THE LADY IN PURPLE:

The Life and Legal Legacy of Gladys Towles Root

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Gladys Towles Root was a Los Angeles lawyer famous for flamboyant clothing, large hats and audacious trial tactics. Root used her legal skills to defend accused sex criminals, murderers, kidnappers, and other unsavory characters. She used the doctrine of legal insanity and aggressive cross-examination to get her clients acquittals or reduced sentences and successfully challenged California's miscegenation law as it applied to Filipinos. Root was as well known to the newspaper's society columnist as she was to the newspaper's crime reporters.

THE HISTORICAL PROBLEM

In their essay, "Women, Legal History, and the American West," John R. Wunder and Paula Petrick observe that

> little scholarship has been published concerning western women and criminal law, and, except for divorce, little has been accomplished by way of women and civil law. Likewise, western women's roles in the

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A COURTROOM APPEARANCE BY GLADYS TOWLES ROOT,
LOS ANGELES TIMES, AUGUST 31, 1948, P. 15

Los Angeles Times Photographic Archive, Department of Special Collections, Charles E. Young Research Library, UCLA.

> history of property and probate need more attention. No regional historical study of western law yet exists; similarly no history of women, the law, and the American West has been written.[1]

Although there have been some contributions to the literature since Wunder and Petrick wrote in 1994, women in the law remains an under-researched area. The present article is a biography, but one intended to be mindful of the maxim that "a biography to be really worthwhile must relate to something more than the life and activities of an individual."[2] Most lawyers' biographies ignore the contributions of attorneys to jurisprudence. For example, *The Invisible Bar* by Karen Berger Morello[3] is a valuable primer on women in the law, but largely ignores the contributions they made other than by just being there. It begins with Margaret Brent, who practiced law in Maryland in 1638, and concludes with the appointment of Sandra Day O'Connor to the U.S. Supreme Court in 1981. Virginia C. Drachman introduces her book, *Sisters in the Law*, stating, "The history of women lawyers is a powerful story of discrimination, integration, and women's search for equality and autonomy in American society."[4] *Sisters in the Law* begins in the 1860s and ends in 1930, the same year Root was admitted to the bar. It is well written, well researched and well documented, but it also ignores the contributions women made to American jurisprudence other than by simply being members of the bar. A notable exception is *America's First Woman Lawyer: The Biography of Myra Bradwell* by Jane M. Friedman.[5] This book begins with Bradwell's quest for membership in the Illinois bar, and goes on to discuss her friendship with Mary Todd Lincoln, her founding and editing the legal newspaper, *Chicago Legal News*, and her contributions to the woman suffrage movement. The book is well written and copiously endnoted to primary sources. Although Bradwell

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[1] John R. Wunder and Paula Petrik, "Women, Legal History and the American West," *Western Legal History* 7 (Summer/Fall 1994): 197.

[2] Owen C. Coy, "Introduction" in Caroline Walker, *Boyle Workman's The City That Grew* (Los Angeles: Southland Publishing Co., 1935), vii.

[3] Karen Berger Morello, *The Invisible Bar: The Woman Lawyer in America 1638 to the Present* (New York: Random House, 1986).

[4] Virginia C. Drachman, *Sisters in the Law* (Cambridge: Harvard University Press, 1998), 1.

[5] Jane M. Friedman, *America's First Woman Lawyer: The Biography of Myra Bradwell* (Buffalo, N.Y.: Prometheus Books, 1993).

may or may not be America's "first" woman lawyer, *America's First Woman Lawyer* is the sort of lawyer's biography — whether of a male or a female attorney — that is generally lacking in the literature because it actually demonstrates that Bradwell was doing something as a journalist and editor, and as a suffragette, if not as an attorney or jurist. Some lawyer biographies are anecdotal, for example, *A Song of Faith and Hope: The Life of Frankie Muse Freeman* by Frankie Muse Freeman with Candace O'Connor,[6] *Lawyer in Petticoats* by Tiera Farrow,[7] and *Call Me Counselor* by Sara Halbert with Florence Stevenson.[8] These books have the advantage of being primary sources in their own right, but have little value in discovering the thinking of the lawyers, and how they came to form their legal arguments.

There are two previous biographies of Root: *Defender of the Damned: Gladys Towles Root* by Cy Rice,[9] and *Get Me Gladys: The Poignant Memoirs of America's Most Famous Lady Criminal-Lawyer*, also by Cy Rice.[10] *Get Me Gladys* is essentially a second edition of *Defender of the Damned*. Much of *Get Me Gladys* is word-for-word the same as *Defender of the Damned*. However, *Get Me Gladys* deletes the account of Jay Geiger's final illness and death and adds a chapter on Root's defense of the accused kidnappers of Frank Sinatra, Jr. Both books have the advantage of having been written with Root's full cooperation and quote her frequently. Indeed, both books amount to the authorized biography of Root; they could be called second-hand primary sources — primary in the sense of not being based on the work of any previous author, second-hand in the sense of being written by someone other than the subject. Sadly, neither book is documented with footnotes or endnotes of any kind. Some of the facts related by Rice, such as Root's work in the *Roldan* case on Filipino-Caucasian miscegenation, or Root's defense of Allan Adron or Frank Sinatra, Jr.'s kidnappers, are verifiable from contemporary newspaper accounts. However, some of the

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6 Frankie Muse Freeman with Candace O'Connor, *A Song of Faith and Hope: The Life of Frankie Muse Freeman* (St. Louis: Missouri Historical Society Press, 2003).

7 Tiera Farrow, *Lawyer In Petticoats* (New York: Vantage Press, Inc., 1953).

8 Sara Halbert with Florence Stevenson, *Call Me Counselor* (Philadelphia: J.B. Lippincott Co., 1977).

9 Cy Rice, *Defender of the Damned: Gladys Towles Root*, (New York: The Citadel Press, 1964).

10 Cy Rice, *Get Me Gladys: The Poignant Memoirs of America's Most Famous Lady Criminal-Lawyer* (Los Angeles: Holloway House Publishing Co., 1966).

other anecdotes such as the name of Root's first client, the Case of the Austere Pasadena Judge, and Root's only appearance before the U.S. Supreme Court cannot be verified independently of Rice's books. Both books contain descriptions of Root's costumes and coiffure, and lack critical analysis of her legal career and influence. Rice's books are relied upon by every other biographer of Root.[11]

The present study differs from the previous two in that it will expand on and correct the facts of Root's biography, and provide an appraisal of her legal career through an analysis of certain types of cases she handled. It will make an original contribution to the literature by focusing on one lawyer's contributions to the evolution of specific, selected legal doctrines.

EARLY LIFE

Gladys Charlotte Towles was born in Los Angeles, California, on September 9, 1905. She was the second daughter of Charles Henry Towles and Clara Jane Deter Towles. Charles and Clara met in Topeka, Kansas, where Clara was secretary to the speaker of the Kansas House.[12] In 1892, they moved to Los Angeles, a city of about fifty thousand people.[13] During the 1880s and 1890s, Los Angeles was undergoing a boom in real estate and oil. Competition between the Southern Pacific Railroad and the Atchison, Topeka & Santa Fe Railroad had driven train fares from Kansas City to as little as one dollar.[14] Tens of thousands of mid-westerners came to southern California to seek their fortunes and enjoy the weather. Charles and Clara Towles were among them. Charles was the supervising agent for the Singer Sewing Machine Company. He was also a "gentleman farmer" and had invested well enough in real estate that he retired from business at the age

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11 See, e.g., Dawn Bradley Berry, *The Fifty Most Influential Women in American Law* (Los Angeles: Lowell House, 1996), 157–67.

12 Cy Rice, *Defender of the Damned: Gladys Towles Root* (New York: Citadel Press, 1964), 87; Cy Rice, *Get Me Gladys: The Poignant Memoirs of America's Most Famous Lady Criminal-Lawyer* (Los Angeles: Holloway House Pub. Co., 1966), 37.

13 John D. Weaver, *Los Angeles: The Enormous Village, 1781–1981* (Santa Barbara, Calif.: Capra Press, 1980), 47.

14 Remi Nadeau, *Los Angeles: From Mission to Modern City* (New York: Longmans, Green & Co., 1960), 73–75.

of fifty-five.[15] Charles and Clara are mentioned twice in the *Los Angeles Times*: once in 1903 in connection with the purchase of three lots in the Alvarado Heights area of Los Angeles, and later that year for the purchase of a lot and seven-room residence on Tenth Street between Grand View and Park View. The home cost $4,000.[16]

Gladys Towles attended Hoover Elementary School and Los Angeles High School.[17] She first appeared in the *Los Angeles Times* society pages at age ten doing a "butterfly dance" at the birthday party of a friend. Gladys entered the University of Southern California.[18] During her freshman year at college, Charles Towles said, "Gladys, you ought to be on the stage — not the theater, but life's real stage: the courtroom."[19] Charles Towles had wanted his daughter to become a lawyer.[20] He had wanted to become a lawyer himself, but "was forced to drop out of school for financial reasons."[21] Clara Towles wanted Gladys to become an actress.[22] In a sense, she became both.

Root took a Bachelor of Laws degree (LL.B.) from the University of Southern California.[23] What would become the law school at USC was organized on November 17, 1896, by "a group of law students meeting in the police court room of Justice Morrison in the old City Hall."[24] The group called itself "The Law Students' Association of Los Angeles."[25] Six months later, the group was reorganized as "The Los Angeles Law School."[26] In 1901, the Los Angeles Law School was reorganized as the "Los Angeles

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15 Rice, *Defender of the Damned,* 87; Rice, *Get Me Gladys*, 37.

16 "Real Estate Transactions," *Los Angeles Times*, January 31, 1903, 19; "Among Real Estate Owners and Dealers," *Los Angeles Times*, August 31, 1903, B1.

17 Rice, *Defender of the Damned*, 87.

18 Ibid., 87.

19 Ibid., 92.

20 Ibid., 44.

21 Ibid., 87.

22 Ibid., 44.

23 Denise Noe, "The Life of Gladys Towles Root: A Feisty, Much Loved Child." http://www.trutv.com/library/crime/notorious_murders/classics/root/2.html. Accessed: July 15, 2011.

24 Allison Gaw, *A Sketch of the Development of Graduate Work at the University of Southern California, 1910–1935* (Los Angeles: University of Southern California Press, 1935), 5.

25 Ibid.

26 Ibid.

College of Law," and in 1904, it was reorganized a final time as the "Southern California College of Law" and incorporated directly into the University.[27] Under the direction of Dean Frank M. Porter, the law school offered a three-year curriculum leading to the double degree of A.B. and LL.B.[28] Root attended USC as an undergraduate and went to the law school without first obtaining a bachelor of arts degree.[29] Denise Noe writes, "In the 1920s and 1930s, in many colleges of law, people could transfer to the law school after three years of college work and that's what [Gladys] did."[30] In 1928, the law students at USC organized the Southern California Bar Association, including all of the law students";[31] presumably, Root was among them. During her years at USC, Root was an active member of the Phi Delta Delta law sorority.[32] Root sometimes performed "melody selections and character interpretations" at benefit concerts and social events supported by Phi Delta Delta.[33] She satisfied her love of drama and music by joining Phi Beta, national music and dramatic arts sorority.[34] She was a regular fixture of the society pages as the hostess of receptions, parties, benefit teas, and other social events, usually in connection with her membership in Phi Delta Delta, Phi Beta, or both.[35]

Rice suggests that Root joined the Junior Republican Study Club some time after she began practicing law as a way to meet potential clients.[36] However, the evidence shows that Root became active in Republican politics as early as 1928 when she, as a "representative of the Southern California Republican headquarters," announced the formation of a Hoover-for-President

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27 Ibid.

28 Ibid.

29 Noe, *op. cit.*

30 Ibid.

31 W. Ballentine Henley & Arthur E. Neeley, *Cardinal and Gold* (Los Angeles: The General Alumni Association of the University of Southern California, 1939), 112.

32 Juana Neal Levy, "Society," *Los Angeles Times*, March 14, 1926, C1.

33 Juana Neal Levy, "Society," *Los Angeles Times*, April 15, 1926, A6; Juana Neal Levy, "Society," *Los Angeles Times*, June 24, 1926.

34 Juana Neal Levy, "Society," *Los Angeles Times*, March 1, 1926, A6; Juana Neal Levy, "Society," *Los Angeles Times*, Nov. 28, 1926, C1.

35 See e.g. Myra Nye, "Society," *Los Angeles Times*, September 12, 1926, C1; Juana Neal Levy, "Society," *Los Angeles Times*, November 28, 1926, C1; Juana Neal Levy, "Society," *Los Angeles Times*, June 27, 1920, A6.

36 Rice, *Defender of the Damned*, 65–66; Rice, *Get Me Gladys*, 55.

club at USC.[37] Root was active in the Junior Republican Study Club and became its president.[38] Rice describes an incident in which Root, as president of the Junior Republican Club, had the idea to sponsor a reception for the President and Mrs. Hoover. According to Rice,

> [Root] was given carte blanche to manage the entire affair. The bottom of the treasury was scraped, and Mrs. Root was handed the money, which she took to a printer.
>
> The invitations read ". . . in honor of the President of the United States of America, Herbert Hoover."
>
> Proudly she showed one of them to her mother. The response was a stifled scream as the alarmed parent blurted, "Gladys! You're going to jail!"
>
> Jails held no terror for Mrs. Root. She asked, "Why, Mother."
>
> "Because you know he isn't coming," was the simple answer.
>
> Mrs. Root counteracted with a defiant, "Well, I didn't say definitely whether he was or not."
>
> Mrs. Towles collapsed into a chair. She was not a believer in smelling salts, but this was one time when she could have benefitted by a few sniffs.
>
> "You *knew* that he isn't coming," she stated categorically.
>
> "He *was* invited," Mrs. Root reminded her mother.[39]

Newspaper accounts verify some of the basic facts of this incident. The reception was scheduled for October 20, 1929, at the Hotel Knickerbocker in Hollywood.[40] Over one thousand tickets were sold to the event.[41] Lieutenant Governor H.L. Carnahan was scheduled to speak; honored guests included Mayor John C. Porter of Los Angeles and Mayor James Rolph of San Francisco.[42] However, President and Mrs. Hoover never committed to attend the reception in their honor. According to Rice, Root was expecting

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37 "Collegians Form Clubs for Hoover," *Los Angeles Times*, Sept. 29, 1928, A9.

38 Rice, *Defender of the Damned,* 66; Rice, *Get Me Gladys*, 56.

39 Rice, *Defender of the Damned*, 66–67; Root, *Get Me Gladys*, 56.

40 Rice, *Defender of the Damned*, 68; Rice, *Get Me Gladys*, 57; "Tribute to be Given by Club to President," *Los Angeles Times*, October 6, 1929, B10.

41 "Thousand to Attend Reception by Club," *Los Angeles Times*, October 16, 1929, A8; Rice, *Defender of the Damned*, 67; Rice, *Get Me Gladys*, 57.

42 "Club to Honor Hoovers," *Los Angeles Times*, October 20, 1929, 20.

to be embarrassed — if not go to jail — but at the last minute a telegram arrived from Washington, D.C., allegedly from Herbert Hoover thanking the Club for the honor and expressing regrets for not being able to attend.[43] The telegram was actually sent by a friend of her mother's.[44] The newspaper does not verify this last detail. Indeed, the *Los Angeles Times* does not report on the event at all. After this near fiasco, Root left politics to concentrate on her legal practice.

Gladys Towles married Frank A. Root in October 1929.[45] Frank Root was a deputy sheriff whose contacts at the county jail helped bring criminal defendants to Gladys's law practice.[46] A son, Robert "Bobby" Towles Root, was born in 1932.[47] Gladys and Frank divorced in 1943.[48] Frank Root died on March 15, 1970.[49]

Gladys Root married John C. "Jay" Geiger in 1943.[50] After her second marriage, Gladys kept the surname "Root" professionally because she had already established herself by that time.[51] However, she is sometimes referred to as "Mrs. Geiger" in the society pages[52] and, in at least one case, as "Gladys Towles Root Geiger."[53] Jay Geiger was the "West Coast representative of a national fashion magazine" and would later become his wife's

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43 Rice, *Defender of the Damned*, 69; Rice, *Get Me Gladys*, 58.

44 Rice, *Defender of the Damned*, 70; Rice, *Get Me Gladys*, 59.

45 *Root v. United States* (1974), 1974 U.S. Dist. LEXIS 6796 at 7; 74-2 U.S. Tax Cas. (CCH) P9758; 34 A.F.T.R.2d (RIA) 6091 at 7; Cy Rice in *Defender of the Damned*, at page 94, gives the date of Gladys and Frank's marriage as 1930.

46 Eric Malnic & Karen Wada, "Gladys Towles Root Dies; Colorful Lawyer Was 77," *Los Angeles Times*, December 22, 1982, D4.

47 Rice, *Defender of the Damned*, 94.

48 *Root v. United States* 8 (1974), 1974 U.S. Dist. LEXIS 6796; 74-2 U.S. Tax Cas. (CCH) P9758; 34 A.F.T.R.2d (RIA) 6091 at; Cy Rice in *Defender of the Damned*, at page 94, gives the date of Gladys and Frank's divorce as 1941.

49 Ibid., 8.

50 Rice, *Defender of the Damned*, 94.

51 Ibid.

52 "Junior Associate Meeting Held," *Los Angeles Times*, January 19, 1946, A8; "Couple Entertain," *Los Angeles Times*, February 3, 1946, C2; Brandy Brent, "Carrousel," *Los Angeles Times*, February 9, 1950, B8; Walter Clarke, "Vacationers' Parties Include Plane Ones, Too," *Los Angeles Times*, October 22, 1950, C10.

53 *Root v. United States* (1974), 1974 U.S. Dist. LEXIS 6796; 74-2 U.S. Tax Cas. (CCH) P9758; 34 A.F.T.R.2d (RIA) 6091.

business manager.[54] His sartorial taste matched his wife's.[55] He was known to wear pink satin tuxedos, coral-colored accordion-pleated dinner jackets with matching shirts, and sequin shirts.[56] He always wore a hat and carried an English walking stick.[57] He loved large pieces of jewelry.[58] Jay and Gladys entertained lavishly at their Hancock Park home and were often seen at Los Angeles's most trendy restaurants.[59] They were members of the Del Mar Club and the L.A. Athletic Club.[60] Their marriage was "supremely happy."[61] Jay and Gladys had one daughter, Christina Geiger, born in 1944.[62] Jay Geiger died October 12, 1958, after a long illness.[63]

THE LADY IN PURPLE

Gladys Towles was admitted to practice law in California on September 18, 1929, in a special proceeding of the California Supreme Court.[64] Of the 187 lawyers admitted to practice that day, twelve were women. She was issued bar number 11321.[65] She opened her first law office in 1930 at Suite 620, The Bartlett Building, 215 West Seventh Street, Los Angeles.[66] Charles Towles

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54 "John C. Geiger, Husband of Attorney, Dies," *Los Angeles Times*, October 13, 1958, B9; Rice, *Defender of the Damned*, 94–95.

55 Rice, *Defender of the Damned*, 171.

56 Ibid., 95.

57 Ibid., 171.

58 Ibid., 172.

59 "Junior Associate Meeting Held," *Los Angeles Times*, January 19, 1946, A8; "Couple Entertain," *Los Angeles Times*, February 3, 1946, C2; "Jubilees," *Los Angeles Times*, February 16, 1947, C9; Lucille Leimert, "Confidentially," *Los Angeles Times*, February 24, 1946, C6; Brandy Brent, "Carrousel," *Los Angeles Times*, February 9, 1950, B8; Walter Clarke, "Vacationers' Parties Include Plane Ones, Too," *Los Angeles Times*, October 22, 1950, C10; Rice, *Defender of the Damned*, 95–96, 169, 172–76.

60 William Hord Richardson, ed., *Los Angeles Blue Book, 1954* (Beverly Hills, Calif.: Society Register of California, 1953), 89.

61 Rice, *Defender of the Damned*, 171.

62 Ibid., 94.

63 "John C. Geiger, Husband of Attorney, Dies," *Los Angeles Times*, October 13, 1958, B9; Rice, *Defender of the Damned*, 94, 178–94; Rice, *Get Me Gladys*, 89.

64 "Many New Attorneys Admitted," *Los Angeles Times*, September 19, 1929, A1.

65 State Bar of California. Attorney Search. http://www.calbar.org. Accessed: July 15, 2011.

66 Petition for Writ of Mandamus, *Roldan v. Los Angeles County*, No. 326484 (Superior Court, Los Angeles County, filed August 18, 1931), 2 (Root's office address in-

gave his daughter enough money to pay the office rent for six months.[67] There is no record of what Gladys did during the months between her admission to the bar and opening her own office. It may be that she tried to get a job but could not.

Karen Berger Morello, author of *The Invisible Bar*, has documented how difficult it was for women to be hired by large law firms. Morello wrote, "The Depression years were the most difficult of times [for women lawyers] to find employment."[68] The Second World War brought a few more women into the large law firms and corporate legal departments, but they had little impact on overall hiring practices.[69] The Los Angeles Bar Association denied membership to women lawyers "for many years" on the grounds that "even though they had diplomas and certificates, they could never be 'full-fledged lawyers.'"[70] A separate Women Lawyers' Club was founded in 1918 with Clara Shortridge Foltz among the charter members.[71] O'Melveny & Myers, one of Los Angeles's oldest and most prestigious law firms, did not hire its first women attorneys until 1943.[72] As late as 1952, Sandra Day O'Connor, third in her class at Stanford University Law School and future U.S. Supreme Court justice, was only offered one job by a large California firm, and that was as a stenographer.[73] Shut out of major law firms, almost one third of women lawyers opted for solo practice,[74] and most of these women had general practices or specialized in probate or family law

cluded in the left margin of her pleading paper); Rice, *Defender of the Damned*, 45; Rice, *Get Me Gladys*, 35.

67 Rice, *Defender of the Damned*, 45; Rice, *Get Me Gladys*, 35.

68 Karen Berger Morello, *The Invisible Bar: The Woman Lawyer in America, 1638 to the Present* (New York: Random House, 1986), 203.

69 Ibid.

70 W.W. Robinson, *Lawyers of Los Angeles: A History of the Los Angeles Bar Association and of the Bar of Los Angeles County* (Los Angeles: Los Angeles Bar Association, 1959), 168.

71 Ibid., 294.

72 William W. Clary, *History of the Law Firm of O'Melveny & Myers, 1885–1965* (Los Angeles: n.p., 1966), 1: 386, 2: 848–49.

73 Morello, *op. cit.*, 194; Dawn Bradley Berry, *The Fifty Most Influential Women in American Law* (Los Angeles: Lowell House, 1996), 208.

74 Virginia C. Drachman, *Sisters in the Law* (Cambridge, Mass.: Harvard University Press, 1998), 182, 184, 241, 259.

matters.[75] Only three percent of women lawyers practiced criminal law.[76] Root was among this three percent; however, that may have been the result of accident and circumstance rather than design.

Root's first client was Louis Osuna, "a small Filipino" who wanted to divorce his wife on the grounds of infidelity.[77] The statute operable in the 1930s was California Civil Code section 92 which stated, "Divorces may be granted for any of the following causes: One. Adultery. Two. Extreme cruelty. Three. Wilful desertion. Four. Wilful neglect. Five. Habitual intemperance. Six. Conviction of a felony. Seven. Incurable insanity."[78] Divorce could not be granted by the default of the defendant,[79] or by confession of adultery,[80] or if there was evidence of connivance,[81] collusion,[82] or condonation.[83] One panel of the Court of Appeal held that marriage was "not subject to dissolution upon the whim or caprice of one of the contracting parties or even upon their mutual consent [but] only for causes sanctioned by law."[84] Root began working on the divorce immediately; however, her client, Mr. Osuna, was an impatient man. Two days later, Root received a telegram, "Am in Los Angeles County Jail. Please come see me. [Signed] Louis Osuna."[85]

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75 Ibid., 182.

76 Ibid., 259.

77 Rice, *Defender of the Damned,* 48–53; Rice, *Get Me Gladys*, 39–43.

78 *California Civil Code Annotated* § 92 (Deerings 1941).

79 *California Civil Code Annotated* § 130 (Deerings 1941).

80 *California Code of Civil Procedure Annotated* § 2079 (Deerings 1941).

81 *California Civil Code Annotated* § 111(1) (Deerings 1941). "Connivance" was defined as "the corrupt consent of one party to the commission of the acts of the other, constituting the cause of divorce." *California Civil Code Annotated* § 112 (Deerings 1941).

82 *California Civil Code Annotated* § 111(2) (Deerings 1941). "Collusion" was defined as "an agreement between husband and wife that one of them shall commit, or appear to have committed, or to be represented in court to have committed, acts constituting a cause of divorce, for the purpose of enabling the other to obtain a divorce." *California Civil Code Annotated* § 114 (Deerings 1941).

83 *California Civil Code Annotated* § 111(3) (Deerings 1941). "Condonation" was defined as "the conditional forgiveness of a matrimonial offense constituting a cause of divorce." *California Civil Code Annotated* § 115 (Deerings 1941).

84 *In Re* Lazar (1940), 37 Cal.App.2d 327.

85 Rice, *Defender of the Damned*, 49; Rice, *Get Me Gladys*, 40.

GLADYS TOWLES ROOT IN COURT,
LOS ANGELES TIMES, JULY 20, 1955.

Los Angeles Times Photographic Archive, Department of Special Collections, Charles E. Young Research Library, UCLA.

Root immediately went to visit her client. The only surviving account of the conversation is recorded by Rice. According to Rice, the conversation went like this:

> "Tell me what happened."
>
> "I come home. I see man getting in bed. He . . ."
>
> "Your bed?" she interrupted.
>
> "My own bed. With my own wife."
>
> "Go on," she urged.
>
> "They didn't hear me come in. So I sneak out again. I go buy gun and come back. He sees me, grabs his trousers, jumps out back window. I shoot at him." He paused for breath.
>
> Mrs. Root asked, "Did you hit him."
>
> "No, I miss."
>
> "And?"
>
> "Then I shoot her."
>
> Whistling softly under her breath, Mrs. Root asked, "What is the extent of her wounds?"
>
> "To big extent."
>
> "How big?"
>
> "To extent she now dead," Osuna related.
>
> From simple divorce the case had suddenly changed to murder.
>
> Osuna stated flatly, "I do it because divorce take you too long."
>
> "Too long?" Mrs. Root repeated, bewildered. "You only came to see me yesterday."
>
> "I know, I know," Osuna agreed. "But you say. 'The wheels of legal machinery turn slowly.' So I decided to speed them up."
>
> Mrs. Root said, "You went about it the hard way. It's murder now. Murder, you know, can cost you your life."
>
> "Not if you good lady lawyer," Osuna grinned. "You ever lose a case?"
>
> "No," she answered truthfully.
>
> "Good," Osuna said happily. "I tell all prisoners in jail about you."[86]

[86] Rice, *Defender of the Damned*, 51–52; Rice, *Get Me Gladys*, 41–42.

Osuna was good to his word. He told his fellow prisoners about his new lawyer and fifteen of them retained Root within the month.[87] Root was also good to her word. At trial, Louis Osuna was convicted of the lesser charge of manslaughter and sentenced to ten months' incarceration.[88] Rice is the only source for this account. I was unable to find any record of anyone named Louis Osuna being charged in Los Angeles for any crime during the 1930s. I believe the name "Louis Osuna" is a pseudonym used by Rice and possibly by Root to protect her client's confidentiality.

Jack the Bard of Main Street, a person described by Rice as a derelict who lived near Root's office building, once exulted:

> Root-de-toot, root-de-toot,
> Here's to Gladys Towles Root.
> Her dresses are purple, hats wide.
> She'll get you one instead of five.
>
> Root-de-toot, root-de-toot,
> Here's to Gladys Towles Root.
> I'm here to do repentance.
> She got me a suspended sentence.[89]

This poem appears in both of Rice's books as two separate quatrains. It accurately describes a criminal defense lawyer's standard for success: getting a client a reduced or suspended sentence is almost as good as an acquittal. Although many of Root's clients were convicted, they were convicted of lesser charges, or received reduced sentences, such as the accused kidnappers of Frank Sinatra, Jr. Rice claims that Root never lost a client to the gas chamber, and I have not been able to refute this contention, although it was a very close call in the case of *People v. Verodi*.[90]

Eventually, Root moved her office to 212 South Hill Street, Los Angeles, California.[91] Cy Rice describes the office thus:

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87 Rice, *Defender of the Damned*, 52–53; Rice, *Get Me Gladys*, 42–43.

88 Rice, *Defender of the Damned*, 63; Rice, *Get Me Gladys*, 53.

89 Rice, *Defender of the Damned,* 115, 232; Rice, *Get Me Gladys*, 107, 199.

90 *People v Verodi*, No. CR179108 (Superior Court, Los Angeles County, filed March 9, 1956); *People v. Verodi* (1957), 150 Cal.App.2d 137.

91 Rice, *Defender of the Damned*, 115.

> The façade is black stone trimmed in gold, but elsewhere on the outside and inside of the building her notorious passion for purple asserts itself. The door is purple glass. Her name on the window is purple script trimmed in gold. Inside the door one's feet sink into soft purple carpeting. Rugs, furnishings, and drapes are all the same eye-popping purple; the flower pots, containing artificial orchids, are of course purple. There are fourteen rooms, including a law library done in sea-green, a black marble bathroom containing a contour tub built to fit the bodily dimensions of Mrs. Root, a spacious dining room and kitchen.[92]

The building was damaged in a suspected arson fire on August 6, 1981.[93]

Root was best known for her fashion sense. Rice called Root "a Technicolor pinwheel in perpetual motion in Cinemascope."[94] Others called her "Circus Portia,"[95] the "Lady in Purple,"[96] and a "peacock from another planet."[97] One colleague remembers Root changing coats three times in one day during a particular jury trial.[98] Root called herself "a little nuts [and] a screwball."[99] She once explained:

> These are my working clothes. If I wore a sports dress or a tailored suit that the average person wears, I'd be miserable. I couldn't do my best. I have to have color and distinctive style. I like everything that is very feminine and luxurious looking. And different.[100]

Her taste for flamboyant clothing is well documented. For example, when defending one of the accused kidnappers of Frank Sinatra, Jr., she

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92 Ibid.; Rice, *Get Me Gladys*, 108.

93 Patt Morrison & Nieson Himmel, "Blaze Sweeps Vacant Office Building," *The Los Angeles Times*, D4.

94 Rice, *Defender of the Damned*, 7; Rice, *Get Me Gladys*, 12.

95 Beth Ann Krier, "Hats Off to the Hatted," *Los Angeles Times*, August 11, 1972, G11.

96 Cercilla Rasmussen, "'Lady in Purple' Took L.A. Legal World by Storm," *Los Angeles Times*, February 6, 1995, 3.

97 Roby Heard in Rice, *Defender of the Damned*, 74; in Rice, *Get Me Gladys*, 64.

98 Rice, *Defender of the Damned*, 74.

99 Ibid., 77.

100 Rice, *Get Me Gladys*, 85.

wore “a shocking pink dress and a huge hat trimmed with silver fox fur.”[101] On another occasion, when she herself was the defendant, Root wore “a low-cut fuchsia-colored sheath, fuchsia shoes, and the usual large hat — fuchsia — with crushed net piled high atop the crown.”[102] She once wore “a flowing champagne and beige coat of empire style and a high-crowned hat of turkey feathers.”[103] Even her hair was color coordinated with her outfit.[104] Her choice of colors would often match her client’s favorites.[105] Supreme Court Justice Stanley Mosk offered the following personal remembrance:

> Her flamboyant costumes and picturesque hats were admittedly deliberate attempts to be the focus of all attention whenever she appeared in court.
>
> But she ran into difficulty with one of my colleagues. The late Judge Charles Burnell had an unyielding policy, that since men must do so, women must also remove their hats in his courtroom. I suspect Gladys Root did not fully appreciate that form of sex equality.[106]

However, the legend is greater still. Rice offers the following anecdote dealing with Root’s “sole appearance” before the U.S. Supreme Court:

> Mrs. Root has made only one appearance before the United States Supreme Court. It was a military case. An argument immediately erupted, not on a point of law but on decorum.
>
> She refused to don the conventional black robes. Argument failed to persuade her. She appeared in a tight-fitting bronze taffeta dress hemmed with brown velvet, bronze ankle-strap shoes, a topaz ring the size of a silver dollar, and a topaz pin of 190 carats at her bust. Over the dress was a monkey-fur cape, all white. Her

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101 “Sinatra Kidnap Trial Set to Open Feb. 10,” *Los Angeles Times*, January 7, 1964, 8, col. 1.

102 Howard Hertel & Walter Ames, “Lawyers in Sinatra Trial Arraigned,” *Los Angeles Times*, July 31, 1964, 18A.

103 Howard Hertrl, “Gladys Root Weeps After Court Hearing,” *Los Angeles Times*, December 12, 1967, C16.

104 Rice, *Defender of the Damned*, 74–75, 76, 97; Berry, *op. cit.*, 162.

105 Rice, *Defender of the Damned*, 102,

106 Stanley Mosk, Letter to the Editor, *Los Angeles Times*, February 27, 1995, 4.

> huge hat was of the same material as the dress and her hair was dyed to match the topaz.[107]

This anecdote is repeated by many authors writing about Root, but it is not true. In this instance, Rice got his facts wrong.

As of 1964, when *Defender of the Damned* was published, Root had petitioned the U.S. Supreme Court once. In 1934, she petitioned the Court for a writ of certiorari, a motion for leave to proceed *in forma pauperis*, and for leave to file a writ of habeas corpus.[108] The motions were denied. There was no oral argument, no appearance before the Court, no occasion to wear bronze taffeta and white monkey fur. Root represented the defendant in one military case, an appeal to the U.S. Court of Military Appeals in 1953.[109] Army Corporal Tokuichi Tobita was convicted by a general court martial of rape and the conviction was affirmed.[110] There is no record of this case being appealed to the U.S. Supreme Court. Further, attorneys appearing before the U.S. Supreme Court do not wear black robes; such attire is worn by barristers in English courts. Traditionally, all attorneys practicing before the Supreme Court were required to wear formal "morning clothes," striped trousers, cut-way coats with tails. Today, only members of the Department of Justice and other advocates of the United States government adhere to the tradition of formal dress.[111]

According to Drachman, all women lawyers had a problem about what to wear.[112] She wrote:

> Before a woman lawyer left her home each day, she had to choose carefully an outfit that would convey at once seriousness and softness, objectivity and sentimentality, professionalism and femininity.[113]

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107 Rice, *Defender of the Damned*, 159.

108 *Groseclose v. Plummer* (1939), 308 U.S. 614, 60 S.Ct. 264, 84 L.Ed. 513. Root made two other appeals to the U.S. Supreme Court: *Till v. New Mexico* (1968), 390 U.S. 713, 88 S.Ct. 1426, 20 L.Ed.2d 254 and *Kowan v. California* (1969), 395 U.S. 335, 89 S.Ct. 1793, 23 L.Ed.2d 348. Both of these appeals were denied by the Supreme Court in two-sentence opinions "for want of jurisdiction," ibid.

109 *United States v. Tobita* (1953), 3 U.S.C.M.A. 267, 12 C.M.R. 23.

110 Ibid., 3 U.S.C.M.A. 272.

111 Kermit L. Hall, ed., *Oxford Companion to the United States Supreme Court*, 2nd ed. (Oxford: Oxford University Press, 2005), 1153.

112 Drachman, *op. cit.*, 93.

113 Ibid.

Belva Lockwood wore pink satin to meetings of the International Council of Women and a "plain black dress accentuated with lace or ruffles at the neck and wrist . . . [and] sometimes she wore flowers in her hair."[114] When arguing before the California Supreme Court, Clara Shortridge Foltz wore "a black silk business suit trimmed with velvet and lace, a gold broach at her neck, and golden butterflies attached to bands of black velvet at her wrists."[115] Nineteenth-century social etiquette required ladies to wear hats in public; however, the wearing of hats in courtrooms by women lawyers was controversial.[116] The controversy continued to Root's time.

Root's garish costumes were a personal statement, but were also a form of advertising. Until 1977, attorneys were not permitted to advertise their services in conventional ways,[117] so they had to find other methods to attract clients. Root's costumes were a billboard that identified her to all and sundry. Whenever she was mentioned in the press, her clothing was always part of the article. This also ran counter to Canon 27 of the ABA Canons of Professional Ethics which forbade "furnishing or inspiring newspaper comments . . . and other like self-laudation."[118] Nevertheless, Root stood out among other lawyers, and among other women lawyers especially. Although there were many other lawyers in Los Angeles during this time, and even other women lawyers, Root is the one mentioned, and she is mentioned for her clothing as much as for her skill as a litigator.

Root's costumes were also a deliberate trial tactic. They drew the jury's and witness's attention away from her client, and toward her. If the jury was looking at Root, at her dress, her feathered hat, and her hair dyed to match, they would not be looking at the defendant thinking about the crime of which he was accused.

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114 Ibid., 94.

115 Ibid.

116 Ibid., 95.

117 American Bar Association, Canons of Professional Ethics, Canon 27, reprinted in William M. Trumbull, *Materials on the Lawyer's Professional Responsibility* (Boston: Little, Brown & Co., 1957), 381. The U.S. Supreme Court declared state bans on attorney advertizing unconstitutional in *Bates v. State Bar of Arizona* (1977), 433 U.S. 350, 97 S. Ct. 2691; 53 L. Ed. 2d 810. See also Lawrence M. Friedman, *American Law in the Twentieth Century* (New Haven: Yale University Press, 2002) 464–66.

118 Ibid.

However, beneath the peacock feathers — literally and figuratively — was a hardworking lawyer. The secret of Root's success was an almost maniacal work ethic. She refused to "squander even a minute of precious working hours."[119] Root handled 1,600 cases per year, most of them sex crimes "plus a sprinkling of divorce, paternity, domestic, accident and civil matters."[120] She made on average seventy-five court appearances each month.[121] Sometimes, she was late for court. She was two and a half hours late for oral argument in the case of *Wood v. City Civil Service Commission of Los Angeles*. The irony is that the issue in the *Wood* case was the granting of a continuance because Root was engaged in another trial.[122] Root represented clients in 312 cases that resulted in officially reported decisions.[123] She was successful in getting her client's conviction reversed in about one fifth of those. She hired private investigators and, on at least one occasion, an astrologer, to assist her in defending her clients.[124] Rice reports that "at least thirty graduating law students received training in her office" as of 1964.[125] Root habitually worked well after midnight, went to bed at four in the morning, and then got up an hour later to go to work.[126] She had a "phenomenal memory, the ability to talk on the telephone, write a letter, and listen to three different conversations at the same time — plus a hard, cold, logical mind."[127] Rice reports that "one of her pet aversions was for any of her clients, overcome with joy, to embrace her."[128]

Root's law practice prospered financially. Rice reports that Root's "annual gross income runs into the high six figures" in 1964.[129] Assessed federal income taxes for the years 1959–1961 certainly bear this out.[130] Her wealthy

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119 Rice, *Defender of the Damned*, 54; Rice, *Get Me Gladys*, 43–44.

120 Ibid.

121 Rice, *Defender of the Damned*, 74; Berry, *op. cit.*, 158.

122 *Wood v. City Civil Service Commission of Los Angeles* (1975), 45 Cal.App.3d 105, 114n4.

123 See Appendix.

124 Rice, *Defender of the Damned*, 106; Rice, *Get Me Gladys*, 94.

125 Rice, *Defender of the Damned*, 94.

126 Rice, *Defender of the Damned*, 196–97; Rice, *Get Me Gladys*, 165–66.

127 Rice, *Defender of the Damned*, 92.

128 Ibid., 112.

129 Ibid., 76.

130 *Root v. United States* (1974), 1974 U.S. Dist. LEXIS 6796 at 5.

GLADYS TOWLES ROOT AT A COURTROOM APPEARANCE,
LOS ANGELES TIMES, JULY 22, 1955.
"WAR BRIDE'S TRIAL DELAYED FOR MEDICAL EXAMINATION"
WAS THE HEADLINE WHEN ROOT DEFENDED
A WOMAN ACCUSED OF SHOPLIFTING.

Los Angeles Times Photographic Archive, Department of Special Collections, Charles E. Young Research Library, UCLA.

clients paid "substantial" fees.[131] Root secured her fees with deeds of trust on clients' homes and other real property.[132] However, less well-heeled clients compensated Root with livestock, at least on occasion.[133] Once a client whom she successfully defended on a burglary charge paid her fees with part of the loot.[134] On another occasion, a client whom she successfully defended on a forgery charge paid her fees with a forged check.[135] Root, like her father, also invested in real estate.[136] She had interests in at least two real estate partnerships: Green Trees Enterprises, Inc., and Secure Defense Company.[137] She owned the building at 212 South Hill Street, Los Angeles, in which she maintained her offices.[138] She also inherited property from her father.[139]

In addition to being in court all day and visiting her clients in jail at night, she taught law at West Los Angeles School of Law.[140] She was invited to write a treatise on the defense of sex crimes by law book publisher Matthew Bender, but never completed the manuscript.[141] She helped found the Los Angeles Fellowship of Business Women, Ltd. and served as its legal advisor.[142] During her tenure as president of the Southern California Women Lawyers Association, Root led the group to raise one thousand dollars in cash and ten thousand dollars in law books for the Philippine Legal Aid System.[143] Her support for this cause may be related to her earlier representation of Filipino clients in various matters, including two miscegenation cases. She appeared on the *Tonight Show* with Johnny Carson "several times," and at least once on the *Merv Griffin Show*.[144]

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131 Rice, *Defender of the Damned*, 76.

132 See *People v. Jones* (1991), 53 Cal.3d 1115, 1132–33; *Brockway v. State Bar* (1991), 53 Cal.3d 51.

133 Rice, *Defender of the Damned*, 53.

134 Ibid., 78–79.

135 Ibid., 122–23.

136 *Root v. United States* (1974), 1974 U.S. Dist. LEXIS 6796 at 5.

137 *Alpine Palm Springs Sales v. Superior Court (Green Tree Enterprises, Inc.)* (1969), 274 Cal.App.2d 523; *People v. Jones* (1991), 53 Cal.3d 1115.

138 *Lee v. Takao Building Development Co.* (1985), 175 Cal.App.3d 565.

139 Ibid.

140 Perry M. Polski, "Gladys Root," *Los Angeles Times*, January 3, 1983, C4.

141 Rice, *Get Me Gladys*, 166.

142 "Founders to Give Dinner," *Los Angeles Times*, January 4, 1931, B10.

143 Robinson, *op. cit.*, 296.

144 Larry Bodine, "In Flux," *National Law Journal*, October 1, 1979, 43.

ROOT FIGHTS FOR INTERRACIAL MARRIAGE

Whether or not Louis Osuna was Gladys Root's first client, another Filipino was the first client she represented before the California Court of Appeal. In fact, Root represented two Filipino-Caucasian couples challenging California's miscegenation law: Gavino C. Visco and Ruth M. Salas, and Salvador Roldan and Marjorie Rogers. According to Rice, Root considered her victory in *Roldan v. Los Angeles County*[145] to be the "most important conquest in her entire law career."[146] Yet its importance was short-lived because Root's argument — and the judicial decision based on it — was so narrow the Legislature could rewrite the law to prevent such marriages in the future.

Visco and Salas came to see Root in April 1931. Roldan and Rogers came to see Root "a few months after the Osuna trial — in [August] 1931."[147] Both couples wanted to get married, but the Los Angeles County Clerk refused to grant either couple a marriage license. Root promised to help them.[148] Visco and Salas, and Roldan and Rogers, may have come to Root because there was only one Filipino attorney in California at this time.[149]

MISCEGENATION LAW IN AMERICA AND CALIFORNIA THROUGH 1930

Although there was no ban on miscegenation at common law,[150] statutes banning interracial marriage and regulating interracial sexual relations in America are older than the republic. Initially, miscegenation laws were

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145 *Roldan v. Los Angeles County* (1933), 129 Cal.App. 267.

146 Cy Rice, *Defender of the Damned*, 63; Cy Rice, *Get Me Gladys,* 52.

147 Rice, *Defender of the Damned*, 63; Rice, *Get Me Gladys*, 52. See also Dara Orenstein, "Void for Vagueness: Mexicans and the Collapse of Miscegenation Law in California," *Pacific Historical Review* 74 (August 2005): 384.

148 Rice, *Defender of the Damned*, 63; Rice, *Get Me Gladys*, 52.

149 Benicio Catapusan, *The Filipino Occupational and Recreational Activities in Los Angeles* (1934, reprint San Francisco: R and E Research Associates, 1975), 18.

150 William Mack & Donald J. Kiser, eds., *Corpus Juris*, (New York: American Law Book Co., 1925) 38: 1290–91; Eugene Marias, "Comment: A Brief Survey of Some Problems in Miscegenation," *Southern California Law Review* 20 (1946): 82; James Wood, "Comment: Statutory Prohibitions Against Interracial Marriage," *California Law Review* 32 (1944): 269.

intended to protect African slavery and white supremacy; later, eugenic reasons were offered as a justification.[151] The first English colony to pass a miscegenation law was Maryland in 1664.[152] This law applied only to *marriages* between freeborn women and slaves, not to relationships outside of marriage, and not to relationships between freeborn men and slaves. Since most interracial births in colonial America were to slave women of children sired by slave owners, under the common law most mulattoes would be born free.[153] In a few generations, slavery would be bred out of existence. In 1691, the Virginia House of Burgesses passed a statute banning any "English or other white man or woman being free" from marrying "a Negro, mulatto, or Indian man or woman, bond or free" on pain of banishment from the colony.[154] Various amendments in the eighteenth,

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151 Lawrence M. Friedman, *Private Lives: Families, Individuals, and the Law* (Cambridge, Mass.: Harvard University Press, 2004), 54–57.

152 Peter Wallenstein, *Tell The Court I Love My Wife: Race, Marriage and Law — An American History* (New York: Macmillan, 2002) 23; see also Leti Volpp, "American Mestizo: Filipinos and Antimiscegenation Laws in California," *UC Davis Law Review* 33 (2000): 798. Professor Volpp gives the date of Maryland's miscegenation law as 1661. Justice John W. Shenk of the California Supreme Court gives the date of Maryland's miscegenation law as 1663. *Perez v. Sharp* (1948), 32 Cal.2d 711, 747 sub. nom. *Peres v. Lippold*, 198 P.2d 17 (Shenk, J., dissenting).

153 Rachel F. Moran, *Interracial Marriage: The Regulation of Race and Romance* (Chicago: University of Chicago, 2001) 21. At English common law a person's station in life followed his or her father's. According to seventeenth century English jurist Edward Coke, "If a villein [bondsman] taketh a free woman to wife, and have issue between them, the issue shall be villeins. But if a nief [bondswoman] taketh a freeman to her husband, their issue shall be free." Edward Coke, *Institutes of the Laws of England* (1797; republished, Buffalo, N.Y.: William S. Hein Co., 1986), 2: 187. However, an older, thirteenth-century rule held, "He is born a bondsman who is procreated of an unmarried nief though of a free father, for he follows the condition of his mother." Henry Bracton, *On the Laws and Customs of England*, Samuel E. Thorne, trans. & ed., (Cambridge, Mass.: Harvard University Press, 1968), 2: 30. By the eighteenth century, William Blackstone wrote, "Pure and proper slavery does not, nay cannot, subsist in England." William Blackstone, *Commentaries on the Laws of England*, (1765; facsimile, Chicago: University of Chicago Press, 1979), 1: 325–27; see also *Somerset v. Stewart* (1772), 98 Eng. Rpt. 499, 510, 20 How. St. Tr. 1, 82; Alfred W. Blumrosen & Ruth G. Blumrosen, *Slave Nation: How Slavery United the Colonies & Sparked the American Revolution* (Naperville, Ill.: Sourcebooks, Inc., 2005), 1–14.

154 Ibid., 16 (internal footnote omitted). A tacit exception was made for the descendants of John Rolfe and Pocahontas, whom many of Virginia's most prominent families proudly claim as ancestors. Stuart E. Brown, Jr., Lorraine F. Myers & Eileen M.

nineteenth, and early twentieth centuries altered the details, but not the substance of Virginia's miscegenation law.[155] The Virginia law set a pattern that was followed by other colonies, and later states, for the next 250 years.

California passed its first miscegenation law on April 22, 1850. The act declared that "all marriages of white persons with Negroes or mulattoes are declared to be illegal and void."[156] In 1880, California amended section 69 of the Civil Code, to forbid county clerks from issuing marriage licenses "authorizing the marriage of a white person with a Negro, mulatto, or Mongolian."[157] In 1905, California's miscegenation law, now codified as California Civil Code section 60, was amended to read, "All marriages of white persons with Negroes, Mongolians, or mulattoes are illegal and void."[158] The amendment was passed to close a perceived loophole. Section 69 forbade county clerks from issuing marriage licenses if a white person wanted to marry a Mongolian, but, prior to the amendment, no law forbade whites and Mongolians from marrying. This is the statute that was in effect in 1931.

FILIPINO IMMIGRATION TO THE UNITED STATES

Filipinos first immigrated to the United States on Spanish ships during the period of the Manila Galleon Trade.[159] Filipinos may have settled in

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Cappel, *Pocahontas' Descendants* (Baltimore: Genealogical Publishing Co., Inc., 1994). The "Pocahontas exception" was codified in the Racial Integrity Act, *Virginia Acts of Assembly*, ch. 371 (1924); see also Randall Kennedy, *Interracial Intimacies: Sex, Marriage, Identity, and Adoption* (New York: Pantheon Books, 2003) 483–84; Wallenstein, *op. cit*, 139. Notwithstanding the ban on European-Native American marriages, some very prominent Virginia statesmen, including Patrick Henry and Thomas Jefferson "championed the amalgamation of Indians and whites." Kennedy, *op. cit.*, 484.

[155] Wallenstein, *op. cit.*, 17–19.

[156] Act of April 22, 1850, *Statutes of California*, ch. 35, § 3. The miscegenation law was passed before California was officially admitted to the Union. California was admitted to the United States by an act of Congress approved by President Millard Fillmore on September 9, 1850. Act of September 9, 1850, *Statutes at Large*, 9: 452.

[157] Act of April 5, 1880, *Statutes of California*, ch. 74, § 1.

[158] Act of March 21, 1905, *Statutes of California*, ch. 164 codified at *California Civil Code* § 60 (Deerings, 1906).

[159] Volpp, *op. cit.*, 803n34.

Louisiana in the 1830s and 1840s.[160] However, Filipinos began to immigrate to the United States in large numbers after the United States acquired the Philippine Islands at the end of the Spanish-American War.[161] Between 1924 and 1929, there were 24,000 Filipinos in California, only sixteen percent, or about 3,800, of whom were women.[162] By 1930, there were 40,904 Filipino men living in California, mostly agricultural workers,[163] and between sixteen and thirty years of age.[164] According to Volpp:

> The Filipinos lived in barracks, isolated from other groups, allowed only dance halls, gambling resorts, and pool rooms of Chinatown as social outlets. They led ostracized lives punctuated by the terror of racist violence. Many restaurants and stores hung signs stating "Filipinos and dogs not allowed."[165]

In Los Angeles, there were only 4,591 Filipinos, or 0.2 percent of the total population, in 1930.[166]

Despite the social isolation, or perhaps because of it, Filipino men met and formed romantic attachments to white women. W.E. Castle said,

> The individual prefers to mate only in his own group, and with his own kind, but circumstances may overcome racial antipathy . . . when mates of the same race are not available.[167]

Benicio Catapusan wrote, "No matter how rigid the man-made laws that tend to prohibit interracial marriages, they cannot ultimately prevent gradual intermixtures . . . despite the adverse sociological attitudes toward

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160 Ibid.

161 Arleen DeVera, "The Tapia-Saiki Incident," in Valerie J. Matsumoto & Blake Allmendinger, *Over the Edge: Remapping the American West* (Berkeley: University of California Press, 1999), 203.

162 Alison Varzally, "Romantic Crossings: Making Love, Family, and Non-Whiteness in California, 1925–1950," *Journal of Ethnic History* (Fall 2003): 18.

163 Moran, *op. cit.*, 37; DeVera, *op. cit.*, 203.

164 Volpp, *op. cit.*, 804.

165 Ibid., 805–13; see also DeVera, *op. cit.*, 201–14.

166 Constantine Panunzio, "Intermarriage in Los Angeles, 1924–33," *American Journal of Sociology* 47 (1942): 695.

167 W.E. Castle as quoted in Benicio T. Catapusan, Filipino Intermarriage Problems in the United States," *Sociological and Social Research* 22:3 (January/February 1938): 266.

such union."[168] Between 1924 and 1933, 701 out of 1,000 Filipino men married outside their community.[169] About half of these marriages were to white women.[170] "The legal status of Filipino intermarriages in California," wrote Nellie Foster, "has not yet been established, and the situation with regard to such marriages is one of confusion, of contradictory practices and policies, [and] of inconsistencies and insecurities."[171] The white partner, usually the wife, would be "diplomatically counted out" of her premarital social relationships, forced to resign from club memberships and abandoned by business connections and clientele.[172] The feelings were often mutual. Allison Varzally wrote:

> Anti-miscegenation laws and white supremacist notions limited interethnic crossings, but so did the social practices and views of minorities. Concerns about civil rights in the abstract gave non-whites pause. Yet in general, they promoted co-ethnic dates and marriages in order to maintain familiar boundaries. Those who wandered beyond these boundaries were coaxed to return.[173]

For example, riots erupted between the Filipino and Japanese communities in Stockton, California, in 1930 when a Filipino man eloped with a Japanese woman.[174] Constantine Paninzio wrote in 1942 that

> the marriage of a white woman, even though of the servant class, to a Filipino is strongly disapproved by Americans in [Los Angeles]. . . . The Filipinos themselves disapprove of intermarriage with American girls. . . . since American-Filipino marriages are subjected to social punishment in the Phillippines even as they are in the United States."[175]

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168 Catapusan, "Filipino Intermarriage Problems," 266; Benicio Catapusan, *The Filipino Occupational and Recreational Activities in Los Angeles* (San Francisco: R and E Research Assoc., 1975), 52–54.

169 Varzally, *op. cit.*, 19; Panunzio, *op. cit.*, 696.

170 Panunzio, *op. cit.*, 695.

171 Nellie Foster, "Legal Status of Filipino Intermarriages," *Sociology and Social Research*, 16:5 (May/June 1932): 441.

172 Catapusan, "Filipino Intermarriage Problems," *op. cit.*, 269.

173 Varzally, *op. cit.*, 10.

174 DeVera, *op. cit.*, 201–10.

175 Panunzio, *op, cit.*, 695.

Despite the social pressure against Filipino-Caucasian unions, their legal status was ambiguous. The issue was whether or not Filipinos were included within the statutory term, "Mongolian." County clerks, who were obliged and authorized to issue marriage licenses, had differing opinions on this issue. The Sacramento county clerk denied a marriage license to Marino Pill, a Filipino, and Emma Lettie Brown, "a white woman born in Wisconsin."[176] Orange County also denied a Filipina-white couple a marriage license.[177] The Riverside county clerk decided not to issue marriage licenses to Filipino-white couples in 1930.[178] On the other hand, Tulare County apparently issued a marriage license to a Filipino-white couple.[179] On May 13, 1921, Assistant County Counsel Edward T. Bishop, writing for the Los Angeles County Counsel's Office, wrote to L.E. Lampton, Los Angeles county clerk:

> While there are scientists who would classify the Malayans as an offshoot of the Mongolian race, nevertheless, ordinarily when speaking of "Mongolians" reference is had to the yellow and not to the brown people and we believe that the Legislature in Section 69 did not intend to prohibit the marriage of people of the Malay race with white persons . . . We do not believe that the Legislature intended in its unscientific language in Section 69 to cover all the races of mankind.[180]

This legal opinion governed the issuance of marriage licenses in Los Angeles County until 1930.[181] However, five years later, on June 8, 1926,

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[176] "Wedding Prevented: Marriage License to Filipino and White Woman Denied," *Los Angeles Times*, July 1, 1926, 1.

[177] "Girl Fails to Prove Race," *Los Angeles Times*, January 31, 1930, 12.

[178] "License to Wed Denied to Filipino," *Los Angeles Times,* November 7, 1930, A7.

[179] "Girl's Mother Halts Plan to Wed Filipino," *Los Angeles Times*, December 6, 1929, 13. The marriage was halted because the bride was underage.

[180] Edward T. Bishop to L.E. Lampton, May 13, 1921, as quoted in Foster, *op. cit.*, 447–48. Bishop had offered a similar opinion in December 1920 in regard to Leonardo Antony, "a Filipino and disabled veteran of the World War, who sought a marriage license to wed Luciana Brovencio, 19 years old, a Spanish girl residing in New Mexico." "Finds Filipino is Real Malay; May Wed White," *Los Angeles Times*, December 16, 1920, H10.

[181] Volpp, *op. cit.*, 814.

California Attorney General U.S. Webb, writing to the San Diego County Clerk, issued a contrary opinion:

> While we find some difference, as will be noted, as to the number of classifications into which the human race should be divided, there seems to be no difference of opinion that the Malays belong to the Mongoloid Race and therefore, come under the classification of Mongolians. The Filipino, with the exception of the inhabitants belonging to the black race and to the whites constituting a negligible proportion of the population being Malays, are therefore, properly classed as Mongolians and marriages between them and white persons are prohibited by the provisions of Section 60 of the Civil Code.[182]

The opinions of lawyers, no matter how learned, and no matter how important the lawyer's political office, are not binding unless and until accepted by a court of competent jurisdiction and made a part of the court's ruling.

The first judicial decision on the issue of miscegenation was *People v. Yatko*, from Los Angeles County Superior Court.[183] Timothy Yatko, a Filipino, married Lola Butler, a white woman. At Yatko's trial for the murder of Butler's lover, the prosecution collaterally attacked the validity of Yatko's marriage to Butler so she would be permitted to testify against him. The prosecution argued that since Yatko was a Filipino, he was also a Mongolian, and his marriage to Butler was therefore void.[184] The judge agreed with the prosecution:

> I am quite satisfied in my own mind that the Filipino is a Malay and that the Malay is a Mongolian, just as much as the white American is of the Teutonic race, the Teutonic family, or of the Nordic family, carrying it back to the Aryan family. Hence, it is my

182 U.S. Webb, *Opinion of the Attorney General No. 5641*, June 8, 1926, 483–84; see also, Foster, *op. cit.*, 447.

183 Volpp, *op. cit.*, 814–15; "Old Law Invoked on Yatko: Judge Declares Marriage Void to Allow Wife to Testify in Asserted Murder of Kidder," *Los Angeles Times,* May 6, 1925, A5; "Pleads Unwritten Law: Filipino Triangle Slaying Defendant Tells of Death Grapple In Victim's Apartment," *Los Angeles Times*, May 7, 1927, A2.

184 Volpp, *op. cit.*, 814–15.

> view that under the code of California as it now exists, intermarrying between a Filipino and a Caucasian would be void.[185]

Yatko was later convicted and sentenced to life imprisonment.[186]

Following the *Yatko* case, five other Los Angeles Superior Court judges ruled directly on the issue of whether Filipino-Caucasian marriages were void under California Civil Code section 60. Volpp wrote that these are the only cases directly on the issue. In *Robinson v. Lampton*, Stella F. Robinson sought an injunction preventing Los Angeles County Clerk Lampton from issuing a marriage license to her daughter, Ruby Robinson, a white woman, and Tony V. Moreno, a Filipino.[187] At trial, the arguments of counsel centered on whether humanity ought to be divided into five races or three.[188] Superior Court Judge Frank M. Smith agreed that there were only three races and ruled that Filipinos were part of the Mongolian race and therefore barred from marrying whites.[189]

In *Laddaran v. Laddaran* and in *Murillo v. Murillo*, the superior courts refused to annul marriages between Filipinos and Caucasians on grounds of race.[190] In the *Laddaran* case, Judge Myron Westover "refused to annul the marriage of Estanislao P. Laddaran, a Filipino, and Emma P. Laddaran, Caucasian."[191] Judge Westover made his ruling because "no proof was offered that a Filipino is of the Mongolian race and due to the fact that

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185 *People v. Yatko*, No. 24795 (Superior Court, Los Angeles County, 1925); Volpp, *op. cit.*, 816 (internal footnote omitted).

186 Volpp, *op. cit.*, 816; "Life Sentence to be Imposed on Yatko Today," *Los Angeles Times*, May 11, 1925, A17.

187 "Filipino Marriage Balked," *Los Angeles Times*, February 20, 1930, A5.

188 "Racial Tangle Halters Cupid," *Los Angeles Times*, February 25, 1930, A2.

189 *Robinson v. Lampton*, No. [unknown], (Superior Court, Los Angeles County, 1931); "Filipino-White Unions Barred," *Los Angeles Times*, February 26, 1930, A1; Volpp, *op. cit.*, 818–19, which says, "Unfortunately, the case number [No. 2496504] Foster gives, cited by other scholars, is incorrect, and I was unable to locate the decision. Happily, the decision was excerpted in contemporary newspaper reports." Moran, *op. cit.*, 38; Foster, *op. cit.*, 448, 945. My own research to locate the correct number was also unsuccessful. Ruby F. Robinson and her intended, Tony V. Moreno, were married in Tijuana, Mexico, before the court made its ruling, which was therefore moot. "Racial Tangle Halters Cupid," *Los Angeles Times*, February 25, 1930, A2.

190 *Laddaran v. Laddaran*, No. D95459 (Superior Court, Los Angeles County, decided September 5, 1931); *Murillo v. Murillo*, No. D97715 (Superior Court, Los Angeles County, decided October 10, 1931); Volpp, *op. cit.*, 820–21; Foster, *op. cit.*, 453.

191 "Filipino Vows Ruled Binding," *Los Angeles Times*, September 6, 1931, C12.

the question has not been determined by the higher courts."[192] In *Murillo*, Judge Thomas C. Gould "rejected [the] modern day scientific definition of Mongolian in favor of what the state legislature had in mind when it enacted the law."[193] Gould ruled that only "Chinese, Japanese and Koreans (who are popularly regarded as Mongolians)," are prohibited from marrying whites.[194]

In *Visco v. Los Angeles County*, Root represented Visco in a writ of mandamus proceeding to obtain a marriage license for his marriage to Salas.[195] County Clerk Lampton answered that "Gavino C. Visco is a Mongolian," and "Ruth M. Salas is a white person."[196] Root submitted affidavits on behalf of her clients stating that Visco was born in "Pasquin, Island of Imson, Philippine Islands, Provence of Ilocon Norte" and that his grandparents were born in Madrid, Spain,[197] and that Salas, her parents and grandparents were born in Mexico.[198] Superior Court Judge Walter Guerin, sitting without a jury, ruled that the couple could marry and ordered Lampton to issue the marriage license.[199] Unfortunately, findings of fact and conclusions of law were waived by the parties, so the court file has no record of why Guerin made his decision. However, the *Los Angeles Times* reports that Guerin ruled that the couple could marry because the bride, who was born in Mexico, was of American Indian descent and therefore the miscegenation law didn't apply.[200] According to newspaper reports, Lampton

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192 Ibid.

193 Volpp, *op. cit.*, 820–21; "Racial Divorce Plea Rejected," *Los Angeles Times*, Oct. 11, 1931, A5.

194 Ibid.

195 Petition for Writ of Mandamus, *Visco v. Los Angeles County*, No. 319408 (Superior Court, Los Angeles Co., filed April 8, 1931). Other authors sometimes refer to this case as *Visco v. Lampton*; however, original documents in the court's file show that Los Angeles County was the first named defendant, not County Clerk L.E. Lampton. Therefore, the proper name of the case is *Visco v. Los Angeles County.* Other named defendants were the State of California and "John Doe, Official."

196 Answer, *Visco v. Los Angeles Co.*, No. 319408. There are no other answers in the file. Although not explicitly stated, Lampton apparently answered on behalf of all defendants.

197 Affidavit of Visco, *Visco v. Los Angeles Co.*, No. 319408.

198 Affidavit of Salas, *Visco v. Los Angeles Co.*, No. 319408.

199 Judgment, *Visco v. Los Angeles Co.*, No. 319408.

200 Volpp, *op. cit.*, 819; "Filipino and Mexican May Wed, Says Court," *Los Angeles Times*, June 4, 1931, A8.

intended to appeal Guerin's ruling in *Visco*; however, there is no notice of appeal in the superior court file.[201] The *Visco* case is unsatisfactory because the ruling is based on the factual determination that the bride was not white, and therefore, that the miscegenation law did not apply.

The fifth case is *Roldan v. Los Angeles County*. It is the only one of the five cases to be appealed and receive a published decision that became, briefly, a binding precedent. Foster, writing at the time *Roldan* was pending in the courts, wrote:

> [T]here seems to be a tendency in the recent decision of the Superior Court of Los Angeles County to sustain the legality of Filipinos' intermarriages. . . .
>
> If such marriages are not sustained, on the ground that Filipinos are Mongolians, the social consequences will be very serious and far-reaching.[202]

GLADYS ROOT'S CONTRIBUTIONS TO THE DEVELOPMENT OF THE LAW ON INTERRACIAL MARRIAGE

Roldan and Rogers came to see Root in about August 1931. It may be that they had heard of Root's successful representation of Visco and Salas through coverage in the *Los Angeles Times* or through the local Filipino press. Although the *Roldan* case was not the first time Root had represented a Filipino in a miscegenation case, the facts here were quite different than the facts in *Visco*. Whereas Salas was born in Mexico and was, or claimed to be, of Native American descent, Rogers was "born in England of English parents, her progenitors on both sides of the family for generations having been English."[203] Therefore, Root could not simply avoid the law; she had to challenge it. The superior court file contains no briefs or documentary evidence. In his findings of fact and conclusions of law, superior court Judge Walter S. Gates found that "neither Salvador Roldan nor

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201 "Right Denied Irish-Indian to Wed Spanish-Filipino," *Los Angeles Times*, June 6, 1931, A6.

202 Foster, *op. cit.*, 453.

203 Findings of Fact and Conclusions of Law, *Roldan v. Los Angeles County* No. 326484 (Superior Court, Los Angeles Co. filed August 18, 1931), 2.

Marjorie Rogers are Mongolians" and ordered Lampton to issue the marriage license.[204] The County of Los Angeles and County Clerk Lampton appealed, probably because the facts were so much clearer than in *Visco*.[205]

In the appeal, California Attorney General Webb, as *amicus curiae*, and County Counsel Everett W. Mattoon, for Los Angeles County, argued that the term *Mongolian*, as understood in 1880, included Filipinos.[206] In addition to arguing that the term *Mongolian* did not include Filipinos, Root argued that "attempts to induce public officials and courts to construe law to bring Filipinos under the general classification of Mongolians is influenced by labor, social and immigration agitation."[207]

The Court of Appeal ruled three-to-three to affirm the superior court. Writing for the court, Judge Harry R. Archibald relied on definitions of *Mongolian* found in various dictionaries and encyclopedias[208] and on the legislative history of the 1878–1879 California Constitutional Convention[209] to find

> that the *common* classification of the races was Blumenbach's, which made the "Malay" one of the five grand subdivisions, i. e., the "brown race," and that such classification persisted until after section 60 of the Civil Code was amended in 1905 to make it consistent with section 69 of the same code. As counsel for appellants [that is, Root and her co-counsel, George B. Bush] have well pointed out, this is not a social question before us, as that was decided by the legislature at the time the code was amended; and if the common thought of to-day is different from what it was at such time, the matter is one that addresses itself to the legislature and not to the courts.[210]

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204 Ibid., 3; "Filipino Opens Battle on Intermarriage Ban," *Los Angeles Times*, April 12, 1932, 10.

205 "Filipino Race Question Given to Higher Court," *Los Angeles Times*, April 20, 1932, A3.

206 Appellants' Opening Brief, *Roldan v. Los Angeles County*, No. 8455 (Cal. Ct. App., filed June 17, 1932); Brief Filed By . . . Amicus Curiae, *Roldan v. Los Angeles County*, No. 8455 (Cal. Ct. App., filed July 8, 1932).

207 Respondent's Brief, *Roldan v. Los Angeles County*, No. 8455 (Cal. Ct. App., filed August 1, 1932), 9.

208 *Roldan*, 129 Cal.App. 268–70.

209 *Roldan*, 129 Cal.App. 270–73.

210 *Roldan*, 129 Cal.App. 273 (italics in the original). The reference to "Blumenbach" is to Johann Friedrich Blumenbach (1752–1840), a German physiologist and anthropologist. Based on the analysis of human skulls, Blumenbach divided humanity

The appellants petitioned the California Supreme Court for rehearing, but the petition was denied on March 27, 1933.[211]

The holding in the case is based entirely on the statutory interpretation of the word *Mongolian*. By not addressing the issue as a "social question," Root probably won the case for her client, because of longstanding precedent upholding miscegenation laws.[212] In 1933, public feeling was not ready for the end of miscegenation laws, and courts follow public opinion, though to a lesser degree than legislatures and members of the executive branch. Nevertheless, by avoiding the larger social question, the court's holding in *Roldan* could easily be deprived of lasting effect through legislative action. It was.

AFTER *ROLDAN v. LOS ANGELES COUNTY*

Salvador Roldan and Marjorie Rogers were married on April 4, 1933.[213] Although of great significance to Mr. and Mrs. Roldan, Root's victory in *Roldan v. Los Angeles County* was of negligible support to other Filipino-Caucasian couples. Nine days before the Court of Appeal issued its opinion, State Senator H.C. Jones introduced two bills which added the word "Malay" to California's miscegenation statutes.[214] Senator Jones was a political ally of Attorney General Webb, who was himself a member of the influential Commonwealth Club of California.[215] In addition to the Commonwealth Club, the California Joint Immigration Committee, which was

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into five races: Caucasian, Mongolian, Malayan, Ethiopian, and American. *The New Encyclopedia Britannica: Micropedia* (15th ed., Chicago: Encyclopedia Britannica, 1991), 2: 303.

211 *Roldan*, 129 Cal.App. 267.

212 See for example, Brief on Behalf of Appellee, *Loving v. Virginia*, 31–38, reprinted in Phillip B. Kurland & Gerhard Casper, eds., *Landmark Briefs and Arguments of the Supreme Court of the United States: Constitutional Law* (Bethesda, Md.: University Publications of America, 1974) 64: 824–31.

213 "Intention to Marry," *Los Angeles Times*, April 4, 1933, 14.

214 Orenstein, *op. cit.*, 385; "Racing Bill Approved . . . Filipino-White Marriages Opposed by Senate," *Los Angeles Times*, March 16, 1933, 8, col. 6.

215 Orenstein, *op. cit.*, 379, 381, 385; According to Professor Foster, in 1929, the Immigration Section of the Commonwealth Club recommended that Civil Code section 60 be amended to specifically ban marriages between Filipinos and whites. Foster, *op. cit.*, 443.

sponsored by the American Legion, the Sons and Daughters of the Golden West, and the California Federation of Labor, asked its members to urge passage of the bills.[216] The new section 60 of the Civil Code read, "All marriages of white persons with Negroes, Mongolians, members of the Malay race, or mulattoes are illegal and void."[217] The companion statute amended section 69 of the Civil Code and directed the county clerk to note on all marriage licenses whether a bride or groom is "white, Mongolian, Negro, Malayan, or mulatto," and forbidding the issuance of a marriage license "authorizing the marriage of a white person with a Negro, mulatto, Mongolian or member of the Malay race."[218] Both statutes were approved by Governor James Rolph, Jr., himself a member of the Native Sons, on April 30, 1933, and took effect on August 31, 1933.[219] According to Volpp, this action "*retroactively* [voided and made] illegitimate all previous Filipino/white marriages."[220]

After the phrase "member of the Malay race" was added to California's miscegenation law, Caucasian-Filipino couples left California to marry in other states. Couples went to Oregon, New Mexico, Utah, and Idaho, with New Mexico favored because "that State does not even have a law proscribing Mongolian-white marriages, and because it is easily accessible to persons residing in Los Angeles."[221] Miscegenation laws were "doomed by the civil rights movement and, more broadly, by society's commitment to equality and multiculturalism."[222]

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216 Volpp, *op. cit.*, 822.

217 Act of April 20, 1933, *Statutes of California*, ch. 104 codified at *California Civil Code Annotated* § 60 (Deerings 1934).

218 Act of April 20, 1933, *Statutes of California*, ch. 105, codified at *California Civil Code Annotated* § 69 (Deerings 1934).

219 Ibid.; see also Volpp, *op. cit.*, 822.

220 Volpp, *op. cit.*, 822 (Italics in the original). Professor Volpp does not offer any examples of Filipino/white couples actually having their marriages declared void and illegitimate. Under the rule in *People v. Godines* (1936), 17 Cal.App.2d 721, this result is unlikely.

221 Panunzio, *op. cit.*, 697. In 1937, Utah Attorney General Joseph Chaz ruled that Filipinos were Malayans — not Mongolians. "Filipino-and-White Marriages Ruled Legal In Utah," *Los Angeles Times*, June 11, 1937, 5.

222 Lawrence M. Friedman, *American Law in the Twentieth Century* (New Haven: Yale University Press, 2002), 56.

Although the Court of Appeal's decision in *Roldan* was effectively overturned by the Legislature, the California Supreme Court would be the first to find a miscegenation law unconstitutional. Pascoe wrote, "Beginning in the late 1870s, judges declared that the laws [against miscegenation] were constitutional because they covered all racial groups 'equally.'"[223] This changed with the case *Perez v. Sharp*.[224]

Andrea Perez, who identified herself as a white person, wanted to marry Sylvester Davis, who identified himself as African American.[225] W.G. Sharp, Los Angeles county clerk, denied Perez and Davis a marriage license pursuant to California Civil Code section 69.[226] The California Supreme Court declared that

> marriage and procreation are fundamental to the very existence and survival of the race. Legislation infringing such rights must be based upon more than prejudice and must be free from oppressive discrimination to comply with the constitutional requirements of due process and equal protection of the laws. . . . Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality. For that reason, legislative classification or discrimination based on race alone has often been held to be a denial of equal protection.[227]

The Court also found the statutes to be "invalid because they are too vague and uncertain."[228] This decision was a major advance in civil rights. By invalidating miscegenation laws on constitutional grounds, the Court put the matter beyond mere legislation. *Perez* built on the precedent established by

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[223] Peggy Pascoe, "Miscegenation Law, Court Cases, and Ideologies of 'Race' in Twentieth-Century America," *Journal of American History*, 83 (1996): 50 (and cases cited there).

[224] *Perez v. Sharp* (1948), 32 Cal.2d 711, sub. nom. *Perez v. Lippold*, 198 P.2d 17. W.G. Sharp replaced Earl O. Lippold as Los Angeles County Clerk while the case was pending, and therefore was substituted as the named defendant.

[225] Ibid., 32 Cal.2d 712.

[226] Ibid.

[227] Ibid., 32 Cal.2d 715.

[228] Ibid., 32 Cal.2d 728.

Skinner v. Oklahoma[229] and served as a precedent in *Loving v. Virginia*.[230] The *Perez* decision is best understood as a step in the evolution of civil rights. Between the *Roldan* decision in 1933 and the *Perez* decision in 1948, California had experienced a tremendous growth in population brought about by mobilization for World War II. This growth in population included Americans of every race, and their interaction was inevitable. America had also just completed a war against Nazi racism and was shamed by its actions against Japanese Americans. World War II and the Cold War opened America's eyes to the hypocrisy of racism in California and in America. Simply put, political and social institutions in California had evolved slightly faster than elsewhere in America.

The first marriage license issued in Los Angeles County after the *Perez* ruling went to a Filipino-white couple: Guillermo O. Esquerra and Miriam Elizabeth Russell.[231] They were married immediately after obtaining the license.[232] Although the California Supreme Court found the miscegenation law to be unconstitutional, the ruling in *Perez* did not reach the race reporting requirement found in Civil Code section 69.[233] The California Legislature repealed Civil Code section 60 and amended Civil Code section 69 to remove the race reporting requirement in 1959.[234]

Federally, it would be almost twenty years before miscegenation laws were declared unconstitutional. It is certainly ironic, and perhaps appropriate, that the decision which held miscegenation to be unconstitutional came from Virginia, the state with the longest tradition of miscegenation laws.[235]

Root made a small contribution toward the removal of miscegenation laws in the United States. In *Visco*, she avoided the law by having her client

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229 *Skinner v. Oklahoma* (1942), 316 U.S. 535, 62 S.Ct. 1110, 86 L.Ed. 1655 declaring that there was an inherent right to reproduce.

230 *Loving v. Virginia* (1967), 388 U.S. 1, 875 S.Ct. 1817, 18 L.Ed.2d 1010 declaring that all miscegenation laws are unconstitutional.

231 "Mixed Marriage License Granted," *Los Angeles Times*, November 19, 1948, A1, col. 3.

232 Ibid.

233 *Stokes v. County Clerk of Los Angeles County* (1953), 122 Cal.App.2d 229.

234 Volpp, *op. cit.*, 824; Act of April 20, 1959, *Statutes of California*, ch. 146.

235 Maryland repealed its miscegenation laws prior to the decision in *Loving v. Virginia* (1967), 388 U.S. 1, 6 fn5, 875 S.Ct. 1817, 18 L.Ed.2d 1010. March 24, 1967, *Laws of Maryland*, ch. 6.

declare her lineage to be Native American. Her argument in *Roldan* was based on statutory interpretation of the word *Mongolian*, rather than on constitutional grounds as in *Perez* and in *Loving*. Thus, the victory was short-lived. The California Legislature promptly passed legislation specifically banning marriages between Filipinos and whites, thereby preventing wider application of the decision. It would be fifteen years until the political and social climate changed enough to permit the California Supreme Court to rule as it did in *Perez*. It would be another twenty years before the political and social climate changed enough to permit the U.S. Supreme Court to rule as it did in *Loving*.

THE KIDNAPPING OF FRANK SINATRA, JR.

Root's last high-profile case was the defense of John William Irwin, one of the accused kidnappers of Frank Sinatra, Jr., son of the famous singer.[236] Not only did the case itself make headlines, but Root herself and her co-counsel, George A. Forde, became defendants in a related case that made a trip to the U.S. Supreme Court and consumed four years of her life. This case illustrates Root's use of the blame-the-victim defense strategy. It also demonstrates the lengths to which she went to do so.

Sinatra, Jr., had his professional singing debut on September 12, 1963.[237] According to Sinatra biographer Kitty Kelly, Sinatra, Jr., "was a pale imitation" of his father.[238] Sinatra biographer Randy Taraborrelli describes Sinatra, Jr., as "a prototypical lounge lizard."[239] Two months later, on Sunday, December 8, 1963, Frank Sinatra, Jr., was taken blindfolded from his hotel room in Lake Tahoe, Nevada, by "two husky gunmen [who] carried young Sinatra, his mouth sealed with a strip of adhesive tape out of the lodge and into a car that sped off into the night during a snowstorm."[240] The kidnappers and

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[236] *United States v. Amsler et al.* No. 33087-CD (U.S. District Court, Southern District, Central Division, filed Januray 2, 1964).

[237] J. Randy Taraborrelli, *Sinatra: Behind the Legend* (Secaucus, N.J.: Carol Publishing Group, 1997), 296.

[238] Kitty Kelly, *His Way: The Unauthorized Biography of Frank Sinatra* (New York: Bantam Books, 1986), 329.

[239] Taraborrelli, *op. cit.*, 294.

[240] "Kidnap Sinatra Jr. In Tahoe Storm," *Los Angeles Times* December 9, 1963, 1; Taraborrelli, *op. cit.*, 298–99.

their hostage passed several police roadblocks and crossed the California-Nevada state line to a hideout in the San Fernando Valley area of Los Angeles.[241] On December 11, Sinatra, Sr., and FBI agent Jerome Crowe delivered the ransom of $239,985 (fifteen dollars was used to buy a valise to carry the balance) to a drop-off point between two parked school buses on "Wilshire Boulevard, near the Sawtelle [Avenue] Veterans Facility."[242] Frank Sinatra, Jr., was released unharmed after his father paid a ransom of $240,000.[243] On December 14, 1963, Barry Worthington Keenan, Joseph Amsler, and John William Irwin were arrested for the crime, and the ransom was recovered.[244]

Since the kidnapping of Charles A. Lindbergh, Jr., in 1932, kidnapping has been a federal crime.[245] The statute was amended in 1938 to make kidnapping a capital offense, unless the victim was released unharmed prior to imposition of sentence, in which case it was punishable by up to life imprisonment.[246]

Keenan, Amsler, and Irwin were indicted and tried beginning in February 1964 in the U.S. District Court in Los Angeles.[247] Keenan and Amsler were indicted on one count of transporting the victim across state lines.[248] Irwin was indicted for aiding and abetting.[249] Because Sinatra, Jr., was released unharmed, the maximum penalty possible on conviction was life imprisonment, rather than death; however, the indictment did not specify that the victim was released unharmed and the death penalty remained a legal possibility.[250] This technicality would be significant on

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241 Ibid., 303.

242 Ibid.

243 "Sinatra Safe," *Los Angeles Times*, December 11, 1963, 1; "Valley Net! Predawn Search of Kidnapers," *Los Angeles Times*, December 12, 1963, 25; "Guard Relates How He Took Frankie Home," *Los Angeles Times*, December 12, 1963, 3; see also Taraborrelli, *op. cit.*, 308–09; Kelly, *op. cit.*, 330.

244 "FBI Seizes 3; Recovers Ransom," *Los Angeles Times*, December 14, 1963, 1; Taraborrelli, *op. cit.*, 309.

245 "Lindbergh Kidnaping Act," June 22, 1932, *Statutes At Large*, 47: 326, codified as amended *United States Code Annotated,* title 18, § 1201 (West 2005).

246 Act of May 18, 1934, *Statutes At Large*, 48: 781–82.

247 *United States v. Keenan, et al.* No. 33087-CD (SD Cal., filed January 2, 1964).

248 "3 Named by Grand Jury in Sinatra Jr. Kidnaping," *Los Angeles Times*, January 3, 1964, E7.

249 Ibid.

250 Ibid.

appeal. Root represented Irwin.[251] According to Rice, "She was hired by an industrialist, a former employer of Irwin."[252] Attorney Charles L. Crouch represented Keenan. Forde and Morris Lavine represented Amsler.

Root began "blaming the victim" by casting doubt on the truth of the kidnapping almost as soon as she was retained. In court on Monday, December 24, 1963, Root, "wearing a large white feathered hat and a black suit trimmed with white fox fur and a fox head," asked that her client's bail be reduced and referred to the allegations as, "This kidnaping — if there was a kidnaping,"[253] After the indictment, Root suggested that "other persons" besides the defendants were involved.[254] The *Los Angeles Times* continued, "Mrs. Root, known for her wearing of enormous hats and elaborate earrings, would not explain this hint that possibly not all of the 'persons' in the case had been arrested."[255] The defense attorneys suggested in the press that a mysterious "Wes" or "West" would be called as a witness to exonerate the accused.[256] No such witness was ever called to testify.

At trial, Root accused Sinatra, Jr., of being in on the entire plot, which was a publicity stunt. In *Sinatra: Behind the Legend*, Keenan is quoted as saying, "One of the attorneys — not my own — came in one night and said to me, 'Look, if this was a publicity stunt and you are able to tell us that it was a publicity stunt, then that would be a very strong defense.' "[257] Neither Keenan's statement nor Taraborrelli's other research clearly identify Root as the source of the hoax defense; however, given Root's statements in the press, and after considering the record in *Root v. United States*, it appears likely that Root was the source of the hoax defense.

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[251] Gene Blake, "Woman Attorney Hired to Defend John Irwin," *Los Angeles Times*, December 21, 1963, 16.

[252] Rice, *Get Me Gladys*, 212.

[253] "Doubts Raised on Kidnaping in Sinatra Case," *Los Angeles Times*, December 23, 1963.

[254] "Sinatra: Secrecy Still Clouds Kidnaping Case," *Los Angeles Times*, January 4, 1964, N3.

[255] Ibid.

[256] "'Hoax' Defense Pressed in Sinatra Case," *Los Angeles Times,* February 18, 1964, 27; Walter Ames and Arthur Berman, "Still Hopes for Exoneration by 'West,' Amsler Testifies," *Los Angeles Times*, March 4, 1964, 2; Howard Hertel and Arthur Berman, "No 'Mystery' Witness Called; Sinatra Kidnap Defense Rests," *Los Angeles Times*, March 6, 1964, 1.

[257] Taraborrelli, *op. cit.*, 311.

The hoax defense was not successful. Keenan and Amsler were convicted of kidnapping and immediately sentenced to life imprisonment, plus seventy-five years each.[258] Irwin was also convicted, and was later sentenced to sixteen years, six months imprisonment.[259] Keenan's and Amsler's sentences were later reduced to twenty-five years and five months.[260]

All three defendants appealed their convictions to the United States Court of Appeals for the Ninth Circuit.[261] Amsler's and Irwin's convictions were overturned and remanded to the district court for retrial on the grounds that the trial court did not follow the correct procedures for trying a capital offense.[262] Keenan withdrew his appeal before the appellate court rendered its decision.[263] Keenan would ultimately serve four and a half years in prison.[264] On remand, Amsler and Irwin pleaded guilty to superseding indictments, and were sentenced to five years of probation.[265] Ultimately, it was a very good result for Amsler and Irwin.

The defense allegation that the kidnapping was a hoax angered Frank Sinatra, Sr. According to Taraborrelli, Sinatra resolved to take the defense lawyers, including Root, to court.[266] Indeed, on July 29, 1964, a federal grand jury indicted Root and Forde on three counts of subornation of perjury and obstruction of justice.[267] They entered pleas of "Not Guilty" and moved to dismiss the indictment on the grounds that the indictment

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258 Howard Hertal and Arthur Berman, Jury Finds Three Guilty in Sinatra Kidnaping," *Los Angeles Times*, March 8, 1964, G1.

259 Ibid. See also "Sinatra Case: Judge Reduces Two Sentences," *Los Angeles Times*, July 19, 1964, 35.

260 "Sinatra Case: Judge Reduces Two Sentences," *Los Angeles Times*, July 19, 1964, 35.

261 *Amsler v. United States*, No. 19509 (9th Cir., decided May 3, 1967).

262 *Amsler v. United States*, 381 F.2d 37, 53 (9th Cir. 1967). The Court of Appeals held, "It is the possibility of an imposition of a death penalty under the indictment, not the evidence produced at the trial, which determines if the accused is entitled to the procedural benefits available in capital cases." Ibid., 45.

263 Ibid., 42.

264 Taraborrelli, *op. cit.*, 313.

265 Howard Hertel and Henry Sutherland, "Keenan Admits He Instigated Kidnaping of Sinatra's Son," *Los Angeles Times*, January 9, 1968, 3.

266 Taraborrelli, *op. cit.*, 314.

267 Indictment, *United States v. Root*, No. 33933-CD (SD Cal., filed July 29, 1964); Walter Ames, "2 Sinatra Trial Lawyers Indicted," *Los Angeles Times*, July 30, 1964, 1.

was vague.[268] The motion was granted.[269] On December 9, 1964, the federal grand jury again indicted Root and Forde for conspiracy, subornation of perjury, and obstruction of justice.[270] This second indictment was 148 pages long.[271] Again Root and Forde moved to dismiss the indictment, this time on the grounds that it was confusing. In a memorandum decision, Judge Peirson M. Hall "carefully and repeatedly examined the indictment and the authorities cited by the parties, . . . and [could not] conscientiously come to a judgment that the defendants are sufficiently informed by the indictment of the charges against them."[272] Judge Hall did not "indulge in a prolonged dissertation of [his] views."[273] However, on appeal, the United States argued that while "the appellees persuaded the Court below that [the first indictment] should be dismissed for lack of specificity"; the "present indictment is attacked for having pleaded too much."[274] Root and Forde lost the appeal on all points, and the case was remanded. Root took her appeal to the U.S. Supreme Court which denied certiorari.[275]

Back in the district court, Root was urged to "'keep up the fight'" by sympathetic colleagues.[276] "'You can see I'm still fighting . . . . It's just the embarrassment,'" said Root.[277] Charges against Forde were dropped on March 6, 1967.[278] Root's attorney Morris Lavine, formerly counsel for Amsler, argued for dismissal on legal grounds and "humanitarian grounds,"

268 "2 Indicted Sinatra Case Lawyers to Enter Pleas," *Los Angeles Times*, August 31, 1964, 22A.

269 Appellant's Opening Brief, *United States v. Root*, No. 20360 (9th Cir., filed November 29, 1965) 6n6 (citations to reporter's and clerk's transcripts omitted).

270 Indictment, *United States v. Root*, No. 34352-CR (SD Cal., filed December 9, 1964).

271 Ibid.

272 Ibid.

273 Ibid.

274 Appellant's Opening Brief, *United States v. Root*, No. 20360, (9th Cir., filed November 29, 1965), 13.

275 *Root v. United States* (1967), 386 U.S. 912, 87 S. Ct. 861, 17 L.Ed. 2d. 784.

276 Howard Hertel, "Gladys Root Weeps After Court Hearing," *Los Angeles Times*, December 12, 1967, C16.

277 Ibid.

278 Howard Hertel, "Gladys Root Weeps After Court Hearing," *Los Angeles Times*, December 12, 1967, C16. Forde died August 28, 1970 of an apparent heart attack while vacationing in Hawaii. "George A. Forde Dies: Sinatra Case Attorney," *Los Angeles Times*, September 9, 1970, 27.

because of Root's failing health.[279] On April 8, 1968, the indictment was finally dismissed by Judge Hall, with a concurrence of the U.S. attorney.[280]

"I'm just very happy. I knew I was innocent and that ultimately I would be exonerated," said Root.[281]

FINAL YEARS

By the 1970s, Root was suffering financial and professional hardships.[282] In 1970, Root was assessed $125,000 in unpaid income taxes for the years 1959, 1960 and 1961.[283] As a result, the government seized real property and sold it.[284] She sold her Hancock Park mansion and moved to "less resplendent quarters."[285] She also moved her office to a "seedy — but still gold and purple — office in a crumbling building on Hill Street."[286] Apparently, Root also was "the subject of substantial litigation by her daughter."[287] It is possible that she would have faced State Bar discipline had she lived.[288]

In addition to financial and professional problems, her health began to fail in the late 1960s and 1970s. She broke her right hip in an automobile accident in June 1966, suffered a cerebral hemorrhage and stroke in

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279 Ibid.

280 "Gladys Root Cleared in Kidnap Case Count," *Los Angeles Times*, April 8, 1968, OC-A12.

281 Ibid.

282 Eric Malnic & Karen Wada, "Gladys Towles Root Dies; Colorful Lawyer Was 77," *Los Angeles Times*, December 22, 1982, D4.

283 *Geiger v. Commissioner* (1969), 28 T.C.M. (CCH) 795, TCM (RIA) 69159 *affirmed sub nom. Root v. United States* (1974), 1974 U.S. Dist. LEXIS 6796; 74-2 U.S. Tax Cas. (CCH) P9758; 34 A.F.T.R.2d (RIA) 6091 at 5.

284 Ibid.

285 Malnic & Wada, *op. cit.*

286 Ibid.

287 See *People v. Jones* (1991), 53 Cal.3d 1115, 1132–33.

288 Root's partner, attorney David Brockway was disciplined by the State Bar in 1991 in connection with the case *People v. Jones* (1991), 53 Cal.3d 1115. Brockway was suspended from the practice of law for three months and placed on probation five years for conflicts of interest resulting from securing his fee by taking a mortgage on the client's home. Root was initially involved in the transaction. *Brockway v. State Bar* (1991), 53 Cal.3d 51, 59–65.

January 1967, and broke her left hip in August 1967 in a fall.[289] During her last years, she endured dialysis treatment three times a week.[290]

On Tuesday, December 21, 1982, Root — wearing all gold — appeared before Judge Peter Smith in the Los Angeles County Superior Court in Pomona where she was defending two brothers accused of sodomy-rape.[291]

She said, "Give me a few moments . . . I'm having trouble breathing." Then she collapsed on a courtroom bench.[292]

Root was rushed to Pomona Valley Hospital where she was officially pronounced dead of a heart attack.[293] She was buried at Forest Lawn Memorial Park, Glendale, California, on December 24, 1982.[294]

CONCLUSIONS

Dawn Bradley Berry justifiably lists Root among *The Fifty Most Influential Women in American Law*.[295] Root is a legend, and her legend is the flamboyant lady lawyer from the society pages who devoted herself to helping the destitute and despised. The Circus Portia was the self-appointed, self-styled champion of human rights, taking cases other attorneys routinely turned down, working tirelessly for her clients.

Root was first a performer. Rather than the stage or the cinema, she chose to perform in the courtroom. Her court appearances, especially her trials, were carefully stage managed to garner attention for herself and to deflect it from her clients. Her eye-catching costumes were just that, costumes. At a time when women were very much a minority in the legal profession, she chose to stand out, rather than blend in. Of course, her clothing choice was a matter of personal taste, and she liked the attention she received. However, her clothing was also a form of advertising at a time when attorney advertising was forbidden, or at least discouraged. People

289 Hertal, "Gladys Root Weeps After Court Hearing," *op. cit.*

290 Perry M. Polski, "Gladys Root," *The Los Angeles Times*, January 3, 1983, C4.

291 Malnic & Wada, *op. cit.*

292 Ibid.

293 Ibid.

294 "Rites for Gladys Towles Root Stated," *Los Angeles Times*, December 22, 1982, OC-A7.

295 Dawn Bradley Berry, *The Fifty Most Influential Women in American Law* (Los Angeles: Lowell House, 1996) 157–67.

in Los Angeles recognized "The Lady in Purple" even when they did not know her personally or have reason to retain her services. Thus, whenever someone was arrested, he knew to call out, "Get me Gladys!"

Root did her job as a lawyer exceedingly well and it meant a great deal to her. She carried out her lawyer's oath to zealously represent her clients, even at great risk to herself. Many of the practices she began, such as employing investigators, are now common practice among the criminal defense bar. She used her femininity as a shield and a weapon in defending her clients. Her cross-examination of victims and witnesses discredited unfavorable testimony. She also used props, such as the fabled grandfather clock in the *Adron* case, in which she had the clock wheeled into the courtroom to demonstrate the hypnotic effect on the defendant of its ticking, "Shoot, Shoot, Shoot," to win an acquittal. And she used innuendo, such as the mysterious "Wes" in the *Irwin* case.

Because she was a woman, Root was shut out of the large, established law firms that existed in Los Angeles. Therefore, she turned to solo practice. Root became an expert defending accused sex criminals, at first by happenstance, and then because it was a niche that proved successful. Since very few other attorneys wanted to defend them, Root faced less competition for clients.

Root sought to benefit society at large with her legal work as did Clarence Darrow, Charles Houston, Jr., and Thurgood Marshall. Her brief in *Roldan v. Los Angeles County* hinted at larger societal issues, but the court's ruling in *Roldan* was based on a narrow, statutory interpretation. Thus, the Legislature was able to pass amendatory legislation to specifically ban Malay-white marriages within a month of the appellate court's decision being issued.

Root was a "career girl" at a time when few women were in the work force, and very few were in the legal profession. In 1955, when Root was at the height of her career, there were 387,385 lawyers in the United States, of whom only 5,036, or 1.3 percent, were women.[296] She used her position to assist and encourage other women entering the legal profession.

Root's large hats sat above a brilliant legal mind. California's jurisprudence and legal history are much richer and more colorful because of her.

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[296] Lawrence M. Friedman, *American Law in the Twentieth Century* (New Haven: Yale University Press, 2002), 457.