

San Jose and the Supreme Court: A 150-Year Connection

BY CHIEF JUSTICE RONALD M. GEORGE

This article is based upon remarks delivered by Chief Justice George in San Jose on December 2, 2003.

Over the past several years, California's courts have focused on increasing meaningful access to the courts and improving our ability to serve the public. Statewide, courts have engaged in a wide range of community outreach efforts to better acquaint the public with the role of the courts and to better acquaint the courts with the concerns and interests of the public.

The December 2003 Special Oral Argument Session in San Jose continued an important part of the California Supreme Court's outreach efforts, pursuant to which the court ventures beyond the three locations in which it traditionally hears oral argument – San Francisco, Sacramento and Los Angeles. In 2002, the court held a similar special session in Fresno, hearing oral arguments in the Fifth Appellate District's courtroom. The year before, we held a special session in Orange County, hearing arguments in the Old Orange County Courthouse as part of the celebration of the one-hundredth anniversary of that historic building and of that county's bar association.

In San Jose, the court's special session was convened in a historic courtroom of the Santa Clara Superior Court. This was not the first time the California Supreme Court has heard arguments and conducted its business in San Jose. The last time, however, there were no television cameras and much less public interest, reflecting the circumstance that the prior session was held almost 150 years ago.

The earliest connection between San Jose and the California Supreme Court dates back to the colorful history of the initial days of California's statehood, when the Gold Rush was on and the institutions of governance were not yet fully settled and formed. The first California Constitution, ratified in 1849, provided: "The first session of the legislature shall be held at the Pueblo de San Jose; which place shall be the permanent seat of government, until removed by law."

Within the first few years of statehood, the Legislature had voted to move the capital, first to Vallejo, then to Benicia, and then, in 1854, to Sacramento. Even before California officially became a state, however, the Supreme Court had established itself in San Francisco. This choice was authorized by the Legislature for a time, but in 1854, when it voted to move the seat of government to Sacramento, the

Legislature also directed that "the sessions of the Supreme Court shall be held at the Capital of the State."

Three days after the Legislature voted to move the capital to Sacramento – and to take the Supreme Court with it – the court convened, on March 27, 1854, in San Francisco. At that time the court consisted of only three justices. By a 2 to 1 vote, the majority rejected the Legislature's determination that Sacramento was the seat of government and instead concluded that the lawful capital was San Jose. Acting without arguments and without issuing a written opinion (a practice the court would not engage in today), the two-justice majority issued an order directing the sheriff of Santa Clara County to rent quarters in San Jose and to move the court's furnishings, books and records there.

Some have suggested it may be relevant that one of the two justices in the majority, Associate Justice Alexander Wells, was a resident of San Jose. Whatever the reason for this order, it is undisputed that the court packed up its belongings and moved south. As colorfully reported by the *Daily Alta California* newspaper on March 31, 1854: "The archives, and a portion of the furniture of the Supreme Court, accompanied by the Clerk, took their departure yesterday [from San Francisco] for San Jose, in accordance with the decision recently rendered by the majority of the court. The court went off in a style in keeping with its supremacy. A handsome Express wagon of Messrs. Adams & Co., to which was harnessed the private horses of the proprietors, drew up before the door of the City Hall, and received the legal lore, handsomely bound, which has been accumulating in the court since its organization. The court went off in dashing style, and we fancied that we saw the shades of Blackstone and Coke looking out of one of the windows of the City Hall."

The court met in San Jose on the first Monday in April and throughout the remainder of 1854. The San Jose *Telegraph* reported that the sheriff had provided "a large and very handsome hall, in the second story of [a] new and substantial brick building" for the use of the court. The press account continued: "The Supreme Court will be quite elegantly and conveniently provided for here, as at any place in the state. The rooms, and the location, fit exactly." Noting that it was still unclear where the Legislature and officers of the state would be located, the report concluded, "We are satisfied and gratified to have the Supreme Court with us."

The building that housed the Supreme Court in 1854, at the corner of Market and

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West Santa Clara Streets no longer exists. It was one of seventeen locations in which the court sat between 1850 and 1923, when it finally settled in at its present home – a tenure since interrupted only by an earthquake and the ensuing need for remodeling.

The court remained in San Jose through the end of 1854, but the dispute over the location of the state's capital continued. The Governor, John Bigler, a resident of Sacramento, filed suit in San Jose in district court, as the superior court was then known, challenging the Supreme Court's order that San Jose was still legally the capital of the state. The trial court ruled in favor of San Jose, and the Governor appealed.

While that appeal was pending before the Supreme Court, Justice Alexander Wells, the justice from San Jose, died unexpectedly. The Governor appointed Charles Bryan to replace him. Justice Bryan in turn promptly joined with the dissenter

from the previous decision, Chief Justice Hugh Murray, and authored a new 2-to-1 decision upholding the validity of the Legislature's actions in declaring that Sacramento was indeed the capital of California.

The court soon moved to Sacramento, where it stayed for nearly twenty years. In 1874, however, the court returned to San Francisco and began holding many of its regular sessions there. Four years later, in 1878, the Legislature expressly provided by statute that the court should hold regular sessions in Sacramento, San Francisco and Los Angeles – a practice that continues to this day, while the Supreme Court's home chambers remain in San Francisco.

Nearly 150 years later, my colleagues and I were very pleased to return to hear arguments in San Jose once again. Fortunately, this time no act of the Legislature or order of the Supreme Court was necessary to bring us there. And although we arrived in automobiles instead of horse-drawn carriages, we could not have been more pleased to be in San Jose.