

NAACP had been looking for local school desegregation cases to build a nationwide movement since 1940, when, under Marshall's leadership, the group founded its Legal Defense and Education Fund, Inc. So when the Westminster school board filed an appeal with the Ninth Circuit, the civil rights group decided to weigh in.

In an amicus brief filed on October 2, 1946, Marshall asked the appeals court to broaden the scope of the *Mendez* case to include all minorities and to strike the "separate but equal" doctrine altogether. "Segregation on a racial basis in the public school system is a type of arbitrary and unreasonable discrimination which should be forbidden under our laws," Marshall wrote. He later used the same argument in his Supreme Court brief.

Other advocacy groups, including the American Jewish Congress, the American Civil Liberties Union, the Japanese American Citizens League, and the Los Angeles chapter of the National Lawyers Guild submitted amicus briefs in support of *Mendez*. "Whenever a group, considered as 'inferior' by the prevailing standards of a community, is segregated by official action from the socially dominant group," American Jewish Congress attorneys Will Maslow and Pauli Murray wrote on October 28, 1946, "the very fact of official segregation, whether or not equal physical facilities are being furnished to both groups, . . . is a humiliating and discriminatory denial of equality to the group considered 'inferior' and a violation of the Constitution of the U.S."

The Ninth Circuit was unwilling to go as far as the civil rights groups wanted, however. "We are not tempted by the siren who calls to us that the sometimes slow and tedious ways of democratic legislation is no longer respected in a progressive society," Stephens wrote. "For reasons presently to be stated, we are of the opinion that the segregation cases do not rule the instant case and that is reason enough for not responding to the argument that we should consider them in the light of the amicus curiae briefs." *Mendez*, 161 F.2d at 780.

The Ninth Circuit's timidity almost certainly reflected a compromise struck to reach a unanimous decision, legal experts say. "We know that in *Brown v. Board*, the chief justice really wanted a unanimous opinion because they'd think, if they go too far out on a limb, nobody would enforce that decision," Gross said. "Certainly in 1947, it's a radical argument to say any time there's segregation, that's discrimination."

But the broader desegregation argument was not lost on Warren. He became governor in January 1943 after four years as attorney general with a mixed reputation on racial issues. In 1942,

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A Continuum

BY JAMES E. SHEKOYAN

This is my first newsletter column as president of the California Supreme Court Historical Society. Often, when there is a change in the leadership of an organization, the incoming officers will talk about new beginnings, suggesting that there will be substantial changes in policy and practice from the past. I can assure you that is not the case with this change of leadership. My fellow officers and I stand on the shoulders of those who have led, directed, and nurtured this Society since its beginning. Without taking anything away from those who served before him, I want to give particular credit and thanks to Kent Richland for his leadership during the past five years. He and his fellow officers have served through a period of substantial progress for the Society, both as to its programs and publications, and the development of resources to support them.

I am pleased that Kent is continuing to serve the Society as a member of the Executive Committee so that we can continue to have the benefit of his advice and wise judgment. We hope to build on that progress by continuing to support current programs and projects (e.g., oral history projects and the archiving of the papers of Justice Stanley Mosk), increasing donations to the Society to support those projects, and identifying new programs and projects to support that further the mission of the Society, that being to preserve and promote the rich history of the California Supreme Court and the entire California legal and judicial system.

I want to thank my fellow board members for electing me as president of the Society. I've been a member of the board for over ten years, and have particular memory of my first board meeting, in April, 1994. The meeting was held in San Francisco, and was preceded by a luncheon for the board members. When I arrived from my home in Fresno, I was greeted by Malcolm Lucas, then the Chief Justice. He invited me to join him at his table with four others: two Court of Appeal justices, Supreme Court Justice Stanley Mosk, and the venerable Bernie Witkin, all of whom were then members of the Board of Directors of the Society. I will confess to having felt much trepidation sitting with that group, and more than once silently asked myself, "What am I doing here?" I will say that I am still here because I have a strong belief in the necessity of preserving California's legal and judicial history and making it available to historians and scholars, as well as the general public. I look forward to working collaboratively with the officers with whom I serve – Vice President Ray McDevitt, Secretary David McFadden, and Treasurer Ophelia Basgal

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Transitions

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Appeal were established. And as an ironic coda to the dispute over the nature of their role, each and every one of the commissioners was appointed a justice of the new intermediate appellate court.

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A much more tranquil transition recently has taken place among the leadership of the California Supreme Court Historical Society: the Board has elected as my successor long-time Board member Jim Shekoyan; it has also chosen Ray McDevitt as Vice President, Ophelia Basgal as Treasurer, and David McFadden as Secretary. These new officers have demonstrated their commitment to the Society's goals of preserving and educating the public about the history of the California judicial system, and I look forward to what I know will be great accomplishments by them as they lead the Society into the future.

I have been honored to serve as President of the Society for the past five years, a time when the Society has grown far beyond anyone's expectations and has accomplished more than in any comparable period of its existence. I wish I could take credit for these successes, but I can't. That belongs entirely to other people with whom I was incredibly fortunate to work: Chief Justice Ron George, who has been the Society's most avid supporter; my predecessor, Elwood Lui, whose continuing efforts on behalf of the Society even following his presidency have had the greatest impact on the Society since its founding; the amazingly talented and unflaggingly supportive group of officers with whom I have served – Vice Presidents John Brinsley and Judge John Wiley, Treasurer Maggie Levy, and Secretary Vicki DeGoff; and the many other members of the Board who have been so generous with their time and efforts.

Finally, and most important, the two individuals who are most responsible for the recent remarkable achievements of the Society are our co-directors Donna Schuele and Jim Yoppolo. Combining creativity, conscientiousness, and raw brain power, Donna and Jim are the heart and soul of the California Supreme Court Historical Society, the indispensable ingredients in the Society's unprecedented success.

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– our very dedicated and extremely supportive co-directors: Donna Schuele (Programs and Publications) and Jim Yoppolo (Finance, Operations, and Administration), the members of our newly-created Advisory Board, and all of you, our members, in furthering the mission and goals of the Society.

None of us has an exclusive on how best to accomplish that. I invite each and every one of you to become an active participant in the work of the Society. Talk about the Society within your firms and organizations. Encourage others to get better acquainted with the work of the Society and, hopefully, to get involved. If you are a member of the California bar, remind your colleagues that the Society is listed on the state bar fee statement as an optional donation. All of the programs, publications, and other activities of the Society could not occur without your continuing financial support, for which we thank you. We hope that the people responsible for contribution decisions within your respective firms and organizations will include the Society on their lists and in their budgets.

Again, to Kent and all the others who have served the Society over the years in one way or another, I say thank you. I welcome and encourage your comments and suggestions for making a very good and important organization even better. You may send comments to the directors at director@cschs.org, or to me directly at jes@bmj-law.com.

Here's to the continuum.

Tour the California Supreme Court

Your docent will guide you through the Earl Warren Building, a National Historical Landmark, and the architecturally acclaimed Hiram W. Johnson State Office Building, located in San Francisco's Civic Center Historic District. View historic documents such as a copy of the state's 1849 constitutional debates, rare photographs, and an extensive collection of contemporary California artworks. Educational materials about the court and its operations are available to prepare for the visit.

The California Supreme Court is located in San Francisco's Civic Center at 350 McAllister Street, between Polk and Larkin Streets.

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MEMBER TODAY
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