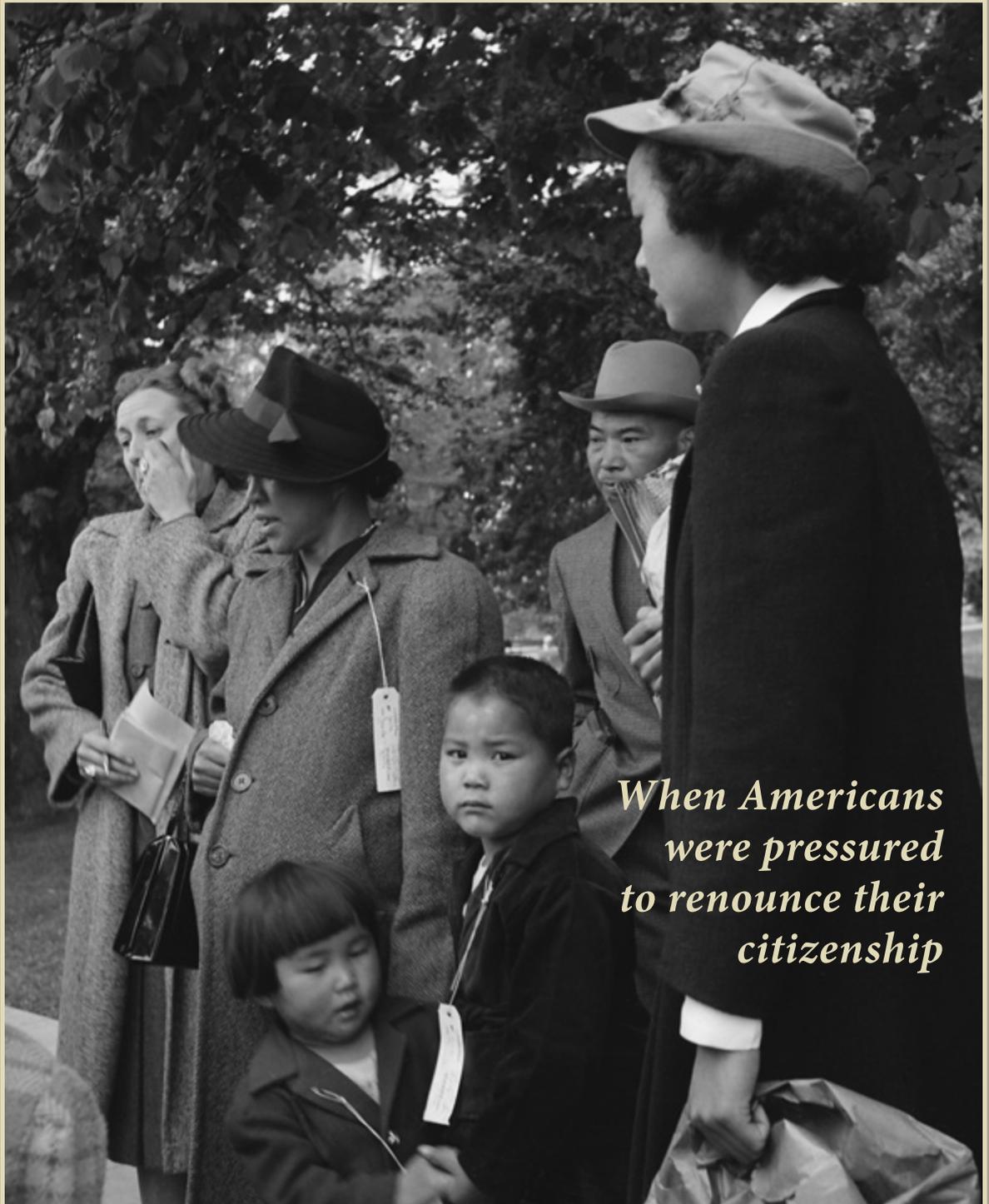




CALIFORNIA SUPREME COURT  
HISTORICAL SOCIETY

# Review

FALL/WINTER 2019



*When Americans  
were pressured  
to renounce their  
citizenship*



*At the Tule Lake Segregation Center, Japanese-American resistance terrified the War Relocation Authority, which sent the U.S. Army to put it down.*

PHOTO: R.H. ROSS, WRA '44-'46. COURTESY OF THE TULE LAKE COMMITTEE

## *When Japanese Americans Were Pressured to Renounce Their U.S. Citizenship*

BY JOHN S. CARAGOZIAN AND DONALD E. WARNER\*

THE FEDERAL GOVERNMENT'S ignoble mass imprisonment of 120,000 Japanese Americans during World War II has a postscript: In 1944 and 1945, thousands of prisoners were pressured to and did renounce their U.S. citizenship. Later, many who had renounced tried to cancel their renunciations. The government's response to these attempted cancellations displayed belated enlightenment, but also inconsistencies and residual stereotyping of Japanese Americans.

As background, all Japanese Americans, citizens and aliens alike — and without any accusation, much less proof of disloyalty or other wrongdoing — were subject to Executive Order 9066 and related federal statutes.

Under that authority, beginning in 1942, the U.S. Army imposed a mass curfew on all 120,000 Japanese Americans living on the U.S. mainland's West Coast. Later that same year, the Army "evacuated" all Japanese

Americans from the West Coast and imprisoned them in euphemistically named "relocation centers."

As recounted by the United States Court of Appeals for the Ninth Circuit in its seminal renunciation case, *Acheson v. Murakami*, the imprisonment occurred with less than one week's notice, and Japanese Americans were required to bring their own bedding, clothing, utensils, and other items, all of which had to be hand-carried.<sup>1</sup> "One has no difficulty imagining the thousands of families in which the mother must carry the babies, measuring the carrying capacity of each of the other children able to walk against the sacrifice of one or another household utensil, or book, or family treasure."<sup>2</sup>

Inadequate storage was available for household or business goods, with the result that, for example, doctors and lawyers lost "long built up practice[s]" and farmers lost crops after "years of soil improvement."<sup>3</sup>

The Ninth Circuit minced no words about the mass incarceration of supposedly free citizens: "[T]he beguiling words 'evacuation' meant deportation, 'evacuees' meant prison and their single rooms, some crowding in six persons, meant cells, as they in fact were."<sup>4</sup>

The harshest prison was at Tule Lake, in northeastern California. It was "like that of the prison camps of

\* John S. Caragozian and Donald E. Warner are lawyers in Los Angeles and formerly taught California legal history at Loyola Law School. A version of this article first appeared in the March 21, 2019 issue of the *Los Angeles Daily Journal*. Reprinted with permission.

the Germans,” a “barbed wire stockade” guarded by soldiers in turrets with machine guns. The Japanese Americans there were treated with a “Nazi-like doctrine of inherited racial enmity.”<sup>5</sup>

Tule Lake’s 18,000 prisoners were crowded into cold and flimsy barracks, fed “unpalatable food,” and had to use remote and unheated latrines. As noted by the Ninth Circuit, “[N]o federal penitentiary so treats its adult prisoners.”<sup>6</sup>

Although other prisons for Japanese Americans could be similarly condemned, Tule Lake also had a high concentration of Japanese Americans who were particularly suspected of disloyalty. Several factors contributed to the situation at Tule Lake, the primary being the government’s decision to turn the camp into the Tule Lake Segregation Center. This grew from the “Loyalty Review Program,” which principally consisted of a questionnaire administered to internees in all the camps. Two of the questions — “Are you willing to serve in the armed forces of the U.S. on combat duty . . . ?” and “Do you swear unqualified allegiance to the U.S. . . . ?” — were designed to identify internees whose loyalty had switched to (or had always been with) Japan. Those who answered those questions “wrongly” — along with, in some cases, their families who were suspected of nothing — were sent to Tule Lake.<sup>7</sup>

As a result, Tule Lake had a core of citizens and aliens who were pro-Japanese and anti-U.S. Beginning in late 1943 and continuing into 1945, these Japanese nationalists formed gangs that terrorized the other Tule Lake prisoners. “[G]oons and strong arm boys” subjected their fellow prisoners to daily intimidation, with a prison-wide “hysterical frenzy” being a result.<sup>8</sup> In 1944 and 1945, nationalist gangs beat, stabbed, and even murdered other Tule Lake prisoners who dared oppose the gangs. This intimidation extended to attacks on family members of those opposing the gangs.<sup>9</sup>

Camp administrators met these gang activities with measures more commonly used in centers where criminals were detained, including incarceration in a stockade that had acutely inadequate food and heating in the winter.<sup>10</sup> A final deterioration occurred when a fatal farm truck accident led to an October, 1943 general strike of Tule Lake’s farm workers (that is, prisoners who were hired out to local farmers or who worked in Tule Lake’s own fields). When the workers elected a negotiating committee, the committee’s members were incarcerated in the stockade. When committee members were replaced, the replacements were jailed as well. Mass meetings, which may have been seen by camp administration as mobs, resulted.<sup>11</sup>

In response to the unrest, the government declared martial law at Tule Lake. It increased the U.S. Army’s military police presence fivefold, to battalion strength. Even after martial law was lifted, nationalist gangs terrorized other prisoners. In February 1945, “the anxiety and panic

of the [Tule Lake] residents reached a new peak. Lawlessness, gangsterism, and hoodlumism prevailed . . . .”<sup>12</sup>

The government recognized the severity of this anti-Americanism. One could even say it pounced on the opportunity to permanently remove the “bad apples.” On July 1, 1944, Congress amended the Nationality Act to allow U.S. citizens to renounce their citizenship while on U.S. soil.<sup>13</sup> (Prior to this amendment, renunciation could occur only when the citizen was abroad and renounced at a U.S. embassy or consulate.) The amendment’s purpose was to allow U.S. citizens who



TOP: Farm families of Japanese ancestry in Byron, California boarding buses for Turlock Assembly center 65 miles away.

BOTTOM: Following evacuation orders, this store in Oakland, California was closed. The owner, a University of California graduate of Japanese descent, placed the “I Am an American” sign on the store front on Dec. 8, the day after Pearl Harbor.

PHOTOS BY DOROTHEA LANGE,  
NATIONAL ARCHIVES, WAR RELOCATION AUTHORITY



*At Tule Lake Segregation Center, countless goodbyes took place through fences.*

PHOTO: R.H. ROSS, WRA '44-'46.

were pro-Japan and anti-U.S. to renounce their citizenship while imprisoned in the U.S., thereby transforming them into “enemy aliens.” Enemy aliens, in turn, could be further segregated and could be subject to the U.S. Department of Justice’s jurisdiction, which included deportation.<sup>14</sup>

Following enactment of this renunciation amendment, Tule Lake’s still-powerful Japanese nationalist gangs intimidated citizens to renounce their citizenship. Tule Lake prisoners were also concerned with outside threats if they remained in the U.S. Japanese Americans feared mob violence — even murder — if they returned to their homes, especially after Army General John De Witt, who

supervised the prisons, publically stated, “A Jap is a Jap,” and must be “wiped off the map.”<sup>15</sup>

As a result of the terror inside Tule Lake and the fears about outside, most U.S. citizens at Tule Lake renounced their citizenship.<sup>16</sup>

The U.S. Supreme Court had upheld the curfew and the evacuation of Japanese Americans.<sup>17</sup> However, on December 18, 1944, the Supreme Court ruled in *Ex Parte Endo* that the Army lacked authority for the mass imprisonment (though the majority opinion failed to reach a decision on the imprisonment’s constitutionality).<sup>18</sup>

After Tule Lake began to release prisoners in the wake of *Endo*, after some Japanese Americans eventually returned to their homes, and after Japan’s surrender, many citizens who had renounced their citizenship changed their

postures: They wished to remain in the U.S. as citizens.

In 1949, in *Acheson v. Murakami*, Miye Mae Murakami and two other U.S. citizens of Japanese ancestry sued to cancel their 1944 and 1945 renunciations. All three had been married to Japanese aliens, had been imprisoned at Tule Lake, and “were free of any suspicion of disloyalty.” After narrating the above treatment of these citizens, the Ninth Circuit unanimously ruled that the three renunciations had been the result of “mental fear, intimidation, and coercion” and were therefore cancelled.<sup>19</sup>

Although the three *Acheson v. Murakami* plaintiffs obtained their prayed-for relief, including restoration of their U.S. citizenship, the decision did not directly



*For some 1,300 Japanese Americans who renounced their U.S. citizenship, the only way out of Tule Lake was a ship to a decimated, impoverished Japan.*

PHOTOS THIS PAGE: COURTESY OF THE TULE LAKE COMMITTEE

decide the fates of the thousands of other citizens who had renounced.

Two years later, in *McGrath v. Abo*, the Ninth Circuit dealt with a class action, eventually totaling 4,315 plaintiffs who wished to cancel their renunciations.<sup>20</sup> The court ruled that all citizens imprisoned at Tule Lake had been subjected to the same conditions described above and therefore were entitled to a rebuttable presumption that their renunciations were involuntary. Unless the government presented evidence that a Tule Lake prisoner's renunciation had been truly voluntary (in which case, an individual hearing would be triggered), then the citizen's renunciation would be cancelled without further proceedings.

*McGrath v. Abo*'s procedures have a common-sense appeal and, more important, worked, in that "almost all" Japanese Americans who sought to cancel their renunciations were successful in regaining their citizenship.<sup>21</sup>

Still, the procedures were imperfect, and the imperfections illustrated that burdens continued to be imposed on Japanese Americans. First, the court refused to accept a blanket affidavit concerning the "mental and physical fear" submitted by 1,400 of the plaintiffs. The court held that this "omnibus knowledge of the particular mental condition of . . . hundreds of persons is a patent absurdity."<sup>22</sup> Yet, nine years earlier, in 1942, courts had been willing to accept blanket treatment — including mass curfew and mass exclusion — of all Japanese Americans. In other words, one presumption (namely, disloyalty) was used against all citizens of Japanese ancestry, but the court stopped short of allowing another presumption (fear) to be used in favor of the same citizens.

A second flaw was that the court singled out a particular group of citizens — Kibei, citizens who had been sent to Japan for schooling. Because they "spent their formative years" there, the government was permitted to offer evidence that their renunciations had been voluntary. Why the renunciation cancellations of the Kibei were particularly suspect was left unexplained.<sup>23</sup>

A third flaw was that the 128 imprisoned citizens who renounced at locations other than Tule Lake would lack the benefit of any presumption of coercion.<sup>24</sup> Japanese Americans at other internment camps generally endured the same horrific conditions described in *Acheson v. Murakami*, save for the presence of Japanese nationalist gangs.

A fourth flaw was that citizens who were suspected of any disloyalty would be unable to cancel their renunciations. In the Ninth Circuit's decision in *Murakami v. Dulles*, Yoshio Murakami, while imprisoned at Poston, Arizona, had answered "no" to the two loyalty questions quoted above.<sup>25</sup>

After he was transferred to Tule Lake — with its "[v]iolent pro-Japanese detainees" who "knife slashed"

and murdered fellow prisoners suspected of being "friendly to the United States" — he renounced his U.S. citizenship and persisted in his renunciation through February 1945. The court seemed to conclude, without explanation, that Mr. Murakami's earlier expressions at Poston diminished the likelihood that he could have been coerced at Tule Lake.<sup>26</sup>

Perhaps these flaws can be explained — if not excused — by the times. In the early 1950s, when *McGrath v. Abo* and *Murakami v. Dulles* were decided, the U.S. was at war in Korea, and the Red Scare, epitomized by U.S. Senator Joseph McCarthy's destructive demagoguery, was at its peak. Suspected disloyalty was not easily excused during those years, even by federal judges who had so graphically condemned prior years of mistreatment of Japanese Americans. ★

#### ENDNOTES

1. *Acheson v. Murakami* (9th Cir. 1949) 176 F.2d 953, 954–55.
2. *Id.*, at 955.
3. *Id.*
4. *Id.*
5. *Id.*, at 954–55.
6. *Id.*, at 956, 960–61.
7. See Eric Muller, "All The Themes But One," 66 *U. Chicago L. Rev.* 1395, 1427 (1999). See also *Murakami v. Dulles* (9th Cir. 1955) 221 F.2d 588, 589; *Acheson v. Murakami, supra*, 176 F.2d at 960.
8. 176 F.2d at 961–63.
9. *Id.*
10. See generally Barbara Takei and Judy Tachibana, *Tule Lake Revisited*. San Francisco: Tule Lake Committee, Inc., 2001, 17.
11. *Id.*
12. 176 F.2d at 965.
13. 8 U.S.C. § 801(i).
14. 176 F.2d at 962.
15. *Id.*, at 958.
16. *Id.*, at 965.
17. *Hirabayashi v. United States* (1943) 320 U.S. 81; *Korematsu v. United States* (1944) 323 U.S. 214.
18. *Ex parte Endo* (1944) 323 U.S. 283.
19. 176 F.2d at 959.
20. *McGrath v. Abo* (9th Cir. 1951) 186 F.2d 766.
21. See Cherstin Lyon, *Prisons and Patriots: Japanese-American Wartime Citizenship, Civil Disobedience and Historical Memory*. Philadelphia: Temple Univ. Press, 2011, 181.
22. 186 F.2d at 773.
23. *Id.*, at 774.
24. *Id.*
25. 221 F.2d at 589.
26. *Id.*

# When the Justices First Donned Robes

BY MOLLY SELVIN\*

ON WEDNESDAY, APRIL 4, 1928, the *San Francisco Chronicle* reported that the seven California Supreme Court justices took the bench attired, for the first time, in black robes. The new regalia contributed “an added courtesy to the ‘your honors’ from the lips of the attorneys,” the newspaper noted, and would henceforth be worn at all official appearances.

Before calling for this sartorial shift, Chief Justice William H. Waste had directed librarian Thomas F. Dunn to request information on the practice from

Supreme Court clerks in other states. The responses he received, copies of which are archived in the Judicial Center Library, reveal that California was not the first state to adopt judicial robes but ahead of many others.

Early American jurists adopted the English custom of wearing robes, minus the wigs. The official portrait of John Jay, the first chief justice of the United States, shows him in a black and red robe with white borders. But by 1801, when John Marshall became chief justice, it is believed that the justices wore only plain black garments. Departures have been rare and noteworthy: In 1995, Chief Justice William Rehnquist added four gold stripes to each sleeve of his robe after attending a performance of Gilbert & Sullivan’s “Iolanthe” in which the lord chancellor sported similar embellishment. Justice Sandra Day O’Connor, the first woman appointed to the high court, wore a white collar, what she called “a modest addition” to her robe.<sup>1</sup>

Ninety years after Justice Waste established the robe tradition here, we asked Chief Justice Tani Cantil-Sakauye and former Chief Justice Ronald M. George to reflect on what this simple garment has meant to them. ★

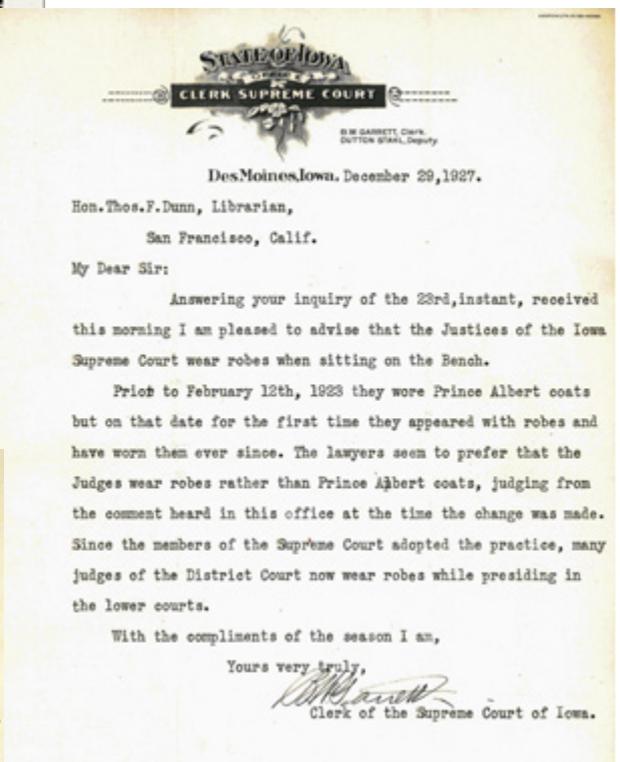
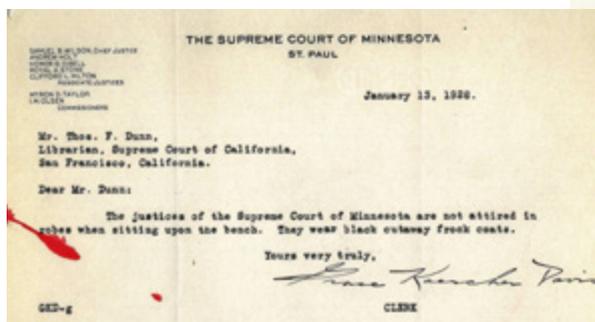
\* Molly Selvin is the *Review* editor.



## ENDNOTE

1. Sandra Day O’Connor, “Justice Sandra Day O’Connor on Why Judges Wear Black Robes,” *Smithsonian Magazine*, Nov. 2013, <https://www.smithsonianmag.com/history/justice-sandra-day-oconnor-on-why-judges-wear-black-rob-4370574/>.

LEFT: *San Francisco Chronicle*, April 4, 1928.  
BELOW: Responses from supreme court clerks in Minnesota and Iowa about judicial robes.





## “Calling for the Best Parts of Me”

AN INTERVIEW WITH CALIFORNIA  
CHIEF JUSTICE TANI CANTIL-SAKAUYE

ON AUGUST 13, 2019, *Review* Editor Molly Selvin interviewed Chief Justice Tani Cantil-Sakauye about why judges wear black robes, the garment’s significance and the robes she has worn over nearly three decades on the bench. Below is an edited transcript of that interview.

**Q.** Is the judicial robe you wear now the same robe you wore as a trial judge?

**A.** Yes, the robe I’m wearing now is the robe from my trial court years. But I have approximately four or five robes. Maybe that’s the fashionista in me, but I have a winter robe, a summer robe, an outdoor robe and I keep a robe in each of the chambers where the Supreme Court holds hearings — San Francisco, Los Angeles and Sacramento — and another one at home in the closet among my coats.

**Q.** Who has robed you over the years?

**A.** In 1990, I was robed as a Municipal Court judge by the then-presiding judge in Sacramento, Gail Ohanesian, one of the first women in Sacramento appointed to the bench. When I went to the Superior Court [in 1997], I was robed by Thomas Cecil, the presiding judge of the Sacramento Superior Court. Then, when I went to the Court of Appeal [in 2005], I was robed by my husband, and at the Supreme Court, I was

robed by my husband and sworn in by Justice Joyce Kennard on January 3, 2011.

**Q.** Why is it important for judges to wear robes? No public officials other than members of the military are required or expected to wear a uniform or other specific attire.

**A.** The robe, at least for me, is partly symbolic and partly a physical act. The symbolic part — the black robe, shorn of adornment, represents the sobriety and the gravity of the proceedings and how the judge is really not to be a central figure in the advocacy before the court. The plain robe, the silence, the remove of the judge, up and away from the well — it’s a sign in the courtroom of the gravity and the role of the person who’s wearing it, the responsibility. I also think the physicality of the robe is important. When I put on my robe my focus changes. And for certain cases, and before going out on the bench, sometimes the robe carries a weight that is palpable. Other times, depending on the circumstances and the reason I’m wearing it and the manner I’m wearing it, I leave it unsnapped. But once I snap it, and step up to the bench, it just seems to have more of a weight to it. Sometimes it [feels] very heavy.

**Q.** Can you talk a little bit more about that feeling of carrying a symbolic weight when you put on your robe?

**A.** When I’ve been in chambers as a trial court judge and I’ve been negotiating cases or talking about motions and talking to the parties, I’m usually not in a robe or if in a robe and an unsnapped robe, an open robe because I’m on and off the bench. Yet the minute I decide to go on the bench and resolve cases on the record in public, I snap up the robe, then I ascend the bench, and the robe now feels like it is calling for the best parts of me, to bring my best thoughts and my best character to bear. There is a quietness, a centering of my thoughts to focus not on myself, but on the case before me and to ensure that the parties have a fair hearing in front of me and to treat them how I would want to be treated if I were a litigant. In a way, the robe sort of gathers all of that energy.

**Q.** You have been photographed wearing a string of pearls with your robe. U. S. Supreme Court Justice Ruth Bader Ginsburg often wears a lace collar over her robe. Do many women judges accessorize their robes? And how do you decide what to do?

**A.** I do not generally wear any adornment at all [on the bench], but when I do I wear a strand of pearls. Now if I’m swearing in the Legislature, if I’m not in a courtroom, then my pearls can be a little showier, a little bigger, a few more strands. I’ve noticed that a few female jurists will wear a piece of jewelry outside or visible on their robe. I’ve noticed that with my colleague Justice [Carol] Corrigan and with [former] Justice [Joyce] Kennard. I noticed their

beautiful jewelry but it's always been somewhat conservative jewelry that didn't distract from the task at hand. I've also noticed that my male colleagues across the judiciary lately appear to be showing more of what I jokingly refer to as "tie cleavage": That zipper or the snaps are fastened lower and lower, leaving more and more tie visible. I'd not seen that before. My colleagues are all impeccably dressed, but over time, this seems to be a trend.

**Q.** Are you aware of judges who object to wearing a robe?

**A.** Not at all. I think we enjoy the uniformity of all of us dressed alike and of the robe itself. The only controversy I've ever heard about the robes, and this is from the new judges I speak with, is the choice between snaps and zippers. That is a constant conversation, surprisingly, among new justices. Snaps are newer, relatively speaking. I don't have a zipper robe. I've always had a snap robe for easy on and off but [new judges] get different advice on snaps or zippers.

**Q.** On the Supreme Court you don't wear your robe as often as you did when you were on the trial court bench. Was that an adjustment?

**A.** When I was a trial court judge, I wore the robe every day. As soon as I walked into work, I took off my jacket, I put on my robe. I wore it every day and I took it off only at the end of the day to go home. But when I went to the Court of Appeal, that was the first time I realized I wouldn't be wearing my robe every day. It was a shock to my system. I put my robe in the closet and I pull it out three times a month. At first it felt very unjudge-like to me, I felt like I had lost part of my identity. Now, after 14 years on the courts of review, I'm used to that. But I felt bereft for a while. ★



TOP RIGHT: *Former Chief Justice Ronald M. George's robe.*  
 BELOW: *Newly enrobed Chief Justice Cantil-Sakauye with, from left, Gov. Arnold Schwarzenegger, husband Mark Sakauye, and former Chief Justice Ronald M. George.*

PHOTOS PAGES 7 & 8: CALIFORNIA COURTS

A SIMPLE ROBE, RICH WITH MEANING



## One Robe's Role in the Rule of Law

BY CHIEF JUSTICE RONALD M. GEORGE  
 (RET.)\*

ON THE AFTERNOON OF APRIL 20, 1972, a few weeks after turning 32, I received a call from Gov. Ronald Reagan appointing me to the Los Angeles Municipal Court. An hour later, I was contacted by Alan Campbell, the somewhat crusty presiding judge of the municipal court, informing me that he expected me to be in his chambers at 8:30 am on the following day, a Friday (rather than my preferred date of the following Monday), to be sworn in and then preside over a jury trial scheduled to start at 9:00 am. When I reported for duty, he loaned me a judicial robe with which my wife Barbara enrobed me (having left our three-year-old son Eric and one-year-old son Andrew at home in the care of a nanny, with our third son Chris in attendance in utero). Judge Campbell then pointed me in the direction of the first of many courtrooms to which I would be assigned.

Not since the parental oversight of my attire that I experienced as a grade-school student had I been faced with a mandatory dress-code, aside from the occasional compulsion of a black-tie event. For the next 38 years, until my retirement from the bench in 2011, I abided by the command of Government Code section 68110 to "in open court during the presentation of causes . . . wear a judicial robe . . . furnish[ed] at [one's] own expense, [t]he Judicial Council [to], by rule, prescribe the style of such robes."<sup>1</sup> The tradition of wearing robes was established by Chief Justice Waste in 1928. Fortunately, it was not accompanied by a mandate that a judicial cap be worn, although given the receding hairline of some of

\* Ronald M. George served as chief justice of California from 1996 to 2011.

us male members of the court, such a provision might have enhanced the appearance of the bench.

Two weeks after joining the municipal court, I was presented with a gift of my own robe by my former colleagues at the California Attorney General's Office at a luncheon celebration they organized in a Chinatown restaurant. They had purchased the robe at an outfit that sold academic, choir, and judicial gowns. As they and Barbara formally re-enrobed me, I was presented with a fortune cookie which they eagerly urged me to open. Upon doing so, I disingenuously informed them that its advisement was "Judge not, lest ye be judged!"

This robe was to accompany me through the 38 years of service on the municipal, superior, appellate and supreme courts that resulted from five appointments by four governors from both major political parties. The robe was my companion as I presided over the resolution of thousands of disputes in which the parties sought justice, ranging from petty traffic offenses and small claims cases, to complex civil and criminal matters including the two-year-and-two-day jury trial in the Hillside Strangler case, through almost 20 years of service on the Supreme Court involving momentous issues such as those resolved in our marriage-equality decisions.

I believe that throughout these years the unadorned, plain black judicial robe worn by my colleagues and myself served its purpose of symbolizing the primacy and impartiality of the law and the impersonality of the individual judge who is called upon to administer justice, in contrast to the idiosyncratic and excessive majesty of the vestments worn by royalty and the nobility. For me, the robe also reinforced the law's formal recognition of the institution of marriage in the many dozens of wedding ceremonies that I performed for family members, friends, and celebrities, and early in my judicial career for persons lined up for hours at the main downtown L.A. courthouse waiting for the noon recess to have their marriage vows solemnized by a judge.

In 1996 on May 1, which we celebrate as Law Day in the United States, Gov. Pete Wilson administered the oath of office to me as chief justice of California, and Barbara for the fifth time enrobed me with that same garment. It was a joy to have my 91-year-old father and 80-year-old mother come to San Francisco and join in the occasion with other members of our family. As immigrants to this country, my parents never dreamed that such an opportunity would be offered to their son.

Soon thereafter, a member of a visiting delegation of judges asked me why my robe was hung on a coat rack adjacent to my desk instead of in a nearby closet in chambers,



*Ronald M. George (3RD FROM LEFT) at his Municipal Court enrobing on April 21, 1972 in the chambers of Presiding Judge Alan Campbell. Joining him are (LEFT TO RIGHT) his uncle, his mother and his wife Barbara.*

PHOTO: RONALD M. GEORGE COLLECTION

since the court was in session only a few days each month. My reply was that given the onslaught of statewide administrative duties that had descended upon me in my new position, I wanted to have that robe in sight as a constant reminder that I was first and foremost a judge.

As I now approach my own 80th birthday, the wearer not quite as tattered as the robe with its frayed cuffs, that garment reposes in my closet, ready to be called back into service for the occasional wedding ceremony.

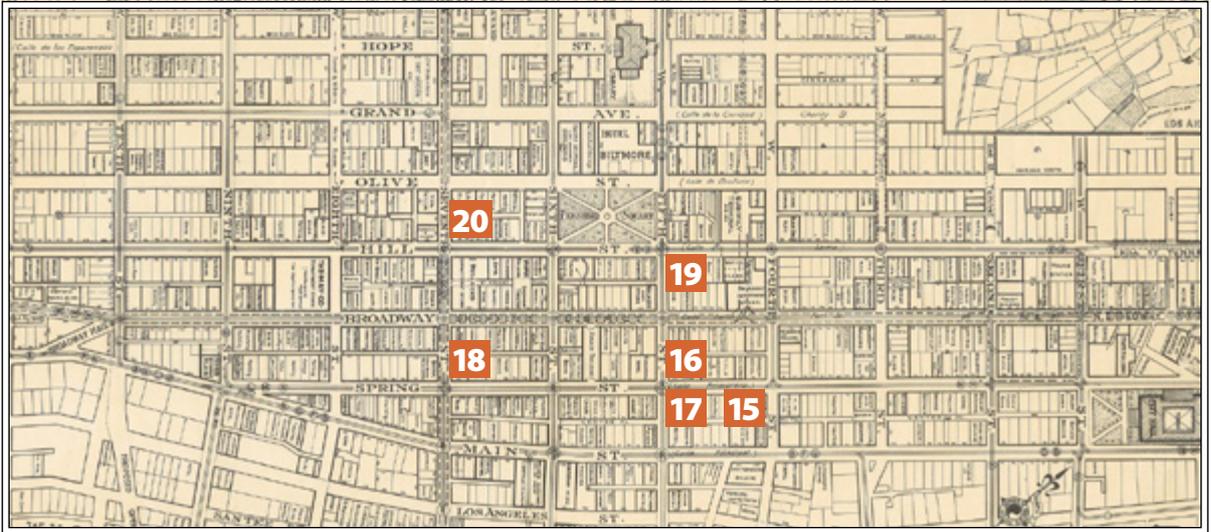
If only my robe could speak, the tales it could tell! ★

#### ENDNOTE

1. "The judicial robe required . . . must be black, must extend in front and back from the collar and shoulders to below the knees, and must have sleeves to the wrists." (Rule 10.505.) An eccentric judge was reputed to wear, at least on occasion, a judicial robe that was pink, but her removal from the bench was for reasons unrelated to this sartorial transgression. (*Cannon v. Commission on Judicial Performance* (1975) 14 Cal. 3d 678.)

One day during my tenure as supervising judge of the criminal division of the L.A. Superior Court, news of the following incident spread like wildfire through what was then named the Criminal Courts Building. It was an especially hot and muggy day; the air conditioning system in the courthouse had broken down, and the court commissioner presiding over a jury trial, upon leaving the bench at a recess in the proceedings, rushed through the doorway into chambers, peeling off her judicial robe without realizing that the door had failed to close, revealing to everyone in the crowded courtroom that she was attired only in undergarments.

DID YOU NOTICE OUR NEW NAME AND NEW LOOK? THE CSCHS NEWSLETTER IS NOW THE CSCHS REVIEW, TO BETTER REFLECT OUR FOCUS ON HISTORICAL CONTENT, BUT WE ALWAYS WELCOME YOUR ARTICLE IDEAS, MEMBER NEWS AND BOOK REVIEWS. LOOK FOR MORE DESIGN CHANGES IN FUTURE ISSUES.



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

## *A Legal Site-Seeing Tour of Downtown Los Angeles*

PART 3 OF A SERIES

BY BOB WOLFE\*

JOURNALIST AND ESSAYIST David Kipen says that Los Angeles may finally be entering what he calls its “mirror stage,” where it starts to recognize its own reflection.<sup>1</sup>

But it does not take a glass-clad skyscraper for a city’s buildings to reveal the stories of people who lived and worked within. L.A., as seen through the prism of its built environment, embodies the profound, the superficial, and even the *meh* of the American experience.

This is the third part of an ongoing series exploring a 10-square block of historic downtown Los Angeles to discover the city’s social realities, as told in appellate opinions, trial transcripts and lawyers’ screeds.

Here we look inside six Beaux Arts buildings, constructed over two decades on adjacent downtown streets. The stories they tell run the gamut of the L.A. experience: from racism, sexism, scandal and hucksterism to oversized personalities and transcendent accomplishment.

There’s more, much more, to dig.

\* Bob Wolfe, the tour author, has been an appellate attorney in Los Angeles since the 1970s. A lifelong L.A. resident, he authored “Where the Law Was Made in L.A.,” *Los Angeles Lawyer* (March 2003). Bob is a board member of the California Supreme Court Historical Society, Public Counsel and the L.A. Metro Citizens’ Advisory Council. He can be reached at [Bob.Wolfe@outlook.com](mailto:Bob.Wolfe@outlook.com).

### 15 Continental Building



FORMERLY BRALY BLOCK, CALIFORNIA RESERVE BUILDING  
408 SO. SPRING STREET (JOHN PARKINSON, 1904)

## UNSAFE SECTS

The 175-foot-tall Continental Building was built shortly before L.A. enacted a 130-foot height restriction in 1905 (raised to 150 feet in 1911). As such, it remained L.A.'s tallest building (other than the 27-story City Hall) until voters rescinded the height limit in 1957.



In 1944, Arthur Bell (pictured) acquired control of the Continental Building through a purchase made in his wife's maiden name.

Bell was the chief spokesperson for the group Mankind United, which was founded during the heart of the Depression. Mankind United promised its adherents a 16-hour, 8-month work week at an annual salary of \$300, as well as an air-conditioned home, equipped with radio, television and swimming pool. The promised utopia would materialize only when 200 million people joined the group.

By 1939, Mankind United had attracted some 27,000 active members. But there was a hitch: Standing in the way, Bell believed, were the "Hidden Rulers," who secretly controlled the world's governments and wealth.

Not surprisingly, Bell opposed American involvement in World War II, which he viewed as part of the same worldwide conspiracy. Shortly after Pearl Harbor, he and 15 others were arrested and charged with sedition for encouraging mass draft evasion.

Following a five-week federal court trial, Bell and most of his fellow defendants were convicted, although Bell was allowed to remain free on bail during the appeal.

Bell turned around and sued some 50 governmental officials, including the head of the FBI's L.A. office, for violating his civil rights because of the warrantless search and seizure leading to his arrest.

Bell's federal damage suit initially was kicked out of court. Bell appealed the dismissal all the way to the U.S. Supreme Court, where he finally prevailed. On April 1, 1946, in an oft-cited opinion by Justice Hugo Black, the court held Bell's constitutional claims to be justiciable because they presented "serious" questions of law and fact. Such issues "must be decided after and not before the court has assumed jurisdiction over the controversy."<sup>2</sup>

Bell ultimately lost on remand when U.S. District Judge William Mathes dismissed his case on the merits, finding no federal statutory authority for such damage suits against federal agents.<sup>3</sup>

In the meantime, Bell reorganized Mankind United as a vast religious cooperative under the name Church of the Golden Rule. Using his wife as a proxy, he bought more than \$3.6 million in assets, including a beach club, cheese factory, dairy, auto repair shops, hotels — and the Continental Building. The money for the purchases came from tithes by church members.

Bell's acquisitions drew the attention of the California Attorney General's office, including Deputy Attorney General Warren Olney III. Olney charged that Bell had drawn more than \$1 million in cash in one year alone, without providing any documentation "to show where it came from or how it was spent."<sup>4</sup>

In October 1945, the superior court appointed a receiver to manage the church's assets and conduct an accounting. Bell was sentenced to three days in county jail for contempt after refusing to cooperate with the receiver. The Court of Appeal dismissed Bell's appeal from the order removing him as president of the church and appointing a receiver.<sup>5</sup>

## Bell, 'The Voice,' Wins Sedition Case Reversal

The Continental Building was sold to Louis Newman in February 1946.

In 1947, the Ninth Circuit reversed Bell's wartime sedition conviction on the grounds that women had been purposefully and systematically excluded from the grand jury that indicted him.<sup>6</sup>

## 16 Citizen's National Bank Building



453 SO. SPRING STREET (PARKINSON & BERGSTROM, 1915)

## ALIEN DOCTRINES OF DEMOCRACY

Citizens National Bank Building opened its doors as the cornerstone of L.A.'s "Wall Street of the West" in April 1915.

Among the building's tenants was attorney J. Marion Wright (pictured), whose law offices were in Suite 830.



While at USC Law School (Class of 1913), Wright developed a lifelong friendship with a fellow law student, Sei Fujii (pictured), who had immigrated to the U.S. in 1903. But only Wright was admitted to the State Bar of California; Fujii, his foreign-born law school classmate (Class of 1911), was blocked from becoming a lawyer. California law granted bar admission only to people who were



eligible for citizenship and federal law then permitted naturalization only for “free white persons” and “persons of African descent.” The law gradually was extended to permit citizenship for persons born in the Philippines or China, but not to Japanese or Koreans.

Indeed, in 1913, the same year as Wright’s law school graduation, the California Legislature passed the Alien Land Law, prohibiting Japanese nationals from owning land in California.

During the next 40 years, Fujii, working as a journalist and legal consultant, and Wright, as lawyer, teamed up to fight racial restrictions against Japanese Americans.

One of their early battles involved healthcare. Severely ill Japanese patients often were denied admission to mainstream hospitals for fear they were a “menace” to the overall community. To address these unserved medical needs, five Japanese doctors sought to incorporate and to build and maintain a hospital. Frank Jordan, then California’s secretary of state, refused to issue a certificate of incorporation because the doctors, as Japanese-born immigrants, were not U.S. citizens entitled to own land.

Wright argued the doctors’ case before the California Supreme Court and the U.S. Supreme Court, and prevailed in both courts based on a liberal interpretation of a 1911 commerce treaty between the U.S. and Japan.<sup>7</sup>

In 1929, the 69-room Japanese Hospital opened in Boyle Heights with some \$129,000 in funds raised by the community. In 1962, the hospital relocated to a larger facility in Lincoln Heights.

In February 1942, Fujii was forcibly moved to immigration and detention camps in New Mexico in the wake of Executive Order 9066, which resulted in the internment of 120,000 Japanese Americans during World War II.

Upon Fujii’s release in 1946, he and Wright resolved to again challenge California’s Alien Land Law of 1913. In 1948, Fujii purchased a small lot in East L.A. for \$200 and filed suit to clear title so that he could build a home there.

The case ultimately ended up before the California Supreme Court. In April 1952, the Court, in an opinion by Chief Justice Phil Gibson, found the Alien Land Law to be an unconstitutional violation of the 14th Amendment. “[T]here can be no justification for a classification which operates to withhold property rights from some

aliens . . . solely because they are Japanese and not French or Italian,” he wrote.<sup>8</sup>

In 1954, following a change in federal law, Fujii, 72, became a U.S. citizen. Not even two months later, he died of a heart attack while eulogizing a man who had helped fund the Japanese hospital.

In May 2017, the California Supreme Court posthumously admitted Fujii to the State Bar, noting, “Fujii’s work [using the courts to advance the rule of law] in the face of prejudice and oppression embodies the highest traditions of those who work to make our society more just.”<sup>9</sup>

## Alien Land Law Illegal, Court Rules

Decision Permits Japanese to Own Property in State

### 17 Rowan Building



460 SO. SPRING STREET (PARKINSON & BERGSTROM, 1911)

### Bow Toxic

In 1905, Robert A. Rowan organized the R.A. Rowan Co. as a real estate development company. In 1910, Rowan partnered with the Chester Fireproof Building Company to construct a 10-story building, heralded by the *L.A. Times* as the “largest and finest of Los Angeles skyscrapers,” with over 3,000 tons of steel.<sup>10</sup>

The building was named after its primary tenant, the Title Insurance & Trust Company. It was renamed as the Rowan Building when the title insurance company relocated up the street.

One of the early twentieth century’s most prominent celebrity attorneys, W.I. Gilbert had his offices in Suite 535 of the Rowan Building. Gilbert represented Charlie

Chaplin's wife Mildred in their 1919 divorce, as well as Rudolph Valentino, evangelist Aimee Semple McPherson, James Cagney, and theater impresario Alexander Pantages.



Gilbert (pictured) also represented Clara Bow, the first "It Girl," one of the leading box office stars throughout the Twenties and the star of *Wings*, the Oscar winning best picture for 1929.

On November 3, 1930, Daisy DeVoe, Bow's secretary and close friend, went to Gilbert's office in the Rowan Building and demanded \$125,000 "to keep my mouth shut" for "things that I know."<sup>11</sup>

DeVoe had just been fired by Bow's new boyfriend, cowboy actor Rex Bell, with whom she had been vying for Bow's attentions. In retaliation, DeVoe removed various checkbooks, letters, telegrams, jewelry, and other items from Bow's house.

Gilbert, in turn, contacted Bow and D.A. Buron Fitts. On November 25, 1930, a grand jury indicted DeVoe on 37 counts of grand theft from Bow.

DeVoe's sensational trial began in January 1931 with star prosecutor David "Debonair Dave" Clark calling a weeping Clara Bow and attorney Gilbert as witnesses. The trial revealed shocking details of Bow's promiscuous love life, profligate spending, visits from bootleggers, and drinking bouts with stars such as Gary Cooper and others. DeVoe, testifying in her own defense, said Bow had so many assignations with different men that "I can't remember."

After deliberating for 48 hours, the jury found DeVoe guilty on one count. Some jurors later told the press that the verdict was a compromise not only to punish DeVoe for her theft, but also as a rebuke of Bow's lifestyle. DeVoe was sentenced to 18 months in jail, and the Court of Appeal affirmed her conviction.<sup>12</sup>

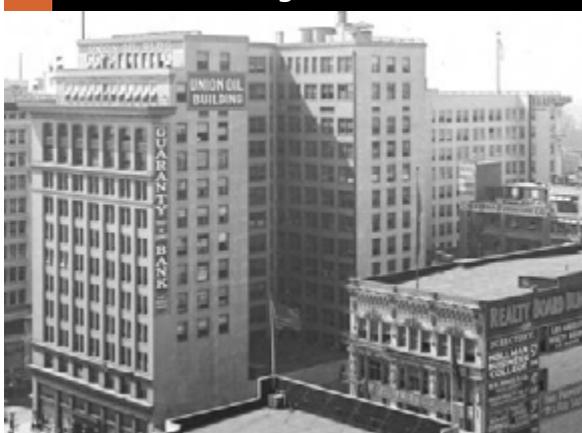
On January 16, 1931, Paramount announced that Bow no longer would be starring with Cooper in Dashiell Hammett's story *City Streets* "due to illness brought on by the trial."

Although Bow made a few more films, her career essentially was over.

Later that year, prosecutor Dave Clark himself was prosecuted for a double homicide concerning the murder of crime kingpin Charles Crawford and journalist Herbert Spencer. Clark turned to W.I. Gilbert, who successfully defended him.<sup>13</sup>

**DAISY DE VOE  
LOSES BATTLE**  
Rehearing Denied by State  
Supreme Court  
Appellate Court Decision  
Fully Upheld

## 18 Bartlett Building



FORMERLY UNION OIL BUILDING  
651 SO. SPRING STREET (PARKINSON & BERGSTROM, 1911)

### WELL-SCHOOLED

In 1911, this 12-story Beaux Arts office block was built to house the headquarters of the Union Oil Company.

Southwestern Law School began in 1912 when a small student group gathered at the Union Oil Building to meet with a tutor. According to its founder, John Schumacher, the school, which offered night classes, was geared toward working students who otherwise might not have a chance to become lawyers. The school began with three full-time instructors and four adjuncts, but soon grew to 150 students, with 22 instructors.

Southwestern's first graduate was a woman, Betty Trier Berry (pictured). Berry had earned a master's degree in mathematics from Columbia and went on to secure a Ph.D. in education from USC, where she became a fellow in educational research. In addition, Berry became the first woman in the U.S. to serve in a public defender's office.



Southwestern's second graduate, B. Rey Schauer, ultimately was appointed to the California Supreme Court, where he served for 22 years, from 1942 to 1964. Schauer was joined on the high court by two other Southwestern graduates, Paul Peek and Stanley Mosk.

In 1915, Southwestern outgrew its space and moved up Spring Street to the Wilcox Building.



### HAT TRICK

In October 1921, A.G. Bartlett, founder of the Bartlett Music Company, bought the Union Oil Building for \$3 million and renamed it after himself.

Eight years later, 24-year-old Gladys Towles Root, a recent USC law graduate, leased an office in suite 832 of

the Bartlett Building. Root began a solo practice because law firms were unwilling to hire women attorneys.

As Root recalled, her first client chose her only because he saw her listing in the building directory. He sought to divorce his wife, whom he suspected of infidelity. What began as a marital dissolution case, however, turned into a homicide case when the client, having discovered his wife *in flagrante delicto*, shot and killed her two days later. (He is reported to have said the divorce would “take too long.”) Despite her inexperience, Root said she succeeded in getting the charges reduced to manslaughter.<sup>14</sup>

Root turned marital murders into a sort of specialty. In one year alone, she tried nine murder cases to verdict, five of which involved women who shot their husbands. She was an indefatigable worker, handling some 1,600 matters per year, with about 75 court appearances per month.

Root came to specialize in cases that many other attorneys would not handle, particularly sex crimes. In 1933, she represented five defendants in a widely publicized “white slavery” ring. She went on to defend alleged rapists, child molesters, prostitutes and Peeping Toms, recalling, in her mother’s words, that such people were “loose spokes on the wheel of life.”

According to the *L.A. Times*, Root “holds the distinction of having defended more sex offenders than any other attorney in the United States.” She aggressively employed a blame-the-victim strategy that is decidedly at odds with today’s “Me Too” movement. As she explained in a 1959 interview, many sex crimes “involve an element of co-operation, if not downright enticement, by the so-called victim.”<sup>15</sup>

Root (pictured) used flamboyant clothing, oversized hats (some as large as 12 feet in circumference) and



colored-coordinated hair to make a statement and distract jurors from the charges against her clients. Stanley Mosk, before whom she frequently appeared when he was a trial judge, described them as “deliberate attempts to be the focus of attention whenever she appeared in court.”<sup>16</sup>

In 1963, the *L.A. Times*, while reporting on a burglary involving Root’s possessions, noted that she had one consolation, “the burglar hasn’t taken [anything from] her large and distinctive collection of hats.”<sup>17</sup>

One of Root’s most sensational cases involved the 1963 kidnapping of 20-year-old Frank Sinatra, Jr., son of the famous singer. Root, representing defendant John William Irwin, contended that the kidnapping was a hoax, and that the victim was a willing participant who engaged in a publicity stunt.

The hoax defense did not work; Irwin was convicted, although his conviction was overturned on other grounds, and he pleaded guilty on a superseding indictment.

In 1964, a federal grand jury indicted Root herself for suborning perjury and obstructing justice for concocting the hoax defense in the Sinatra, Jr. kidnapping. Root vigorously, but unsuccessfully asked the Ninth Circuit and the U.S. Supreme Court to dismiss the charges.<sup>18</sup>

In 1968, after a four-year fight, the government dropped its charges against Root. Barry Keenan, one of the co-defendants (not Root’s client), confessed in a 150-page affidavit that he made up the story about the hoax and was the prime mover behind the kidnapping.

Root died in 1982 at age 77 after suffering a heart attack in a Pomona courtroom while defending two brothers on a sodomy-rape case.

## Gladys Root Cleared on Kidnap Case Court

Indictment in Sinatra Jr. Case Dropped After 4-Year Fight by Flamboyant Lawyer

## 19 Pershing Square Building



448 SO. HILL STREET (CURTLETT & BEELMAN, 1923)

### LOVE FOR SALE

The 13-story Pershing Square Building opened to great fanfare in November 1924.

Multimillionaire oil and real estate developer John P. Mills had offices in the building for his company, John P. Mills Organization. Mills sold thousands of small plots of land to small investors, in \$400 units, claiming they would get rich from oil. Substantial litigation ensued when it turned out that many of these lots were dry. In defense, Mills characterized his representations as mere “expressions of opinion.”<sup>19</sup>

Mills gained his greatest notoriety in 1931 when arrested in the so-called “Love Mart” case. The diary of a woman named Olive Day came to light, revealing that she had a contract to deliver underage virgins each week to Mills.

Leslie White, an investigator for the D.A.’s office, waited in the parking lot outside the Pershing Square Building and arrested Mills when he got into his V16 Cadillac.

Mills was well-connected and politically savvy. That day, Mills not only was out on bail, but had hired Lucien Wheeler as his private detective to assist in his defense. Wheeler had been White’s boss at the D.A.’s office and was close to D.A. Buron Fitts.<sup>20</sup>

As Mills’ trial finally began in the fall of 1931, Fitts appeared in court to ask that all the charges against Mills be dropped. Judge Wilbur Curtis refused to do so. Nevertheless, Fitts declined to produce any evidence, leaving Judge Curtis no choice but to dismiss the case.<sup>21</sup>

It was later revealed that Fitts’ sister had sold a seven-acre orange grove in Claremont for \$18,500, twice its real value. The purchaser? Lucien Wheeler. The money for the purchase? It came from Mills himself.<sup>22</sup>

In November 1934, the grand jury indicted Fitts and his sister on charges of bribery and perjury. Fitts (pictured, with attorneys) hired famed defense attorneys Jerry Giesler and Joe Scott, among others, to defend him.



Fitts furiously tried to quash the indictment. His attorneys required all 50 superior court judges to testify at a hearing about how the grand jury was impaneled, claiming that Judge Fletcher Bowron, who was in charge of the grand jury, handpicked the panel “to clean up the District Attorney’s office,” which Judge Bowron purportedly believed was controlled by the mob.<sup>23</sup> Judge Bowron denied any bias or that he sought to influence the grand jurors.

Fitts’ efforts ultimately came before the California Supreme Court, which, after four hours of oral argument, allowed the prosecution to proceed.<sup>24</sup>

Fitts’ bribery trial began in January 1936. After long and sensational proceedings, involving over 100 witnesses, Fitts was acquitted, and reelected as D.A. However, four years later, reformer John Dockweiler defeated Fitts in his bid for a fourth term.

Judge Bowron went on to win election as L.A.’s 35th mayor in 1938 after the notoriously corrupt incumbent Frank Shaw became the first American mayor to be recalled from office.

In 1973, the 78-year-old Fitts committed suicide by shooting himself with the same gun that had been used in the unsolved murder of film director William Desmond Taylor in 1922.



ORIGINALLY PANTAGES THEATRE BUILDING; WARNER BROS. DOWNTOWN THEATRE  
401 W. 7TH STREET (B. MARCUS PRITECA, 1920)

### A LEGAL CUDGEL FOR THE (PANT)AGES

“Alexander, the Great!” heralded the newspaper headlines. On August 17, 1920, multimillionaire vaudeville magnate Alexander Pantages opened the ornate 2,000-seat Pantages Theatre. From his offices in the seven-story Beaux Arts structure, Pantages ran his ever-expanding show business empire as an extension of his domineering personality. A Greek immigrant, Pantages spoke in heavily-accented English, and never learned to write or read the language.

“Business before pleasure is a mighty sensible adage,” Pantages remarked. “But [to] combine business and pleasure is a better one.”<sup>25</sup>

Nine years later, the nation was riveted to a courthouse spectacle about how exactly Pantages combined business and pleasure.

On August 9, 1929, 17-year-old Eunice Pringle, a young dancer from Garden Grove, went to see Pantages to discuss a vaudeville booking for a singing and dancing sketch. Later that afternoon she ran outside the theater screaming “the beast!” She later told police that Pantages had raped her.

Pantages was found on the floor of his mezzanine office, coatless and with his clothes in disarray. But he told the police that it was Pringle who had attacked him, and that he was being blackmailed.

The 54-year-old, accompanied by his attorney W.I. Gilbert, was arrested and booked for assault and statutory rape. That same month, he sold the theater building to Warner Brothers. After a brief refurbishment, it reopened on September 27, 1929 as the Warner Brothers Downtown Theatre, with Al Jolson as the guest of honor.

Pantages' rape trial began several days later. It drew screaming newspaper headlines in the U.S. and internationally. Both Pringle and Pantages testified, with Pringle photographed holding the semen-stained red dress she was wearing at the time of the incident (pictured). Several of the jurors appeared to be crying while Pringle was on the stand.



On October 27, 1929, after 25 days of testimony, the jurors, seven women and five men, returned a guilty verdict. Superior Court Judge Charles Fricke sentenced Pantages to 50 years in San Quentin state prison.



On June 7, 1930, after Pantages had been incarcerated in the county jail for nearly a year, the California Supreme Court ordered that he be freed on a \$100,000 bond, concluding that the “overwhelming weight of evidence” established his life to be at risk because of ill health.

On April 2, 1931, the Supreme Court, by a 5-to-2 vote, issued a per curiam opinion reversing Pantages' conviction. The court found prejudicial error in the trial court's failure to introduce evidence of Pringle's “previous acts of unchastity,” particularly since the prosecution repeatedly referred to “taking this girl's virginity” and violating “her girlhood.”<sup>26</sup>

Pantages' retrial began in November 1931. Pringle again testified, but was subject to extensive (and for the most part unprintable and “particularly frank”) cross-examination by Pantages' new lead defense counsel Jerry Giesler about her “moral life and friendships with other men.”<sup>27</sup>

Giesler focused on Pringle's “association” and “compromising situations” with Nick Dunaev, a 40-year-old Russian bachelor, and her purported agent. Dunaev's landlady testified that Pringle frequently was in his apartment, including early mornings, and that she had been told by Dunaev's roommate they were “going to have a lot of money soon — enough to pay for a year in advance.”<sup>28</sup> Dunaev was called to the stand as a hostile witness and grilled about his relationship with Pringle. Glaring at Pantages, he admitted that he “disliked Greeks.”<sup>29</sup>

A weeping Pantages denied the assault, accusing Pringle of “framing” the incident to get him into a compromising position.<sup>30</sup>

The second jury acquitted Pantages, with one juror stating afterward that Pringle appeared to be the “victim

of a schemer,” namely Dunaev.<sup>31</sup> Giesler, as Pantages' lead counsel, became the celebrity lawyer of choice.

According to a widely circulated urban legend (which has made its way into books, magazines, and Wikipedia), Pringle died of “unknown causes” in 1933 under circumstances suggesting poisoning. Pringle reputedly made a deathbed confession that she had been paid \$10,000 by Joseph P. Kennedy, Sr. to smear Pantages. (At the time, Kennedy was trying to wrest theaters and business share from Pantages for his competing RKO studios.)

The story has been thoroughly debunked. As explained by Pringle's daughter, Marcy Worthington, Pringle died of natural causes in 1996 and never made any such confession. “The tone of his numerous letters to Pringle and other family members for many years afterward,” says Worthington, “showed [Dunaev] to be no more than a friend and mentor.”<sup>32</sup>

California's “rape shield” law, passed in the 1970s as one of the country's first, now precludes testimony about a victim's past sexual conduct to prove consent.<sup>33</sup>

In 1988, Wanis (Joseph) Koyomejian and other partners bought the Pantages Theatre Building for some \$16 million for use as a wholesale jewelry mart. But there apparently were other anticipated uses as well: in addition to collecting jewelry, the merchants used their armored trucks to pick up cartons of drug money — an estimated \$1 billion.

On March 7, 1989, Koyomejian, along with 30 other suspects, was indicted in the laundering scheme, called the largest in U.S. history. The government also moved to seize Koyomejian's interest in the Pantages Theatre Building in a civil forfeiture proceeding.

### U.S. to Seize Drug Ring's Building in Downtown L.A.



Koyomejian challenged the statutory basis for the government's use of secret video surveillance tapes to support the indictments. In July 1992, the Ninth Circuit, sitting en banc, upheld such tools as part of a domestic criminal investigation so long as they comply with the constitutional protections of the Fourth Amendment.<sup>34</sup> Following the Ninth Circuit decision, Koyomejian pleaded guilty to three felonies and accepted a 23-year prison term.

The Pantages name lives on in the 3,500-seat Hollywood Pantages Theatre, which Pantages built in 1930 at a cost of \$2.5 million. Pantages died in 1936, his empire in tatters. ☆

### ENDNOTES

1. David Kipen, *Dear Los Angeles: The City in Diaries and Letters 1542 to 2018*. New York: Modern Library, 2018, xv.
2. *Bell v. Hood* (1946) 327 U.S. 678, 682.
3. *Bell v. Hood* (S.D. Cal. 1947) 71 F.Supp. 813, 821. It took more than two decades for the U.S. Supreme Court to establish that constitutional torts could be actionable for

money damages. (See *Bivens v. Six Unknown Fed. Narcotics Agents* (1971) 403 U.S. 388.)

4. “State Attorney Complains He Can’t Find Church’s Church,” *L.A. Times*, Oct. 24, 1945. (Olney was the son of California Supreme Court Justice Warren Olney, Jr. and father of prominent newscaster and public radio journalist Warren Olney IV.)

5. *People ex rel. Kenny v. Christ’s Church of the Golden Rule* (1947) 79 Cal.App.2d 858.

6. *Bell v. U.S.* (9th Cir. 1947) 159 F.2d 247.

7. *Tashiro v. Jordan* (1927) 201 Cal. 236, *Jordan v. Tashiro* (1928) 278 U.S. 123.

8. *Fujii v. State of California* (1952) 38 Cal.2d 718, 733.

9. *Administrative Order 2017-05-17* (2017) S239690, 217 Cal. Rptr.3d 730; see also Sidney K. Kanazawa, “Sei Fujii: An Alien-American Patriot,” *Calif. Leg. Hist.* 13 (2018), 387–409.

10. *L.A. Times*, April 16, 1911.

11. “Bow Secrets Told At Trial,” *L.A. Times*, Jan. 15, 1931.

12. *People v. DeVoe* (1932) 123 Cal.App. 233.

13. See *CSCHS Newsletter*, Spring/Summer 2018 at 17.

14. Richard F. McFarlane, “The Lady in Purple: The Life and Legal Legacy of Gladys Towles Root,” *Calif. Leg. Hist.* 6 (2011), 368–371.

15. “Sex Deviates Can Be Cured, Says Attorney,” *L.A. Times*, Aug. 13, 1959.

16. Quoted in McFarlane, *op. cit.*, 373.

17. “Gladys Root’s Valuables Taken,” *L.A. Times*, June 20, 1963.

18. *Root v. United States* (9th Cir. 1966) 366 F.2d 377, cert. denied (1967) 386 U.S. 912.

19. See, e.g. *Gater v. Skinner* (1930) 103 Cal.App. 448; *Peterson v. Donnelly* (1939) 33 Cal.App.2d 133.

20. Richard Rayner, *A Bright and Guilty Place*. New York: Doubleday, 2009, 152–153.

21. “Mills Freed in Girl Case,” *L.A. Times*, Sept. 16, 1931.

22. Rayner, *supra*, note 20.

23. “Judges Will Take Stand,” *L.A. Times*, June 4, 1935.

24. *Fitts v. Superior Court* (1935) 4 Cal.2d 514, 521.

25. “Alexander Pantages Is Here on Business,” *L.A. Times*, April 7, 1918.

26. *People v. Pantages* (1931) 212 Cal. 237, 249–50, 260.

27. “Young Dancer Affirms Story,” *L.A. Times*, Nov. 6, 1931.

28. “Witness Raps Pringle Girl,” *L.A. Times*, Nov. 17, 1931.

29. “Dunaev Scored by Witnesses,” *L.A. Times*, Nov. 19, 1931.

30. “Pantages Weeps on Stand,” *L.A. Times*, Nov. 20, 1931.

31. Taso Lagos, *American Zeus: The Life of Alexander Pantages*. Jefferson, NC: McFarland & Co., Inc., 2018, 167.

32. Michael Parrish, “A Myth Maker’s Clarification,” *L.A. Times*, June 16, 2002. Given the sharply conflicting testimony at the two Pantages trials where nearly

everyone was impeached, what actually happened on August 9, 1929 remains murky to this day. See *American Zeus*, *supra*, note 31, at 103.

33. *People v. Fontana* (2010) 49 Cal.4th 351, 354; see also Evid. Code § 782.

34. *United States v. Koyomejian* (9th Cir. 1991) 970 F.2d 536.

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DRUG RING HEADLINE: *L.A. Times*, Mar. 8, 1989.

PANTAGES RETRIAL HEADLINE: *L.A. Times*, Apr. 3, 1931.

PANTAGES GUILTY HEADLINE: *Chicago Daily Tribune*, Oct. 28, 1929.

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# The Indictment and Presidential Pardon of Caspar Weinberger

BY JIM BROSNAHAN\*

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CASPAR WEINBERGER was secretary of defense under President Ronald Reagan when a scandal erupted over the illegal trade of weapons for hostages with Iran. The whole scandal was called Iran Contra. The Iran part concerned Reagan's personal decision to break the law and trade missiles for hostages with Iran, a terrorist country. The Contra part related to illegally funneling U.S. government money to the Contras who were fighting the communist government of Nicaragua. When called to testify Weinberger lied to Congress and the FBI, in order to save President Reagan from impeachment. My partner George Harris and I were asked by special prosecutor Lawrence Walsh to lead the prosecution trial team against Weinberger. The criminal trial was set to begin January 3, 1993, before Washington D.C. U.S. District Judge Thomas F. Hogan. I felt that a successful conviction could deter future officials from participating in presidential cover-ups.

In 1985, Iran, a terrorist nation, took American hostages and demanded U.S. weapons in exchange for releasing them. The U.S. initially supplied 96 TOW anti-tank missiles to Iran as part of a deal to return the American hostages, who were freed. How did that happen? American law and policy forbade such an exchange because it would endanger Americans in the future. That is when a presidential cover-up began. In a televised address, President Reagan told the country, "We did not — repeat — did not trade weapons or anything else for hostages." In November 1986, it was revealed that Reagan had personally authorized the trade of missiles for hostages. Between August 20, 1985 and October 1986, a total of 2,000 TOW and 18 Hawk anti-aircraft missiles were supplied to Iran in violation of American law. That action was an impeachable offense.

The president's defenders said Reagan was motivated by humane concern for the American hostages. No doubt true but he also wanted to avoid a public perception of personal weakness. Reagan assured the country that the arms shipments stories "had no foundation," and that no "third countries" were involved. High officials tried to follow the president's lead by sending mixed signals, for example, producing a story that the Israelis were responsible for the exchange. Still, as the scandal grew in importance, some reassessed their favorable view of Reagan and pondered impeachment.

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Weinberger was a lawyer with years of experience. Why would he lie to Congress and the FBI? Why would a president of the United States engineer a cover-up? Unfortunately, presidential cover-ups have become, if not routine, at least common. In the last 50 years, we have suffered through Watergate, Iran Contra and now investigations into Russian meddling in U.S. elections.

Each cover-up has followed the same playbook:

- Attack someone else.
- Deny everything.
- Distract attention from the governmental sin.
- Suppress the truth or at least delay, hoping the public will grow bored with the issue.
- Members of the president's party must stand with him, no matter what the evidence.
- The attorney general must assist the cover-up.
- Hire the best criminal lawyers to represent the president personally.
- Maintain public support by promoting unrelated accomplishments like a good economy.
- Conspirators must understand that the truth could destroy the president.
- An irrelevant admission by the president such as "My oversight was faulty" can be useful.
- If necessary, lie to high governmental officials and Congress.

The Reagan cover-up had all those ingredients.

FBI agents interviewed Caspar Weinberger when the scandal first broke. "We heard you keep notes. Do you keep notes?" referring to the meeting where Reagan ordered the missiles sent to Iran. "No," Weinberger replied definitively.

Several years later, a set of Weinberger's notes was discovered by accident in the Library of Congress. His minute-by-minute notes described each day of his time in government. If he went to a grade school class and spoke about government, it was in his notes. The notes showed definitively that Reagan personally made the decision to ship missiles to Iran. The president told his close advisors that he "could answer charges of illegality but could not answer a charge that 'big strong President Reagan passed up a chance to free hostages.'"

Weinberger was charged with five felony counts, including perjury, for lying to Congress and obstructing government investigations. I understood the human dynamics involved in Weinberger's decision to step across the criminal line. Reagan was the leader of the

free world. Those closest to him had pledged to help him succeed. I accepted that Weinberger could have been motivated by his view of what was best for President Reagan and the country.

However, no one is allowed to lie to an FBI agent. No one is allowed to lie to Congress. Every day men and women are charged, convicted, and serve jail time for lying to federal investigative authorities. Secretary Weinberger as a trained lawyer knew the law and the potential consequences for breaking it.

This was a trial of enormous import. I asked myself, *what had we gotten into?* The office of special prosecutor had the windows covered to prevent spying from outside, giving the space the look of a secret secure bunker. There were brutal unremitting attacks on Judge Walsh by Republican senators.

Nominated to the federal bench and later, as deputy attorney general by President Dwight Eisenhower, Lawrence Edward Walsh seemed to ignore the fact that he was taking a battering ram to his own political party. As unmovable as a boulder, he believed what happened in the Iran Contra affair was wrong. His office obtained 11 convictions and guilty pleas over six years.

Caspar Weinberger was an accomplished, smart, and interesting man. With a full head of black hair and an expression that seemed to say, *now this is interesting*, he had made his way into the heart of America's political and military establishments. Before moving to Washington, he had served in the California Legislature and in Governor Reagan's state cabinet where he was known as "Cap the Knife" for his budget cutting. He would be a strong witness but given the perjury charge, the jury would be suspicious.

In Washington, as secretary of defense, Weinberger oversaw massive defense expenditures. He gave our military most of what it asked for and enjoyed enormous support from the military-industrial complex. *Time* magazine ran a cover with his picture surrounded by dollar signs under the heading, "How to spend a trillion."

Weinberger testified before Congress on July 31, 1987, bringing to the committee credibility and gravitas built over years of service. Looking down at him were senators, members of the House and co-chairs Sen. Daniel K. Inouye from Hawaii, and Rep. Lee H. Hamilton of Indiana. The hearings were nationally televised. Weinberger raised his right hand and swore to tell the truth but he actually decided to protect the president — a human decision, yet a criminal one.

He repeatedly told the joint committee investigating Iran Contra that he thought he had stopped the Iran arms sales. He said he was surprised to find that White House officials were negotiating arms sales to Iran. He said an agency had been ordered to exclude him from the matter and said he was outraged when he heard about it. He said he voiced his strong opposition to the



*President Ronald Reagan with Caspar Weinberger, George Shultz, Ed Meese, and Don Regan discussing the president's remarks on the Iran-Contra affair, Oval Office.*

COURTESY RONALD REAGAN LIBRARY, OFFICIAL GOVERNMENT RECORD

president's actions. (That, at least, was true.) He said the arms deal was pushed by National Security Council officials with their own agendas.

One criticism of the original indictment was that it lacked specificity. We were required to file a new indictment on Friday, October 29, 1992. I was told by one of the deputies that an effort to postpone the filing until after the 1992 election had been unsuccessful. Shortly after my arrival in the office and one day before the amended indictment was to be filed, I received a draft that I carefully read. It contained many allegations drawn from Weinberger's notes that had been found in the Library of Congress. The most relevant note, from January 7, 1986, read,

Met with President, Schultz, Poindexter, Bill Casey, Ed Meese, in oval office. President decided to go with Israel-Iranian offer to release our five hostages in return for sale of 4,000 TOW'S to Iran by Israel — George Shultz & I opposed — Bill Casey, Ed Meese & VP favored — as did Poindexter.

The words "VP favored" revealed that then Vice President George H. W. Bush, by now President Bush, knew and approved of Reagan's decision to ship arms to terrorist Iran. Was it appropriate to include those words in the new indictment? If the note showing Bush's participation in the Iran Contra decision to send missiles was taken out we felt we would be furthering a cover-up. That is not the job of the special prosecutor. Word of Bush's involvement was not new. Judge Walsh and I discussed the matter. We concluded that his involvement had been thoroughly aired by the press. There had been public discussion indicating that Bush knew Reagan gave the order. We both thought the note reflected that public understanding, and was not particularly newsworthy. How wrong we were.

The grand jury indictment was filed on Friday, October 30, four days before the presidential election between Bush and Clinton. In the corner of the courthouse newsroom one journalist furiously typed a story about “VP favors.”

Walter Pincus and George Lardner immediately wrote a story for the *Washington Post* with the headline “A 1986 note contradicts statements by President Bush.”

That Friday night, all three national networks led with the story of the amended indictment indicating that President Bush had favored trading missiles for hostages when he was vice president. Bush’s avoidance of his responsibility, his half-statements, and his participation in Iran Contra had come home to roost. Presidential candidate Bill Clinton said the indictment undercut the President’s credibility. Vice presidential candidate Al Gore asked, “How can Bush ask the American people to trust him?”

Senate Minority Leader Bob Dole thought our office should be investigated. On CBS’s *Face the Nation* he said that I was a Democratic attorney who contributed \$500 dollars to the Clinton campaign without mentioning that the contribution was made before Judge Walsh first contacted me. Vice President Dan Quayle derisively called me “that San Francisco lawyer,” not appreciating that for some people out west that was a high compliment.

Bill Clinton was elected president, gaining 370 electoral votes and 43 percent of the popular vote. In the political vacuum of the interregnum, George Harris and I went around Washington interviewing senators, members of the House, and the defense and intelligence communities. We found that some Republicans were disappointed with Weinberger’s testimony.

William S. Cohen, Republican Senator from Maine was impressive, New Hampshire Republican Senator Warren Rudman was outraged at the scandal and Maine Senator George Mitchell, wearing a modest gray sweater, was precise, helpful, and warm. We could have been chatting around a cracker barrel in one of Maine’s famous 100-year-old penny candy stores in Augusta or Kennebunkport. He was not happy about the scandal and the lying to the Senate.

At the time of the Weinberger case, lawyers all over the country and a few prosecutors were using mock trials to prepare for their actual trials. Our mock trial was on December 15, 1992, two weeks before the scheduled trial. We had a total of 36 mock jurors on three juries and all three juries voted to convict Weinberger.

One of our mock jurors went to the press, violating his written confidentiality agreement, and reported on the mock trial. Was he a plant? The press made it into an extraordinary revelation. The political effect of the leaked mock trial was negative for the special prosecutor.

On December 16, Judge Hogan called us into chambers to discuss housekeeping details for the trial. Robert

Bennett, counsel for Weinberger, announced in a calm voice that he would call President Bush as a witness in his defense case but would wait until Bush was out of office. It was a bombshell. Could a former president be summoned to court and asked about things that happened while in office? Before Bill Clinton was subpoenaed while in office and then volunteered to testify there had been 200 years of legal resistance to compelling a president to testify. Because President Bush was being summoned to give testimony in a criminal case the courts would probably enforce the subpoena in the interest of Weinberger’s right to command all needed evidence.

Although President Bush could refuse the subpoena, citing executive privilege, our team pulled together all of the public statements by Bush on the subject of Iran Contra. Using these, I prepared a cross-examination of the president. How should I approach such a witness? One thing was certain: He knew Weinberger’s testimony was false.

On December 23, I flew home to California for Christmas with two briefcases filled with work. The trial was ten days away. The morning of December 24, I was in our kitchen. The warmth and familiarity of our family in our old Berkeley house contrasted dramatically with what came out of the TV.

“President Bush today granted full pardons to six former officials in Ronald Reagan’s administration, including former defense Secretary Caspar Weinberger.”

The words coming from the TV made me numb. The president had slammed the hammer down. Faced with the misery of testifying, a long trial highlighting President Reagan’s scandal, and gloomy about his election loss, President George H. W. Bush had employed one of the strongest presidential powers, the pardon.

Judge Walsh held a press conference and announced for the first time that President Bush had been a subject of the investigation. He said there is “evidence of a conspiracy among the highest-ranking Reagan administration officials to lie to Congress and the American public.”

Robert Bennett’s announcement that he would call Bush as a witness was the impetus to pardon Weinberger. Let’s be clear: Mr. Bennett had done exactly what he should have for his client. Atty. Gen. William Barr — now again the attorney general — announced he had advised President Bush to pardon Caspar Weinberger. Given the present presidential cover-up of Russian meddling in our elections, we the people are back at our testing point. We need candidates who will raise the flag of clean government and be like some of the presidential examples we have revered in the past. Our future as a nation depends on it. The Iran-Contra cover up had been successful. Reagan had served out his two terms. Weinberger went home to Maine. I went back to San Francisco, suffering from post-pardon depression. ★

## Remove the Statue Honoring Los Angeles Lawyer Stephen M. White

BY MICHAEL L. STERN\*

FROM ANCIENT TIMES, people have erected statues celebrating significant figures of their eras. As times change, such monuments may be quietly relegated to history.

Thus, it was hardly noticed when, in 2018, a statue of the once-respected Christopher Columbus was removed from its pedestal beside the downtown Mosk Courthouse and carted away. Now considered by many to be a symbol of the brutality inflicted by Europeans on indigenous peoples, the man who “discovered” America is no longer as highly esteemed and his statue is gone. A similar re-appraisal has resulted in the removal of several statues of heroes of the Confederacy in recent years.

From 1901 to 1988, a towering bronze statue of the late attorney Stephen M. White stood before two Los Angeles courthouses<sup>1</sup> before it was moved to its present location in San Pedro. It was erected by White’s contemporaries to remind future generations of his service as the Los Angeles district attorney, state senator, lieutenant governor, United States senator and charter member of the Los Angeles Bar Association. The statue portrays White as an orator grandly gesturing with outstretched arms to a crowd or jury before him.

But this statue has come to represent a dark period of racial discrimination against Chinese immigrants and White’s association with it. The moment has arrived to remove it from public display.

Stephen M. White was in his prime when he died in 1901 soon after his 48th birthday. A true lawyer to the end, his parting words were “The evidence is all in; the case is submitted.” Marking the late senator’s passing, flags in Los Angeles were lowered to half-mast and the courts were closed in mourning. He was eulogized as “the brightest name in California’s galaxy of those born upon her soil.” His friends took up a collection to place a statue of him in front of the main Red Sandstone Courthouse.

On October 31, 1958, a reinstatement of the statue before the new County (now Mosk) Courthouse was a main feature of the dedication ceremonies. But there was little notice when, in 1988, it was moved to San

Pedro in recognition of White’s efforts in the 1890s to make the Port of Los Angeles a reality.

White’s lifetime accomplishments are largely forgotten. But the legacy of his advocacy for the Chinese Exclusion Act of 1882, which ensured legal racial discrimination against Chinese persons, remains. His legal work to uphold that racist Act disqualifies him from continued recognition by a statue standing in his honor, let alone the continued use of his name on a Los Angeles public school. An outmoded relic of a bygone era, it is time to retire the statue of Stephen M. White.

Not unlike many attorneys in their early years, Stephen M. White was stung by a political bug that impelled him to run for public office. Soon after admission to the bar, he vied unsuccessfully for Los Angeles district attorney in 1875 and 1877. He lost again while running on the ticket of the Workingmen’s Party in 1879 but was finally elected for a two-year term in 1882.

His reputation as a “terror to evil doers,” whose vigorous prosecution of a case “spelled conviction for the



*Statue of Stephen M. White in front of the Red Sandstone Courthouse, ca. 1930s.*

PHOTO: CALIFORNIA STATE ARCHIVES

\* Judge Michael L. Stern has presided in civil trial courts in Los Angeles County since he was appointed in 2001. A version of this essay first appeared in the *Los Angeles Daily Journal* on April 24, 2019. Reprinted with permission.

guilty,” helped him win state senate seat in 1886. In 1887, White was elected president pro tem of the California Senate while he continued his lucrative law practice in Los Angeles. In a time when U.S. senators were still elected by the Legislature, he was chosen to serve a six-year U.S. Senate term beginning in 1893.

White’s chief accomplishment in the U.S. Senate was a bill clearing the way to build a deep-water harbor at San Pedro, which had been a natural site for a port since the Spanish had arrived more than a century before. Fending off a fierce effort by railroad magnate Collis P. Huntington to build a port in Santa Monica, White’s legislative victory earned him great acclaim.

This crowning senatorial achievement virtually erased any recollection of White’s past participation in the upstart Workingman’s Party, under whose banner he had run for district attorney in 1879. This now-forgotten political party performed a brief, but critical, role in California’s history.

Founded by San Francisco anti-Chinese firebrand Denis Kearney in 1878, the Workingman’s Party’s program was dominated by a racist message against Chinese workers who remained in the country after building the western railroads and who mostly held menial jobs that he insisted took work away from caucasians. Kearney provoked the rabble with hateful anti-Chinese tirades and incited his followers to violence against Chinese. He invariably finished his harangues with the vitriolic refrain, “And the Chinese must go!”

The Workingman’s Party won control of the California Legislature in 1878 and the new lawmakers convened a constitutional convention that produced California’s Second Constitution, which remains in effect today. In addition to reorganizing the executive and judicial branches, the new constitution took aim at the supposed Chinese “menace” by giving state officials discretion to decide who could live in California, deprived Chinese of the right to vote, and severely limited their employment opportunities.<sup>2</sup>

The party’s anti-Chinese racism swept across the country and its fervor succeeded in encouraging passage of the Chinese Exclusion Act of 1882 by the U.S. Congress.<sup>3</sup> This xenophobic statute, extended by similar restrictive laws over the years, banned all Chinese immigrants from entering the United States and set strict restrictions on Chinese immigrants who left the country and attempted to reenter. It was the first national legislation preventing a specific race from immigrating to the United States.

The Act demonized ethnic Chinese, who were scapegoated and despised by many in the majority population. Renewed and extended, it remained law until 1943 and stands as a mean-spirited and racist precedent for federal immigration policy that lasts to the present day.

The reentry provisions of the Chinese Exclusion Act were immediately tested in court by a lawful Chinese



*Statue of former U.S. Sen. Stephen M. White stands in the corner of a utility yard at 1st and Olive, Jan. 7, 1987.*

PHOTO: JACK GAUNT. COPYRIGHT ©2017. LOS ANGELES TIMES. USED WITH PERMISSION.

resident with a certified return pass who was denied readmission to the United States in San Francisco following a trip to China. When the trial court rejected his case, he appealed to the U.S. Supreme Court.

California retained Stephen M. White, then lieutenant governor, to co-author the appellate brief and argue before the Supreme Court. White’s arguments took a page straight out of the Workingman’s Party nativist playbook. He contended that Chinese people were so racially and culturally inferior and different from the majority that they could never assimilate into the American mainstream.

White’s high court brief insisted that the “action of Congress [in passing the Act was] merely in the line of the administration of *preventive justice*.” He submitted that “the reasons influencing the legislative mind may have been various. They may have embraced the prevention of any heathen admixture with a Christian civilization, the warding off of corrupt and deteriorating practices, the preservation of the public health and morals, the riddance of the country of a pauper element and the advancement of the general well-being.” Denis Kearney’s rant, “And the Chinese must go!” might have

silently reverberated in the Supreme Court chambers during oral argument.

In the Chinese Exclusion Case, *Chae Chan Ping v. United States*,<sup>4</sup> the U.S. Supreme Court agreed with White's arguments and affirmed the order barring the plaintiff's reentry. In his majority opinion, Justice Stephen Field, a former California chief justice, held that the Constitution grants discretionary power to exclude foreigners as an incident of sovereignty, inherent in the powers of Congress and the executive branch. The Court firmly established the plenary power of the federal government to determine who and under what circumstances non-citizens could be admitted to the United States.

Tracking White's contentions, Justice Field wrote that the "presence of Chinese laborers had a baneful effect upon the material interest of the [California], upon public morals; . . . their immigration was in numbers approaching the character of an Oriental invasion," and this constituted "a menace to our civilization."<sup>5</sup> He warned of a threat posed by "the presence of foreigners of a different race in this country, who will not assimilate with us, to be dangerous to its peace and security."<sup>6</sup>

Echoing Denis Kearney's demagoguery, Field railed against Chinese workers who "retained the habits and customs of their own country," and settled in this country "without any interest in our country or its institutions," thus endangering public order in the United States without demonstrating any loyalty to it.<sup>7</sup>

Stephen M. White was laid to rest on a cool day in Los Angeles in February 1901, a dozen years after the Supreme Court's decision. Mourners were told that "He leaves behind a light which will shine for ages to come. His is a clear, unsullied and great record. Centuries will pass over the mound of grass where his ashes will rest and still this city and this State will be his debtors for the great services he performed for the public good."<sup>8</sup>

Chae Chan Ping and countless others who were excluded or suffered intense discrimination as a result

of the Chinese Exclusion Case were not present to laud White's accomplishments. The case to which White had brought his lawyerly skills destroyed lives and families and stoked suspicion, discrimination and unequal treatment.

It would be decades before Congress repealed the Chinese Exclusion Act and many more years before public officials expressed true regrets about its harsh discriminatory effects. More than a hundred years after its passage the Act continues to cast a long shadow over the administration and fairness of federal immigration policy.

The statue of Stephen M. White no longer graces the lawns of Los Angeles courthouses but it remains in this community, at the entrance to Cabrillo Beach, off Stephen M. White Drive in San Pedro, near the harbor he helped create, and a Los Angeles public school still bears his name. It is time to remove this statue from public display, remove White's name from the school and reflect on the countless lives damaged by the law to which he applied his legal abilities. ★

#### ENDNOTES

1. The statue was originally installed in front the Red Sandstone Courthouse, then moved to the lawn in front of the Hall of Records and finally located in front of what is now the Mosk Courthouse.
2. See, e.g., *In re Hon Yen Chan on Admission* (2015) 60 Cal.4th 1169, 1172–73, and authorities cited.
3. *Id.*, at 1173–74.
4. *Chae Chan Ping v. United States* (1889) 130 U.S. 581.
5. *Id.*, at 595.
6. *Id.*, at 606.
7. *Id.*, at 596.
8. Leroy E. Mosher, *Stephen M. White: Californian, Citizen, Lawyer, Senator. His Life and Work. A Character Sketch*. Los Angeles: Times-Mirror Co., 1903, 23.

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# With 40 Years on the Bench, Judge Carol Brosnahan Leads RBG

BY MEGAN CASSIDY\*

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THREE WEEKS OR SO into her first semester at Harvard Law, Carol Brosnahan was something of a campus novelty. In 1956, she was one of just nine women in a class of 525, making the tiny cadre of women the subject of celebrity-like intrigue to male classmates and an occasional annoyance to professors.

The women were flattered though, when Dean Erwin Griswold invited them to an intimate dinner at his home. They dressed up for the occasion, in ensembles fit for the set of *The Marvelous Mrs. Maisel*.

But the female students' excitement was quickly tempered, as Griswold would make a declaration that Brosnahan relishes reciting some six decades later. You women, the dean told them, were taking the slot of a man "who would do something with the profession," recalled Brosnahan, who recently celebrated her 40th year on the Alameda County bench.

If the memory sounds familiar, that's because the dean's words also struck a chord with one of Brosnahan's classmates: U.S. Supreme Court Justice Ruth Bader Ginsburg. The scene was featured in the recent Ginsburg biopic *On the Basis of Sex*.

Brosnahan remembers the comments as striking, if not surprising.

"It was a different time. You just kind of took it," she told the *San Francisco Chronicle* recently. "You have to understand that we were odd to be there. We were objects of great interest among our classmates — confusion almost. 'Why was she here and not in the kitchen?'"

In April, after celebrating four decades on the Alameda County bench, Brosnahan received a note from her "notorious" former classmate.

"Cheers on 40 years of devoted service on the Alameda Superior Court," Ginsburg wrote in a handwritten letter. "In our law school days, who would believe that women would become judges in numbers? The huge changes we have seen make me optimistic about future progress."

Now 84, Brosnahan is an institution in Alameda County, particularly among those in the mental health field. For the past decade, she has operated the county's behavioral health court, which diverts defendants away from criminal proceedings and into individual treatment plans. If they're successful, charges are dropped.



PHOTO: PAUL KURODA/SAN FRANCISCO CHRONICLE.

With her white pageboy bob and slight frame, Brosnahan's grandmotherly demeanor belies a sharp wit and full calendar. She's earned a reputation as a compassionate judge who knows the homeless, mentally ill and addicted by name.

She meets defendants where they are, figuratively and literally, said public defender Peter VanOosting. A homeless client once refused to get out of his case worker's car, so Brosnahan held a hearing in the parking lot.

"If you're making effort, she's always going to bend over backwards for you," VanOosting said.

Perched on the bench on a recent day inside the Wiley M. Manuel Courthouse in Oakland, Brosnahan adopted the tone of a no-nonsense mother figure.

"You have to take your medicine to get out of jail. So, please do that," she told a defendant.

Brosnahan is quick to commend inmates for their accomplishments and offer alternatives, but she doesn't suffer fools. She's also quick with an anecdote on any topic, from rearing children to civil rights to manicures.

"They're not mine," she quipped after a compliment on her French tips.

The judge beams when recalling the defendants she's reached. There was the woman she ran into at the dollar store who introduced her like a star: "This is my judge!"

And then there was the man who drank to excess. Each year he sent her a Christmas card. "Judge Brosnahan, I love you," one of the cards read. "Nothing sexual."

"All you have to do is realize that they deserve as much respect as anybody else," she said.

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\* Megan Cassidy is a staff writer for the *San Francisco Chronicle* where a version of this story was originally published, on July 5, 2019. Reprinted with permission.

Brosnahan grew up in Queens, N.Y., attended Wellesley College and worked for a year on Wall Street before continuing her education. She met her husband and fellow Harvard Law alum, Jim Brosnahan, during their third semester, after she accepted a job to cook in his house for him and five male classmates. When she was hired, the men brokered a gentlemen's agreement to avoid drama: No one dates the cook.

The pact would not last.

Jim, of course, had known of Carol Simon — and the other women students — before that.

"We thought it was exotic beyond verbal description," he said in an interview at the couple's Berkeley home.

"We'd sit in the library and we'd have our books," he continued, miming the scene. "And as the women would walk by, we would look *just* over the edge of our books. And we would talk about them incessantly."

The couple officially met on Sept. 25, 1958, and the first thing Jim learned about his soon-to-be bride was that she knew all the words to all the Broadway musicals. He promptly violated the terms of his housemate agreement and proposed in three weeks. Three weeks after that, on Nov. 8, 1958, they were married.

Brosnahan's winnings from a TV game show called "Tic Tac Dough" funded her final year at Harvard, but the couple uprooted in 1959, skipping town before their graduation ceremony. He was a Catholic boy who married a Jewish girl, which was frowned upon at the time.

So, the two packed into Jim's black 1946 Ford and headed toward Phoenix. Both passed the Arizona Bar and began working on John F. Kennedy's presidential campaign, and Jim scored a job as an assistant U.S. attorney in Arizona after the election. But few legal positions were open to women, so Brosnahan worked as secretary to the Arizona Senate Judiciary Committee.

"When we were in Arizona, Jim was head of the young Democrats for Kennedy, and a fellow by the name of John O'Connor was the head of the young Republicans. And his wife couldn't get a job either," Brosnahan said, pausing for effect. "Sandra Day O'Connor, her name was."

The couple moved to Berkeley two weeks after their third child was born, in July 1964. The city's public school system was one of the first to begin integrating, and "we wanted our kids to grow up with some degree of diversity in their lives," she said.

Meanwhile, Jim's career continued to flourish. He had become a nationally renowned trial attorney, beginning at the U.S. Attorney's offices in Arizona and San Francisco, and then in private practice. His roster of clients have drawn international headlines, including "American Taliban" John Walker Lindh.

Taking a backseat to her husband's career for the first part of their marriage, Brosnahan said, was part of life in "a different generation."

"Jim was trying cases, [and] I was responsible for the household and the kids," she said. "He was a great dad, but that wasn't really his responsibility. I needed to be where the kids were."

Brosnahan passed the California Bar in 1965, while caring for three children under the age of 4. She started her California law career working as a fact-checker for the Continuing Education of the Bar, and in 1979 she was appointed to the Berkeley-Albany Municipal Court by Gov. Jerry Brown — "the first," Brosnahan joked, referencing Brown's two stints as governor.

Alameda County District Attorney Nancy O'Malley recently recalled working with Brosnahan as a young deputy district attorney in Berkeley, where the judge ran the drug court. Every morning when the prosecutor arrived at the courthouse, Brosnahan's car was already there, her bathing suit hanging to dry on the headrest.

"She just had this really amazingly full life and was a great judge on top of it," O'Malley said.

About a decade ago, after Brosnahan had moved up to the Alameda County Superior Court when the Municipal Court merged with it, the judge approached O'Malley about forming a behavioral health court to help break the cycle of recidivism.

"She seems to be driven by a real desire to make the world a better place," said Jeff Chorney, an Alameda County public defender who often represents mentally ill clients. "I think people in Alameda County might not know who she is, but a lot of people have felt the effect of what she has done."

Defense attorneys say the court once considered lightening Brosnahan's load and offered to transfer some of her cases to another judge.

"My understanding is that she threatened to retire," VanOosting said.

"If she ever does retire, it will truly be a big loss to Alameda County," Chorney said. "I think she is extremely compassionate, and she works really, really hard. She has kind of an old-school work ethic. She's willing to take on some jobs that maybe other judges wouldn't find as exciting."

Now heading into her 41st year on the bench, Brosnahan has no plans to hang up her robe. She'll continue to forge a legacy that few, including the dean of Harvard Law, would have predicted.

"I love what I do. I'm good at it," Brosnahan said. "Nobody wants me to retire." ★

EDITOR'S NOTE: On October 26, the California Lawyers Association announced Judge Brosnahan as the recipient of its 2019 Aranda Access to Justice Award, honoring a judge demonstrating a long-term, tireless commitment to improving, and promoting fairness and access to, the courts.

*Fathers and Sons:*

THE BROWN FAMILY AND THE ARC OF LIBERALISM IN THE TWENTIETH CENTURY

BY REUEL SCHILLER\*

MIRIAM PAWEL

**THE BROWNS OF CALIFORNIA:**

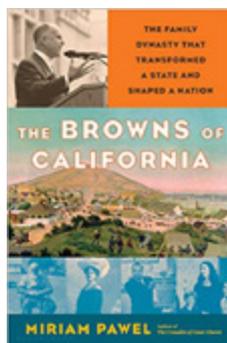
THE FAMILY DYNASTY THAT TRANSFORMED A STATE AND SHAPED A NATION

483 pages

\$21.36 (hardcover), \$20.00

(paperback) \$13.99 (Kindle)

New York: Bloomsbury Publishing, 2018.



HALFWAY THROUGH HER marvelous book, *The Browns of California: The Family Dynasty That Transformed a State and Shaped a Nation*, Miriam Pawel recounts a small, but telling, incident. It was 1976 and Edmund G. “Jerry” Brown, Jr. had just started his first term as governor of California. A Cub Scout from Boise, Idaho wrote to the governor, requesting an autographed picture in order to complete his collection of signed gubernatorial photographs. Unfortunately for the young man, the Brown administration had recently implemented a new policy with respect to such pictures: it refused to provide them. Accordingly, the boy, like hundreds of others, received a form letter: “[The Governor] feels that distributing such memorabilia contributes to a misplaced cult of personality which too often grows up around our political leaders.”

Undaunted, the scout wrote to Brown’s father, Edmund G. “Pat” Brown, Sr., who, our intrepid scout must have known, had been California’s governor eight years earlier. The scout asked Pat to intervene on his behalf, and the 71-year-old retired politician did: “I know you’re very, very busy Governor,” he wrote his son, “but I assure you that complying with a few requests would not be burdensome.” Pat, however, was not optimistic. “I have written my son,” he informed the scout, “and told him that I thought he ought to send you an autographed picture. Sons don’t always pay attention to their fathers, however.”

Indeed, they don’t.

In fact, the contrast between Pat and Jerry is the fulcrum on which Pawel’s energetic narrative sits.

The father was a tireless campaigner who eagerly used government resources to transform California into the largest, richest, most dynamic state in the country. The son, on the other hand, disdained the theater of politics, often doubted the ability of government to solve social problems, and embraced an outsider, anti-establishment image despite being a scion of California’s premier political family. This contrast might tempt a reader to the facile conclusion that the shifting nature of California politics was the result of some sort of Oedipal struggle. Indeed, Pawel’s narrative leaves no doubt that Jerry’s relationship with his father helped to define both his personality and his politics. Yet, the differences between father and son illustrate much more than the anxiety of influence that often drives the relationships between parents and children. The story of Pat and Jerry is emblematic of a dramatic change in the dimensions of American liberalism in the twentieth century. It was not simply one son who ignored his father’s advice. It was an entire generation of Democratic politicians who rejected the lessons of New Deal and Great Society liberalism, and replaced them with a more constrained idea of the role of government in the lives of the American people.

Pawel tells this story by focusing on the biographies of Pat and Jerry. After a brief introduction to the Brown family’s immigrant ancestors, the first third of *The Browns of California* focuses on Pat’s career. Preternaturally interested in politics, Pat began running for office in high school, and did not stop for 50 years. He lost his first campaign for public office when he ran for the state assembly in 1928, a year after he graduated from law school. What followed were a string of campaigns, some successful, some less so, in which Pat rose through the ranks of Democratic politics in the state: San Francisco district attorney, two terms as the state’s attorney general, and the two terms as governor. An optimistic, warm, gregarious fellow (“natural as an old shoe,” one voter remarked), Pat thrived in both retail politics and in cultivating the state’s elites. His policy preferences were typical of New Deal liberals in the postwar period: low-key but significant regulation of business (he enacted the first pollution control standards in the country), support for civil rights (his administration saw the passage of state legislation prohibiting both employment and housing discrimination), and substantial government

\* Reuel Schiller is Professor of Law at UC Hastings and author, most recently, of *Forging Rivals: Race, Class, Law, and the Collapse of Postwar Liberalism*.

spending on public goods, particularly higher education and water infrastructure.

Like many liberals of his generation, Pat had difficulty weathering the seismic changes in political culture that occurred in the 1960s. He was unable to see the threat to California Democrats posed by a Republican Party that, under the leadership of Richard Nixon and Ronald Reagan, abandoned the reasoned moderation of Earl Warren and stoked the fires of cultural and racial resentment. At the same time, he supported the war in Vietnam and was “hurt, outraged, and bewildered” by student protests on the campuses of his beloved University of California. Yet despite these failings, Pawel’s portrayal of Pat is extremely and deservedly sympathetic. Her Pat Brown is a charming, compassionate, earnest man — perhaps a little naive — who entered politics with a faith in government to act for the benefit of all Californians.

His son was cut from different cloth. Pat knew what he wanted to do from an early age. Jerry, on the other hand, was more of a searcher. Though he may have been destined for politics, he started off training to be a priest. He left seminary after a year to enroll at UC Berkeley, where he studied history and political science, and contemplated a career as a psychologist. Yale Law School, however, beckoned, and, in the end, Jerry could not deny the one attribute he most certainly shared with his father: political ambition. Between 1969, when he ran to be a trustee of the Los Angeles Community College District, and 2019, when he concluded his fourth term as governor, Jerry ran in more than a dozen campaigns: for secretary of state, for governor, for senator, for mayor of Oakland, for attorney general and, of course, three times for president of the United States.

Yet despite their common ambitions, Jerry and Pat were very different politicians. Jerry, Pawel reports, would be the first to tell you that he took after his brilliant, acerbic mother, Bernice, rather than his father. Accordingly, he despised his father’s political style — “low comedy,” Bernice called it — and he replaced it with a blunt-talking rejection of the norms of both campaigning and governance. Jerry was not going to kiss babies. Nor would he give long, poll-tested speeches, or glad-hand Sacramento old-timers. More typical was his inclination to lecture the Boise Cub Scout on the danger of cults of personality. In a post-Watergate world, Jerry’s anti-establishment, straight-talking campaign style was exceptionally appealing.

His approach to public policy was also different from his father’s. Although both men were deeply committed to civil rights and racial egalitarianism, Jerry possessed a hostility toward government that had little in common with Pat’s New Deal conception of the role of the state. Jerry evidenced no particular faith in the state’s ability to solve people’s problems. To Pat’s chagrin, he attacked the University of California as a bloated bureaucracy

staffed by overpaid professors. Though he was opposed to Proposition 13 and the limits it placed on property taxes in California, after the proposition passed, Jerry embraced it with such fervor that 1978 poll revealed that a majority of Californians thought he was the force behind the initiative. Indeed, both Jerry’s rhetoric and his budgets during his first two terms as governor often had more in common with those of his predecessor, Ronald Reagan, than with those of his father: government could not be trusted, government taxed too much, government spent too much. In 1975, Jerry gave the commencement address at Santa Clara University, where he had attended seminary. His advice was simple: “He exhorted students not to look for government help in solving their problems,” Pawel wrote, “but ‘to depend on your own energy and your own creative potential.’”

That said, Pawel makes clear that viewing Jerry Brown as a Democratic clone of Ronald Reagan would be a grave mistake. Jerry was and remains an intellectual and ascetic man with deeply egalitarian impulses that have guided his public policy: his advocacy for the well-being of agricultural labor in California; his commitment to diversifying the state’s judiciary and its bureaucracy; his dogged pursuit of campaign finance reform; his passionate desire to make California the most environmentally friendly state in the union. A genuine free thinker, Jerry’s hostility toward hierarchy and established institutions led him in directions that infuriated both the right and the left, labor unions and corporate interests. By the time of his second go round in the governor’s office in the 2010s, he may have come to view government with a little more sympathy than he had in the 1970s, but he was still most at home when he could tweak the established order.

Pawel does as good a job of describing these contradictions within Jerry as she does introducing the reader to the simpler, and more charming, attributes of his father. *The Browns of California*, however, does more than this. It illuminates a world beyond these two men and the state that they governed for almost a quarter century. The Browns’ story is the story of the transformation of liberalism in postwar America. It is the story of how the Democratic Party changed from the party of Roosevelt and Kennedy — advocates of robust government pursuing the public interest though state power — into the party of Carter and Clinton — a party that lost faith in government and contented itself with technocratic fixes to small problems. Pat Brown viewed government as an engine for growth and prosperity. Jerry Brown, on the other hand, saw government’s limits. In the meantime, Democratic politics had become a rearguard action against the advancing power of the conservatism that had come to dominate America at the end of the century. As such, the careers of both men, so ably described by Pawel, trace the declining fortunes and ambitions of twentieth-century American liberalism. ★



First-place winner Sarah Alberstein, CENTER, is congratulated by, SEATED, FROM LEFT, California Chief Justice Tani Cantil-Sakauye and Selma Moidel Smith, who initiated and conducts the competition; Richard Rahm, STANDING LEFT, president of the California Supreme Court Historical Society and a shareholder at Littler, and, STANDING RIGHT, recently retired California Supreme Court Justice Kathryn Mickel Werdegarr.

(PUBLISHED IN THE SAN FRANCISCO AND LOS ANGELES EDITIONS OF THE DAILY JOURNAL ON OCTOBER 25, 2019)

This year, a second-place prize of \$500 was also awarded, recognizing the paper submitted by Parthabi Kanungo, a second-year student at Maastricht University Faculty of Law in the Netherlands. Her paper, “The Right of Free Speech in Privately Owned Premises: Following up with the *Robins v. Pruneyard* Judgment,” will also appear in this year’s volume of *California Legal History*.

This year’s competition marks two “firsts”: a first-place winner from a state outside of California, and a winner in any category from outside the United States.

Kanungo’s paper discusses the continuing expansion of the California Supreme Court’s 1976 *Pruneyard* decision, which established a right of free speech in privately owned shopping centers, to include other, seemingly less “public” venues.

The Society’s annual competition is open to all law and graduate students. Papers must be written during school enrollment and may address any aspect of legal history dealing significantly with California, ranging from the justices and opinions of the Supreme Court itself to local events of legal and historical importance. The papers are judged by a panel of legal historians and law professors. The deadline for the next competition is June 30, 2020. This year, with the generous support of recently retired Justice Kathryn Werdegarr, the Society established a Research Travel Grant in Smith’s honor to facilitate research in California legal history (see facing page). ★

## 2019 Student Writing Competition Winners Announced

THE CALIFORNIA SUPREME COURT HISTORICAL SOCIETY is pleased to announce the results of the 2019 Selma Moidel Smith Student Writing Competition in *California Legal History*.

Sarah Alberstein, a third-year student at the University of Richmond School of Law in Virginia, won first place. She receives a prize of \$2,500 and publication in the 2019 volume of the Society’s annual scholarly journal, *California Legal History*. Her paper is titled, “Right of Publicity in the Era of Celebrity: A Conceptual Exploration of the California Right of Publicity, as Expanded in *White v. Samsung Electronics*, in Today’s World of Celebrity Glorification and Imitation.” She contends that in the current digital age the right of publicity recognized in California creates a paradox wherein individuals are simultaneously incentivized to participate in, and mirror, celebrity culture but are barred from doing so.

is open to all law and graduate students. Papers must be written during school enrollment and may address any aspect of legal history dealing significantly with California, ranging from the justices and opinions of the Supreme Court itself to local events of legal



Second-place winner  
Parthabi Kanungo



## A California Chief Justice Sent the First Transcontinental Telegram

ON OCTOBER 24, 1861, the transcontinental telegraph was completed, and like the transcontinental railroad, it was built by two crews working toward the middle.<sup>1</sup> The telegraph wire roughly followed the route taken by the fabled Pony Express and its completion signaled the demise of the one-year-old delivery system.

The two construction crews met in Salt Lake City, Utah on the 24th. Brigham Young sent the first telegram west but the first coast-to-coast message was sent by California's Chief Justice Stephen J. Field at 7:40 pm and received by President Abraham Lincoln 3,595 miles away, in Washington, DC at 11:30 am on Oct. 25th. Some six months into the Civil War, Field, substituting for the temporarily absent Gov. John Downey, used the telegram to pledge California's loyalty to the United States.

To Abraham Lincoln, President of the United States:  
In the temporary absence of the Governor of the State, I am requested to send you the first message which will be transmitted over the wires of the telegraph line which connect the Pacific with the Atlantic States.

The people of California desire to congratulate you upon the completion of the great work. They believe that it will be the means of strengthening the attachment which binds both the East and the West to the Union, and they desire in this, the first message across the Continent, to express their loyalty to that Union, and their determination to stand by the Government, in this, its day of trial. They regard that Government with affection, and will adhere to it under all fortunes.

STEPHEN J. FIELD, Chief Justice of California.<sup>2</sup>

Fewer than two years later, Lincoln appointed Field to the U.S Supreme Court. ★

### ENDNOTES

1. This note is drawn from Dakota Livesay, "Transcontinental Telegraph. The Week in the Old West," *White Mountain Independent*, Oct. 25, 2019, [https://www.wmicentral.com/news/arizona\\_news/transcontinental-telegraph/article\\_44a5a6bf-098a-5e9c-90fa-35339edd639e.html](https://www.wmicentral.com/news/arizona_news/transcontinental-telegraph/article_44a5a6bf-098a-5e9c-90fa-35339edd639e.html). The Review thanks Society Board Member David Ettinger for his post noting this milestone, "The first transcontinental telegram was sent by a California Supreme Court chief justice," *At the Lectern*, Oct. 27, 2019, <http://www.atthelectern.com/the-first-transcontinental-telegram-was-sent-by-a-california-supreme-court-chief-justice/>.
2. "The Telegraph to California. The First Message over the Pacific Line," *New York Times*, Oct. 29, 1861, <https://www.nytimes.com/1861/10/29/archives/the-telegraph-to-california-the-first-message-over-the-pacific-line.html>.

### FIRST LEGAL HISTORY TRAVEL GRANT WINNERS ANNOUNCED

EARLIER THIS YEAR, the California Supreme Court Historical Society established a research grant program to help defray the travel and archival-related expenses of graduate students and law students pursuing research on California legal history.

The fund has now awarded its first grants, to Taylor Cozzens, a history master's student at the University of Oklahoma, and Smita Ghosh, a Ph.D. candidate at the University of Pennsylvania.

Ghosh's research relates to her dissertation on the history of immigrant detention, and the grant will help fund her travel to several archives in Los Angeles and the Bay Area. Cozzens' research focuses on the history of the California Rural Legal Assistance organization during the 1970s. The non-profit CRLA, founded in 1966, provides legal services to California's low-income individuals and communities. The grant will enable Cozzens to work with materials in Stanford University's Special Collections.

The Society congratulates these young scholars.

The Legal History Travel Grant is funded by the generosity of California Supreme Court Justice Kathryn Mickle Werdegar (Ret.) and David M. Werdegar, M.D., in honor of Selma Moidel Smith, editor-in-chief of *California Legal History*.

Application information is found at <https://www.cschs.org/wp-content/uploads/2019/02/CSCHS-California-Legal-History-Research-Travel-Grant-121018.pdf>. Applications are considered on a rolling basis. ★

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VOLUME 14, 2019

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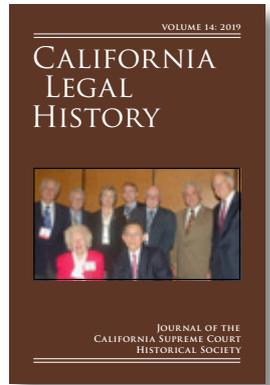
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\*Please note that issues prior to 2006 were published as *California Supreme Court Historical Society Yearbook*. (4 vols., 1994 to 1998–1999.)

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ON THE COVER: A family of Japanese ancestry waits to board the bus for an assembly center, and be transported to an internment camp for the duration of World War II.

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