Bernard E. Witkin (“Bernie” to everyone) was never a judge, never held elected office, was never a professor, and except briefly after law school, never practiced law, yet he arguably had the greatest positive influence on law in California of any person. The Review is honoring Bernie with a two-part article focusing on his early life and career. Part I, published in the Fall/Winter 2020 issue, explored the unlikely circumstances that led to his appointment in 1930 as California Supreme Court Associate Justice William Langdon’s private secretary. This article, the second and last, focuses on Bernie’s years working for Langdon, from 1930 to 1939. These were the critical years in which Bernie developed the analytical skills and legal acumen that propelled him to become California’s most renowned legal scholar. In this period, he fashioned his great work, the Summary of California Law, into the treatise that transformed law in California. But it was also a time when Bernie would receive a personal lesson in the promise, and the perils, of a public life.

“One-Seventh of the Work”: Bernie’s Time with Justice Langdon

In June 1930, Bernie and Justice Langdon had reached an arrangement concerning his new role as Langdon’s law clerk. Bernie would write all of Langdon’s opinions and legal memoranda for the court. In return, in addition to his salary, Langdon would permit Bernie to continue to publish and sell his bar review notes (which he entitled the “Summary of California Law”) and teach a twice-yearly bar review course. Bernie later described it as being offered “the magnificent sum of $275 a month, and all I had to do was one-seventh of the work of the Supreme Court of California.”

It turned out to be a solitary endeavor. According to Bernie, he rarely saw Langdon to discuss the cases or opinions with him. He didn’t even see him at oral argument, since law clerks never attended. Instead, when Langdon was assigned an opinion, Bernie would write it by himself from the record and the briefs. He then would himself type the original and seven copies (one for each justice on the court) and place them on Langdon’s desk to sign.

In a speech given to the California Supreme Court Historical Society in 1995, Bernie described his experience working for Langdon. The story involved the financing of the Golden Gate Bridge. The California Legislature had passed a statute to allow certain Bay Area counties to create a bridge and highway district. The district adopted plans for a bridge spanning the Golden Gate and sold bonds for its construction. Opponents of the project, led by the Southern Pacific–Golden Gate Ferries, fought so vigorously in court that a group of bankers, as a condition of purchasing the bonds, insisted that the California Supreme Court rule on the bonds’ validity. To get the case before the court, the secretary of the bridge district refused to sign the bonds, and the district’s directors sought a writ of mandate, seeking an order compelling him to sign. Argument was held and the public eagerly anticipated a decision.

Bernie recalled what happened next: “Well, one day my boss, Justice Langdon, walked into my office and announced that the court was sore as hell at Chief Justice Waste, because he had assured the reporters that the court was working night and day on the case, and it hadn’t even been assigned to any Justice for an opinion.” According to Bernie, the Chief asked each justice to prepare a memorandum regarding the matter. Bernie wrote the memo, Langdon submitted it, and because no other justice had done so, the Chief assigned the opinion to Langdon.

“That was a Wednesday; and I collected the 4-foot stack of briefs and records, and took them to my Berkeley home. On Saturday the justices as usual attended the Cal–Stanford football game, and on Monday, I delivered
the opinion in *Golden Gate Bridge and Highway District v. Felt* upholding the validity of the bonds. Justice Langdon was listed as the author, and others joined him, which was enough.77

At the time, no one knew that Bernie wrote not just this opinion, but all of Langdon’s opinions. When the newspapers praised Langdon for a well-written decision, Bernie had to learn to be content with that. He was not alone. Bernie later claimed that nearly all of the opinions on the Waste Court were written by the law clerks.8

Associate Justice John W. Preston, Langdon’s colleague on the court, lends support for Bernie’s account. In an article published in October 1931, just a month before the issuance of the *Golden Gate Bridge* decision, Preston described the court’s process of opinion writing. According to Preston, Chief Justice Waste assigned 90 percent of the cases to individual justices, who would prepare the decision without consulting the others. These were “one-man” opinions, simply passed along for other justices to sign. “The court never convenes as a court, nor in chambers, in consultation, to approve opinions so signed previous to their filing. When they bear a sufficient number of signatures and all the Justices have examined the same and have had an opportunity to express their assent or dissent, they are filed, usually at the instance of the author.”9

Preston saw this process resulting from a court incapable of keeping up with the onslaught of cases. “Because of restrictions placed upon the court by the constitution and by the further reason that the court is two and a half years behind in its duties because of the mass of litigation heaped upon it, one-man decisions were mandatory.”10

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7. Ibid.
10. Ibid. [Editor’s note: for more on Witkin, Langdon and Preston, see pages 26–29, this issue.]

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**The Summary of California Law Becomes a Treatise**

With his work at the court receiving no public recognition, Bernie busied himself with his bar review business. He self-published a new edition of the *Summary of California Law* in 1931, and again in 1934, and sold copies to law students and prospective lawyers. He expanded his bar review course by entering into a partnership with Jack W. Chance, a friend from law school practicing with O’Melveny, Tuller & Meyers. Bernie would teach the course in San Francisco and Chance in Los Angeles.11

Bernie’s approach to preparing these early editions of the *Summary* was straightforward: “I simply took the original material, added the new cases, expanded the outline accordingly, profited by whatever commentary appeared in the law reviews.”12 As his work at the court and his writing of the *Summary* intertwined, he began to envision a much greater publication, one that would encompass his ideas about the law and how the parts of it interconnected.

“I was working for the Supreme Court and I was constantly scanning all the advance sheets and selecting [cases] — it [the *Summary*] began to accumulate content. It was no longer a case of selecting material that was valuable for a student taking an examination. It began to be an updating of current California law. That necessarily meant two things: first an expansion in volume and second, a more sophisticated treatment, abandoning simplicity and going into more detail.”13 He would select only those cases that “I thought from the basis of my experience or from my imagination or from guess work had something to contribute instead of merely a regurgitation of existing law.”14

Changing his method of selecting material was only one aspect of the *Summary’s* metamorphosis. More importantly, Bernie sought to reformulate the organization of the law. “[W]hen I started putting the subjects in text order instead of just as a summary for law students, I studied the outlines of major treatises, and the major encyclopedias (*Ruling Case Law, Am Jur and Corpus Juris*), and the restatements.”15 From there, he developed his own arrangement, to which he would come to apply all new cases, statutes, and legal developments. “[T]he original outline is conceived with a study of the available

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14. Id. 19.
better works in each of the subjects, but used in my own methods to reflect California law problems and to give them the proper highlighting."

It became his second nature. He later described it this way: "I don’t [have the law in my head] — I have the structure in my head. That’s the important thing... [I]’s that placement and structure that counts. Not a vast accumulation of memorized ideas."

By 1936, Bernie was ready to reveal his new vision to an audience beyond the law student and test-taker. He would sell his Fifth Edition of the Summary widely to judges and practicing lawyers. It would come to change California law and practice. Over the next 85 years, California judges would cite to it, and to new treatises created from it, in more than 14,000 published opinions. In time, experts, judges, and practicing lawyers would acclaim the Summary of California Law as the leading authority for understanding California law.

Targeted in the Anti-Communist Hysteria

The growth of the Summary’s influence, and the acknowledged brilliance of its author, were not preordained. In December 1937, Bernie’s reputation was dealt a blow from which both he and the Summary might not have recovered. A lawsuit was filed claiming that many in labor, government, education, and the film industry had conspired to bring about a communist takeover of the West Coast. It alleged that Bernard E. Witkin, private secretary to Justice Langdon, held meetings of communists to further this conspiracy. It made front page news throughout the state.

No evidence existed that Bernie was a member of the Communist Party, had communist beliefs, or held such meetings. Instead, Bernie found himself caught up in the labor unrest and anti-communist hysteria prevalent at that time on the West Coast, a forerunner of the McCarthyism that would later grip the country in the 1950s.

The suit was brought by Ivan Cox, a former secretary-treasurer of the International Longshoremen’s Association local in San Francisco. The union was led by Harry Bridges, who was the central figure in the General Strike that brought San Francisco to a halt for several days in July 1934. Cox had been voted out of office and accused of having unexplained shortages in the union local’s accounts. Cox held Bridges responsible for his ouster and sought revenge.

Opponents of the union claimed that communist agitators, foremost among them Bridges, caused the labor unrest, and vowed to remove him. If Bridges were proved to be a member of the Communist Party, he could be prosecuted under California’s Criminal Syndicalism Act, which made it a felony to belong to any organization that advocated or promulgated violence as a means of “accomplishing a change in industrial ownership or control or affecting any political changes.”

Because Bridges was not a U.S. citizen (he was Australian), he could then be deported as an undesirable alien. Bridges consistently denied being a communist.

Cox went to the American Legion to tell his story. The Legion and its partner organization, the Associated Farmers of California, were the principal warriors in the anti-communist crusade in California in the 1930s. While the American Legion supplied the troops, the Farmers provided the strategy, logistics, and financing. Many local sheriffs and police forces supported them, most notably William “Red” Haynes, captain of the notorious anti-communist “Red Squad” of the Los Angeles Police Department. They also had ties to the California Highway Patrol, the state Bureau of Criminal Identification, and Army and Navy Intelligence. The Legion and the Associated Farmers had between them an extensive network of informants and files on more than 1,000 suspected subversives.

Harper Knowles, commander of the American Legion Branch in San Francisco, and later executive secretary of the Associated Farmers of California, seized this opportunity to get Bridges. Cox swore out an affidavit, which Knowles witnessed, and which was then used to draft the lawsuit. Although the suit focused on Bridges, it named many other persons, including Bernie, and thousands of John and Jane Does.

Langdon’s dissents in the Mooney and Billings cases may help explain why Bernie was named a defendant in this suit. Apart from Bridges, the labor issue that most captured the public’s attention in California was that of pro-labor activists Tom Mooney and Warren Billings, who were convicted of murder for the Preparedness Day

16. Ibid.
17. Id. 16.
18. This recognition is even embodied in statute: “The Legislature hereby finds and declares that Bernard E. Witkin’s legendary contribution to California law is deserving of a lasting tribute and an expression of gratitude from the state whose legal system, he, more than any other single individual in the twentieth century, helped to shape.” Cal. Educ. Code, § 19328.
22. Larrowe, Harry Bridges, supra note 20, 59.
23. Id. 192.
25. Larrowe, Harry Bridges, supra, note 20, 192; Starr, Endangered Dreams, supra note 24, 74–75.
Bombing in 1916 in San Francisco, in which ten people died.27 Despite widespread concerns about the fairness of the trial, the court twice denied Mooney and Billings relief during the time that Langdon served on the court. Langdon dissented in both decisions, most recently in October 1937, just two months before the Cox lawsuit was filed.28 Mooney later praised Langdon, and castigated the other members of the court, when he received his pardon at a ceremony in the state Assembly chamber in 1939.29 Naming Bernie as a communist, and pointing out his association to Langdon, could have been a way to raise suspicions about Langdon and his motives in these cases without attacking the justice directly.

Bernie’s heritage and family ties present another plausible explanation. Bernie and his family, who were of Russian-Jewish heritage, had arrived in San Francisco after the 1906 Earthquake. They were not alone. During this time, so many other Jewish immigrants from Eastern Europe had come to San Francisco that it was likened by some as “an invasion from the East.”30 These new arrivals found acceptance in the city difficult.31 The Preparedness Day Bombing in 1916 made things worse. Along with Mooney and Billings, two Russian Jews were implicated in the attack.32 The Soviet Revolution the following year further heightened suspicions about Russian Jews.33 By the mid-1920s, the Witkin family had moved out of San Francisco, resettling in Oakland.

Bernie’s older brother could also have unwittingly brought unwelcome attention to him. Zara Witkin, a civil engineer, had joined other American business leaders in visiting the Soviet Union in 1932. While there, the Soviet government appointed him “Chief Rationalizer and Consultant” for all building projects of its Second Five Year Plan.34 The appointment made national news back in the United States.35 Zara returned two years later and went on a speaking tour about his time in the Soviet Union, highlighted by a speech at the Commonwealth Club in San Francisco.36 It would be simple enough to link Bernie’s Russian-Jewish heritage, and Zara’s work in the Soviet Union, to build a plausible story that Bernie had communist ties.

In August 1938, eight months after filing the suit, Cox repudiated his affidavit and the case collapsed. Cox later claimed to have protested that he did not know all the people named as defendants in the suit but was told not to worry, because “[y]ou’re helping the government, enabling it to construct its case around what you actually know.”37

The lawsuit, and ensuing publicity, could have devastated Bernie’s career. Fortunately, it did not do so. But Bernie learned that even a relatively obscure role at the court could not shield him against unsubstantiated calumny. When taking on a more public role, Bernie would need to pay careful heed to his reputation.

With Chief Justice Gibson

Justice Langdon died in 1939 and Governor Culbert Olson appointed his finance director, Philip Gibson, in Langdon’s place. With the arrangement that Bernie had reached with Langdon now over, Bernie prepared to leave the Court. He had managed to obtain a position at a law firm, but “hated the very idea” of practicing law.38 Fortunately, he would be interrupted as he finished packing up his office. “There was a knock on the door. A little guy came into my office. He said ‘I’m Phil Gibson.’ I said, ‘I’m Bernie Witkin.’ He said, ‘I know you. What are you doing?’ I said, ‘I’m going downtown to practice law.’ He said, ‘why don’t you stay here. I need you.’ In a split second I thought this is the right guy, so I said, ‘okay, it’s a deal.’”39

A friendly collaboration quickly developed, contrasting sharply with his former distant relationship with Langdon. “I went to work for Gibson and this time I wrote all the opinions BUT he read them and we discussed them. We disagreed occasionally. They were his opinions. I was a professional, he was not, but they were

27. For the influence of this event on Bernie’s appointment, see Part 1 of this article.
28. See In re Billings (1930) 210 Cal. 669; In re Mooney (1937) 10 Cal.2d 1.
32. Id. 184–85.
33. Rosenbaum, Cosmopolitans, supra note 30, 189.
37. Larrowe, Harry Bridges, supra note 20, 194.
38. Witkin Interview, 1986, supra note 3, 10.
39. Ibid.
reformed electoral and reapportionment procedures; and imposing limitations on property taxation. Likewise, provisions of other state constitutions cover substantial ground not addressed by the federal constitution. They treat and regulate, for example, various privacy protections; gender equality; natural resources and conservation of lands; native peoples and “Indian territory”; flood protection levees; minimum wages; and rights to bilingual education. Provisions like these support the observation that, as a practical matter, the lives of average Americans are affected at least as much, if not more, by state, rather than federal, law.


In the meantime, California, the most populous state and one of the world’s largest and most vigorous economies, is fortunate to have seen attention focused on its constitution by both an excellent treatise and law school courses. In the past quarter century our lawyers, judges, professors, and public interested in our constitution’s complex history and myriad provisions have benefited from a comprehensive treatise authored by former California Supreme Court Justice Joseph Grodin. First published in 1994, in 2016 it was completely revised in a second edition: Grodin, Shanske, and Salerno, The California Constitution. In addition, beginning in 2008, and ahead of the Conference of Chief Justices’ call for law schools to focus on state constitutional law, the authors of the present casebook, David A. Carrillo, of University of California’s Berkeley Law, and San Mateo Superior Court Judge Danny Chou, have offered courses and seminars at Berkeley Law addressing the California Constitution. Meanwhile, and laudably, other California law schools have offered similar classes. Augmenting these initiatives, Carrillo founded, and continues to oversee as Executive Director, the California Constitution Center at Berkeley Law. The Center has organized and held conferences focusing on the California Supreme Court and our state’s constitution — and it has published numerous related useful articles, chapters, books, and reports.

The present casebook, an outgrowth of the courses taught by Carrillo and Chou at Berkeley Law over the past dozen years, is a natural and welcome progression, building upon the earlier and ongoing work of others. This extensive compilation, covering all major (and some minor) articles and sections of the state constitution, formalizes the authors’ continuing significant contributions to this area of law and governance. At the same time, it facilitates the education of law students at all law schools of this great, vast, and promising state.

I look forward to a future in which legal training in California and nationwide is enhanced by works such as this. In the meantime, I am hopeful that legal educators in all jurisdictions will augment and expand upon the existing materials mentioned above in order to explore the rich history and important provisions of all state constitutions. The judicial system, in California and nationwide, stands to benefit.