitutional principles to defeat the statute. Traynor rejected that strategy. Instead, he employed a standard rational basis test but did so by relying on a variety of ostensibly neutral contemporary scientific and social scientific studies, especially Gunnar Myrdal's *An American Dilemma*.

In this way, Traynor avoided appearing activist but nevertheless reached a decision that carefully but creatively achieved justice. And he did so without setting off the sort of firestorm that one might have expected for the times. As Field demonstrates, notwithstanding the significant media attention focused on the case, the decision generated little public reaction and no more than subdued commentary from legal scholars.

Field's next chapters deal with Traynor's contributions to the development of law regarding divorce (*DeBergh v. DeBergh*, 39 Cal.2d 858 (1952)), police searches (*People v. Cahan*, 44 Cal.2d 434 (1955)), and products liability (*Escola v. Coca-Cola Bottling Co.*, 24 Cal.2d 453 (1944) and *Greenman v. Yuba Power Products, Inc.*, 59 Cal.2d 57 (1963)). As with his treatment of *Perez*, Field places each case in its social, political and/or economic context and demonstrates the ways in which Traynor moved the law away from sclerotic precedent and towards a position designed to accomplish broad justice without doing damage to the reputation of the California Supreme Court.

The Court's subsequent tumultuous history has not been lost on Field, especially when he undertakes to explain how Traynor and his form of activism avoided, in Field's words, the "self-inflicted wound" of the Bird Court. But, as Field ably demonstrates, Traynor accomplished much more than merely protecting the Court

Marshall F. McComb, Louis H. Burke, Mathew O. Tobriner, Roger J. Traynor, Stanley Mosk, Raymond L. Sullivan & Raymond E. Peters.

from charges of judicial activism. His understanding of the public interest recognized that judicial decision-making that remained loyal to outdated precedents undermined respect for the law and threatened democratic values far more than would judicial activism. Field astutely concludes that Traynor "attempted to replace the predictability of stare decisis with the predictability of coherent social policy." The result was an unprecedented period of prestige for the Golden State's highest court.

For anyone interested in the Traynor Court specifically or judicial process generally, *Activism in Pursuit of the Public Interest* is a must-read. Field's analysis is sharp and his writing clear. He provides just enough detail to place the cases in both social and legal context, allowing the reader to move quickly through the chapters. In the end, Field provides a historical context to today's politically charged but oh-so-routine cry of "judicial activism."

Ben Field received his Ph.D. in history and his J.D. from the University of California, Berkeley. He is a deputy district attorney in Santa Clara County, where he prosecutes homicides and sex crimes.

Shoohrat Isaev is an undergraduate history major at California State University, Northridge and an aspiring attorney. He is currently serving as the student intern for the California Supreme Court Historical Society.

Activism in the Pursuit of the Public Interest is provided as one of the many benefits of Society membership at the Judicial level and above. To become a member of the Society or upgrade your membership, mail the membership form printed in this newsletter or join online at director@cschs.org.

The Fruits of Generosity

Continued from page 2

collection, and the Society is gratified to have a role in bringing that project to fruition.

This newsletter issue also includes the edited remarks of Chief Justice Ronald George, delivered at the CSCHS-sponsored educational panel at the 2002 State Bar Annual Meeting. That program focused on California's historic and modern courthouses, and highlighted new legislation transferring responsibility for the courthouses from the various counties to the state.

We again sponsored a CLE program in 2003, entitled *Righting History's Wrongs: WWII Reparations Cases*. Much of the litigation dealing with WWII-era issues has been undertaken in California, and for a topic with a historical angle the program could not have been more timely. The Society is indebted to Whittier Law School Professor Michael Bazylar, former Assemblyman Wally Knox, Deputy Attorney General Catherine Ysrael, and Randol Schoenberg of Burris & Schoenberg, for sharing their extensive expertise and first-hand experiences at this stimulating panel discussion.

Our next newsletter issue will highlight three more Society-supported programs and projects: the expanding archival mission of the Supreme Court Library, including the archiving of Justice Stanley Mosk's papers; the Supreme Court tour program, which includes a video highlighting the role of the Court in California government; and the CSCHS's website, currently under construction.

This newsletter also happens at various points to focus on the Traynor Court and those connected to it. Our regular *On Your Bookshelf* column features Ben Field's biography, *Activism in Pursuit of the Public Interest: The Jurisprudence of Chief Justice Roger J. Traynor*, published by UC Berkeley's Institute for Governmental Studies. Publication costs were underwritten by the Historical Society, and the book is a benefit of 2003 membership at the Judicial level and above. If you are an Associate member and would like to receive a copy of *Activism in Pursuit of the Public Interest*, please contact us about upgrading your membership today.

As well, we commemorate here the life of former Supreme Court Justice Marcus Kaufman, who began his legal career as a law clerk for Justice Traynor. Justice Kaufman, who passed away in March 2003, served on the Court from 1987-1990. He is fondly remembered in these pages by Justice Joyce Kennard and Jo Larick, his research attorney.

Our next newsletter will be dedicated to the memory of Justice David N. Eagleson, who passed away in May 2003.

Once again, thank you to all of our members for your generous support of the Society in 2003. We look forward to including you in Society membership in 2004, and hope that our paths cross at a future Society event.

Fond Memories

Continued from page 1

Marc's delighted chuckle when I told him that my attorneys affectionately referred to Evan as "young Marcus." Little did I know that this was to be my last conversation with Marc. He died shortly thereafter.

In 1987, while recuperating from cancer surgery, Marc wrote down for his beloved children and grandchildren his reflections on life and death, and he reminded them of the values that he held so dear and that he in turn wanted his children and grandchildren to treasure and pass on. Those eloquent and heart-felt comments reflect the essence of Marc.

This is what he said: "The ideas, ideals and values that have most influenced my life I think, and those that I would like to believe are most exemplified in my life, are a love affair with excellence, the pursuit of perfection and rather great impatience with mediocrity or stupidity, especially when repeated; a striving for and sense of obligation to develop one's abilities and to achieve to the fullest of one's capacity; a love of beauty and of nature's wonders; love of family; acceptance of responsibility; devotion to duty; the admiration of courage; loyalty; the realization that there is much greater pleasure in giving or helping others than in receiving; and, finally, a belief that it is both a privilege and obligation of the more fortunate to assist the less fortunate, particularly in developing their potential, achieving an education or finding employment."

Marc went on to tell his family: "Ideas, values and ideals do not perish with the mind that conceived them or the life that exemplified them. They live on and play a part in the lives of those to whom they have been transmitted. And so people live on after death in the ideas, values and ideals they transmitted during their lives, which often continue to grow and spread even after death."

Marc's spirit lives on; his legacy lives on.

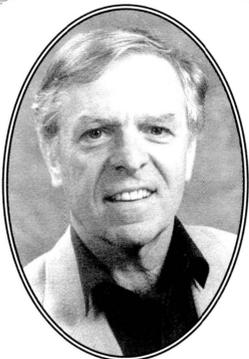


At the request of Senator Dianne Feinstein's office and Public Counsel, **MAGGIE LEVY** and a team from Manatt, Phelps & Phillips, LLP represented Ruth Hairston, an 82-year old widow whose claim for survivor annuity benefits was denied by the federal Office of Personnel Management (OPM) before the Federal Circuit Court in Washington, D.C. In November 2002, Levy argued the Petition for Review, and in January 2003, the Federal Circuit ruled unanimously in favor of Ms. Hairston. The Federal Circuit's precedent-setting published opinion can be expected to have a significant impact on OPM's operations and the rights of civil service employees and their families to obtain survivor annuity benefits.



In September 2003, **RONALD W. STOVITZ**, Presiding Judge of the State Bar Court, was elected founding President of the newly formed National Council of Lawyer Disciplinary Boards. This organization acts to enhance the work of courts and boards who serve nationwide to aid their respective state high courts in the adjudication of lawyer regulatory cases.

The College of Letters and Science at the University of California, Berkeley has honored **DR. CHARLES McCLAIN** with the 2003 Award for Distinguished Research Mentoring of undergraduates. The award is presented to faculty members who have created extraordinary opportunities for students beyond the classroom by devoting their time and effort to encouraging and developing research projects. McClain teaches in Berkeley's Legal Studies program, a law and liberal arts program located in the Letters and Science College but under the supervision of the Boalt Hall School of Law faculty.



Maggie Reyes Bordeaux, front right, is joined by the recipients of the William J. Lasarow Award for Public Service as well as members of the judiciary and court administration of the U.S. Bankruptcy Court.

CSCHS member **MAGDALENA REYES BORDEAUX**, a Public Counsel staff attorney charged with managing the organization's Debtor Assistance Project (DAP), writes that on September 25, 2003, the Los Angeles County Bar Association (LACBA) Law Commercial Law & Bankruptcy Section Debtor Assistance Project Subcommittee recognized the outstanding pro bono participation of its DAP volunteers. The U.S. District Court, Central District of California, and the bankruptcy courts for the Central District supported the event. The DAP began in 1997, with the bankruptcy courts, the LACBA Commercial Law & Bankruptcy Section and Public Counsel working collaboratively to address the pressing needs of low-income debtors. Services now include pre-bankruptcy counseling and advice; representation in Chapter 7 cases, representation in adversary proceedings; and counsel and advice at reaffirmation hearings. The pro bono participation of the volunteers honored enabled Public Counsel to provide greatly needed legal assistance to over 800 consumers over the past year.

JUSTICE EDWARD A. PANELLI received the Peter Burnett Award for Public Service from Santa Clara University at the June 2003 commencement. This award was given at the conclusion of Justice Panelli's 19 years of service as Chair of the University's Board of Trustees. Justice Panelli has served on the Board since 1963 and was named Chair Emeritus. Justice Panelli's birthplace on the University campus was recognized by the following plaque: "Edward A. Panelli, a graduate of

Santa Clara University (B.S. 1953, J.D. 1955), the 100th Supreme Court Justice of the State of California, a member of the University Board of Trustee for over 40 years and Chair of the Board from 1984-2003, was born on this site November 23, 1931." In addition, the CSCHS extends its congratulations to Justice Panelli upon being named one of the California's Top 100 Lawyers by the *Los Angeles Daily Journal*.

PETER L. REICH, Professor of Law at Whittier Law School, is litigating the land use case *Lobato v. Taylor*, which has been appealed to the U.S. Supreme Court. The case presents novel issues of the interpretation of foreign law and of a key international treaty. Successors-in-



interest to beneficiaries of an 1842 Mexican land grant, Reich's clients claim grazing, water, and woodcutting rights on the grant's former common lands, now occupied by a ski resort. When the resort owners fenced them out, Reich's clients sued on the basis of prescriptive use and Mexican law theories of usufruct under the 1848 Treaty of Guadalupe Hidalgo. The Colorado Supreme Court upheld their claims in June 2002.

"Reached a professional milestone?" we asked. CHARLES LAWRENCE SWEZEY writes, "Now that you mention it, I reached one this past summer: it was 55 years from the time I started my year and a half term as law clerk for the late California Supreme Court Justice Homer R. Spence. I retired 15 years ago after two plus terms as a member of the California Worker's Compensation Appeals Board (appointed by both Gov. Ronald Reagan and Gov. Jerry Brown) but have continued consulting in that field and writing for CEB and the California Workers' Compensation Reporter."

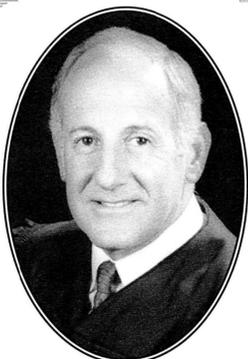
A number of current and former CSCHS Board members were among those recognized by the *Los Angeles Daily Journal* for the extraordinarily high level of business they generated for their law firms in 2002. Topping the \$10 million mark were JOHN A. DONOVAN and MELVIN R. GOLDMAN, while THEODORE J. BOUTROUS JR., ELWOOD LUI, THOMAS R. MALCOLM, and J. THOMAS ROSCH topped the \$5million mark. Congratulations on your success!

The CSCHS extends sincere condolences to the McComb family on the passing of MARGARET MCCOMB, widow of Supreme Court Justice Marshall McComb. Mrs. McComb passed away on November 4, 2003.



R. SCOTT WYLIE has been nominated for the position of Secretary of the Orange County Bar Association, and, if elected, would become OCBA President in 2007. Wylie is Associate Dean of Whittier Law School and a former member of the State Bar Board of Governors. Best of luck, Scott!

From May through July 2003, JUDGE ALVIN H. GOLDSTEIN, JR. served in Iraq as one of four judicial members of a thirteen person Legal Assessment Team. Members of the Assessment Team, acting under the auspices of the U.S. Department of Justice, were disbursed throughout the country and returned to Baghdad to prepare a report that evaluated the Iraqi judicial system and its infrastructure. The Team's primary objective was to assist in the post-war task of re-establishing the rule of law, engendering respect for fundamental human rights, debaathification of the judiciary and reactivation of the Iraqi courts at all levels. In September 2003, Judge Goldstein served as a Legal Reform Consultant to the Office of High Representative in Bosnia-Herzegovina.



The CSCHS congratulates Board of Directors members CHIEF JUSTICE RONALD M. GEORGE, former Justice ELWOOD LUI, and DANIEL GRUNFELD, as well as former board member THOMAS R. MALCOLM, on being named to the *Los Angeles Daily Journal's* Top 100 Lawyers list for 2003.



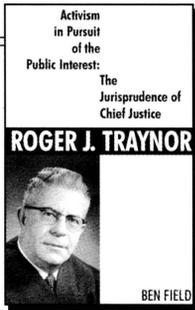
LET US HEAR FROM YOU!

Send Member News contributions and suggestions for On Your Bookshelf to: director@cscchs.org (818)883-5569 (fax) or CSCHS, 22130 Clarendon St., Woodland Hills, CA 91367.



These figures reflect monies collected and paid out for the fiscal year of July 1, 2002 through June 30, 2003. The Board of Directors approved funding for various programs during FY 2003-2004 with that funding being paid out in FY 2003-2004. The next annual report, published in our Autumn / Winter 2004 Newsletter, will reflect those transactions.

INCOME	
Membership Dues	224,076.81
Other Income	1,766.45
<i>Total</i>	<i>\$225,843.26</i>
EXPENSES	
Personnel Related	64,008.75
Publications	10,332.18
Professional Fees	6,142.00
Travel	3,261.79
Office Related	18,746.03
<i>Total</i>	<i>\$102,490.75</i>
<i>Net Income</i>	<i>\$123,352.51</i>
<i>% of Income</i>	<i>55%</i>



As a benefit of membership for 2003, members at the Judicial Level and above will receive Ben Field's newly released book, *Activism in Pursuit of the Public Interest: The Jurisprudence of Chief Justice Roger J. Traynor*.

To request additional copies, please inquire.

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