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Jewish Justices of the California Supreme Court:

From Gold Rush Days to the Present

Jews have played an historically important role as judges in California going back to the dawn of California as a state in 1848. As of this writing, a total of seven have served as justices in the California Supreme Court—Henry A. Lyons, Solomon Heydenfeldt, Marcus C. Sloss, Mathew O. Tobriner, Stanley Mosk, Joseph Grodin, and Joshua P. Groban, the last of whom shares his name with a famous entertainer and sits on the Court to this day. Also worth mentioning as a Jewish contributor to California’s highest courts is Bernard E. Witkin, a legal scholar who became the preeminent authority on California law and whose writings became indispensable to its practitioners.

Mostly active in state politics, several of these men were extremely active in their Jewish communities. Almost all came from the liberal side of the political spectrum, which was not always an advantage to their careers. Some served only short periods and made a relatively small impact, making their reputations in practice and business off the Court rather than on it, while others served many years with great distinction and became giants in their field.

Henry A. Lyons (1809–1872) and Solomon Heydenfeldt (1816–1890)

The least well-known Jews who served on the California Supreme Court are likely to be these first two, who were the earliest going back to the time of the first 1849 California Constitution. That Constitution called for three members of the State Supreme Court, and remarkably these two men served

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on it briefly at the same time in 1852. Both were men who had made careers in Southern cities and who were drawn West by the lure of the Gold Rush.

Henry A. Lyons's parents, Solomon and Rebecca Lyons, were French Jews who migrated to America at the turn of the nineteenth century and settled in Philadelphia, where baby Henry was born in 1809. In the 1830s, the Lyons family moved to Louisiana, where the then-grown Henry first began to practice law.

Henry Lyons quickly achieved social prominence in the heart of the old South. In 1840, at age thirty-one, he married Eliza Pirrie, the twice-widowed daughter of the owner of the celebrated Oakley Plantation, which the Pirrie family friend, the renowned John James Audubon, described as one of the continent's most prolific bird sanctuaries.¹

The discovery of gold in California intrigued the young Lyons. Despite his comfortable existence in Louisiana, and the wherewithal to make frequent travels to Paris and Rome, he decided to leave the South and make the journey West, which he did by way of the Isthmus of Panama. Like a good many other Southerners of the day who were attracted to California, he settled in the town of Sonora (in Tuolumne County), not far from San Francisco. There he set up a thriving law practice and became active in local politics. In 1849, he ran for the new state's first legislature but ended up defeated in his first race for elective office.²

However, later in 1849, Lyons was elected by the new California legislature for a four-year term on the state's first Supreme Court, receiving the second highest vote. When Chief Justice S. C. Hastings's two-year term ended in 1852, Henry Lyons succeeded him as Chief Justice. When Solomon Heydenfeldt was elected to the Court in early 1852, two Jews for the first time briefly served together on the state's highest court. Chief Justice Lyons, however, only served for three months before resigning, because he considered the salary set by the new state to be too small to support a family.

Though the first (and only) Jewish chief justice in the history of California's Supreme Court, Lyons made little contribution to California's jurisprudence. He wrote only eleven opinions during his two years and three months on the Court—nine as an associate justice and two as chief justice. The first and only notable judicial opinion written by Justice Lyons—the third decision produced by the new Supreme Court—involved a forcible ouster of a landowner. Wrote Lyons: “When a party is in quiet and peaceable possession of lands, the law will not sanction any invasion of his rights by force.”³

¹ Stanley Mosk, “A Majority of the California Supreme Court,” *Western States Jewish Historical Quarterly* 8, no. 3 (April 1976): 225.

² Mosk, “A Majority of the California Supreme Court.”

³ *Ladd v. Stevenson*, 1 Cal. 18 (1850).

After resigning from the Court, Lyons gave up the practice of law, devoting himself primarily to business ventures and real estate investments in San Francisco. In San Francisco, Lyons bought an opulent Victorian home on Rincon Hill, then a fashionable area of the city, and accumulated a sizeable fortune in real estate.⁴

As for his Jewish identity, it is not known whether Justice Lyons formally converted to Christianity, but he ceased to publicly identify as Jewish and never entered a synagogue after his marriage to Eliza Pirrie at the age of thirty-one. Throughout his years in San Francisco, he was never active in Jewish affairs. His funeral services in 1872 were conducted in Trinity Episcopal Church on Post Street in San Francisco.⁵

Other notable facets of Lyons's biography are that he left an estate of about half a million dollars when he died in 1872, an enormous amount of money for that period. An ardent Southern sympathizer, Lyons returned to Louisiana in 1860 and remained there until the end of the Civil War, after which he returned to California.

Solomon Heydenfeldt, the second Jewish man to serve on the California Supreme Court, was a much more brilliant legal scholar than Henry Lyons and left an indelible impression on California law. He was also active in local Jewish affairs. He served on the Court for five years, from 1852 to 1857. Heydenfeldt was born in Charleston, South Carolina, in 1816, the son of Jacob and Esther Desiree Heydenfeldt. His mother was a DePass, from a celebrated family of Jewish lineage originating in Bordeaux; his father came to America from Silesia. His family was identified with the Sephardic community for generations. Heydenfeldt's sister was the first wife of Dr. Abraham Jacobi of New York, and his brother Elcan was a lawyer and politician in Alabama and later California, where he also moved.⁶

Although Heydenfeldt went to college in Pennsylvania, where he studied Latin, Greek, and mathematics, he did not graduate. Instead, he returned to Charleston where he studied law in the offices of Henry De Saussure, son of the celebrated chancellor of South Carolina.⁷ In 1837, at the age of twenty-one, he moved to Montgomery, Alabama, and was admitted to the bar in that state. Like Lyons, he also became active in local politics. In December 1842, at a session of the Alabama legislature, an election was held to fill a vacancy

⁴ Mosk, "A Majority of the California Supreme Court," 226.

⁵ Mosk, "A Majority of the California Supreme Court," 227.

⁶ Albert M. Friedenber, "Solomon Heydenfeldt: A Jewish Jurist in Alabama and California," *Publications of the American Jewish Historical Society* 8 (1902): 129.

⁷ Friedenber, "Solomon Heydenfeldt," 130.

in the office of county judge for Mobile, “one of the best paying offices of the State,” for which Heydenfeldt was an unsuccessful candidate.⁸ However, the run provided him with valuable experience and contacts.

In 1850, beckoned by the California Gold Rush, Heydenfeldt moved to California, practicing law in San Francisco, where he opened an office in San Francisco’s old City Hall.⁹ He quickly developed a prosperous civil practice and was recognized as a community leader in both professional legal circles and in San Francisco’s growing Jewish community.¹⁰

It would seem phenomenal today, but after having been in the state for only one year, Heydenfeldt was a serious contender for a United States Senate seat to succeed John C. Fremont, who in 1856 would emerge as the new Republican Party’s first candidate for the presidency. The first state legislature after California’s admission into the Union met in San Jose in 1851 and proceeded to elect a senator. The legislature was equally divided between the Democrats and the Whigs, while Fremont became a candidate to succeed himself. Although Heydenfeldt became the candidate of the legislature’s Democratic caucus, opposition to Heydenfeldt developed even among the Democrats because of his Southern background and outspoken Southern sympathies. (In 1860, he would support Breckinridge in his campaign against Lincoln.) After 142 ballots no candidate received a majority vote, and the Legislature adjourned until the following year, when a compromise candidate was chosen.¹¹

All was not lost however, and Heydenfeldt’s Southern roots did not prevent him from pursuing other offices. It had been assumed that Heydenfeldt would be a candidate for the Senate seat in 1852 but given his stellar background in law, in late 1851 the Democratic Party nominated him for the Supreme Court. He was elected that November over his Whig opponent, a popular Sacramento district judge. The salary for a California Supreme Court Justice at this time was set at \$10,000 a year.¹²

As a State Supreme Court Justice, Heydenfeldt was conspicuously successful in his five years on the court and was remarkably productive. He wrote in all forty-five judicial opinions. While most of his decisions dealt with complex legal issues, he is perhaps best remembered today for an 1855 example of simple pragmatic justice, in a case known as *Robinson v. Pioche*.¹³

⁸ Friedenber, “Solomon Heydenfeldt,” 130.

⁹ Friedenber, “Solomon Heydenfeldt,” 131.

¹⁰ Mosk, “A Majority of the California Supreme Court,” 227.

¹¹ Mosk, “A Majority of the California Supreme Court,” 228.

¹² Friedenber, “Solomon Heydenfeldt,” 132.

¹³ *Robinson v. Pioche, Bayerque & Co.*, 5 Cal. 460 (1855).

The plaintiff had fallen into an uncovered hole in the sidewalk in front of the defendants' premises. The trial judge had instructed the jury that if the plaintiff had been intoxicated at the time of the accident, he could not recover damages. Wrong, said Justice Heydenfeldt: If the defendants were at fault in leaving an uncovered hole, the intoxication of the plaintiff could not excuse them. He wrote succinctly: "A drunken man is as much entitled to a safe street, as a sober one, and much more in need of it."¹⁴

The most controversial of Heydenfeldt's judicial opinions, and probably the most damaging to his legacy, was in the case of *People v. Hall*, an appealed murder case in which the Supreme Court established in 1854 that Chinese Americans and Chinese immigrants had no rights to testify against white citizens. This reflected the racism and anti-Chinese sentiment common in early California and enshrined into law at the time. The ruling effectively freed Hall, a white man, who had been convicted and sentenced to death in 1853 for the murder of Ling Sing, a Chinese miner in Nevada County, based on the testimony of three Chinese witnesses.¹⁵ George Hall appealed the verdict, arguing that the testimony of the Chinese witnesses should not be accepted and that the section of California law that barred the use of testimony by blacks, mulattoes, and Indians against whites, should also be extended to banning the testimony of Chinese. The California Supreme Court, in a majority opinion delivered by Chief Justice Hugh Murray, decided for Hall and Justice Heydenfeldt went along with it.

This case has been described as "containing some of the most offensive racial rhetoric to be found in the annals of California appellate jurisprudence."¹⁶ It preceded in infamy the Dred Scott case decided by the U.S. Supreme Court three years later.¹⁷ In support of its decision to include Chinese people within the class prohibited from giving evidence in favor of or against a white man, the Supreme Court in its majority opinion stated the following about Chinese people: "The same legal rule which would permit them to testify, would admit them to all the equal rights of citizenship, and we might soon see them at the polls, in the jury box, upon the bench, and in our legislative halls."¹⁸

A California state law passed in 1873, sixteen years after Solomon Heydenfeldt resigned from the Supreme Court, invalidated all testimony laws,

¹⁴ *Robinson v. Pioche*; and Mosk, "A Majority of the California Supreme Court," 228.

¹⁵ *People v. Hall*, 4 Cal. 399 (1854).

¹⁶ Michael Traynor, "The Infamous Case of *People v. Hall* (1854): An Odious Symbol of Its Time," *California Supreme Court Historical Society Newsletter* (2017), p. 2.

¹⁷ *Dred Scott v. Sandford*, 60 U.S. 393 (1857).

¹⁸ *People v. Hall*, 4 Cal. 399, 404–05 (1854).

and thus overrode the decision in *People v. Hall*.

In 1857, Heydenfeldt realized that he could not support his family and dependents on his judicial salary, and he resigned from the high court. He resumed private law practice, in a firm that specialized in mining law. He prospered financially and acquired considerable real estate property over the years.

Heydenfeldt, like Justice Henry Lyons, was an outspoken Southern sympathizer. In 1860, Heydenfeldt supported the Southern Democratic candidate Breckenridge in his campaign against Abraham Lincoln. Thus, when during the Civil War a Test Oath Act was adopted requiring an oath of loyalty to the Union, Heydenfeldt felt that in good conscience he could not swear to the oath. Also, as a result of his decision not to swear to the loyalty oath, he was removed from his position on the Board of Trustees of the California State Library for being “disloyal” to the Union.¹⁹ Thus, he withdrew from his law firm and from practice in the courts. Instead, he became a business adviser to many large corporations and wealthy businessman and in so doing accumulated a substantial fortune.

A generous philanthropist, Heydenfeldt gave away vast sums of his fortune to innumerable charities, Jewish and non-Jewish alike. His special interest was the kindergarten movement. Together with Julius Jacobs, he was the founder of the first kindergarten in San Francisco, and with Rabbi Felix Adler of New York, the founder of the Ethical Culture Movement, he pioneered a national campaign to establish and fund kindergartens.²⁰

The legal historian Oscar T. Shuck, in his 1901 book on the California bench and bar, described Justice Heydenfeldt in this way:

In person he was diminutive, with small hands and feet, dark hair and complexion, a kind eye, well-shaped and finely chiseled features. His weight was suited to his stature, and he possessed distinguished dignity of manner. A man universally esteemed, he yet held himself aloof from the people. He was not a man of the masses. We once heard him on the stump addressing a multitude of the unterrified. He was out of place. He disliked all gloss and glitter, and tinsel and was void of arrogance and affection. He knew sorrow, bore the burden of care, and was thrown amid all the snares of pioneer adventure, yet he kept the mood and habit of the philosopher.²¹

After leaving the Supreme Court in 1857, Heydenfeldt’s private law practice gave him the historic opportunity to vindicate the legal right of

¹⁹ *Marin County Journal*, March 26, 1864.

²⁰ *Marin County Journal*, 230.

²¹ Mosk, “A Majority of the California Supreme Court,” 230.

California Jews to work on Sunday. Throughout the 1850s, Jewish merchants, for whom Sunday was not a religious holiday, were expected to not compete with Christian merchants and work on Sunday, the Christian Sabbath. As early as 1851, Protestant churchmen began to call for state government legislation to legally prohibit Jewish merchants from working on Sunday. Many Californians would have been happy to close their businesses on Sunday. For the vast Christian majority of California, Sunday was the natural day of rest, and thus a law forbidding business during that time was of no great consequence. By 1858, popular support for a Sunday closing law had increased throughout the state. In the California Assembly's legislative debate over the law, all members of the Assembly were aware that such a law would burden only the state's Jews, whose religion did not require resting on Sunday. In one such discussion, Assembly Speaker William W. Stow went as far as to declare that he had "no sympathy with the Jews," who were "a class of people who only came here to make money and leave as soon as they effected their object." Regarding the Sunday closing law, the Jewish preference for the Saturday Sabbath was irrelevant to Stowe as the Jews "ought to respect the laws and opinions of the majority."²²

In April 1858, an important Sunday closing law, "An Act for the better observance of the Sabbath," directed specifically against the state's Jews, was enacted by the California legislature, forbidding the keeping open of any store, workshop, or other business, and the sale of any goods, wares, or merchandise "on the Christian Sabbath or Sunday."²³ Almost immediately after the Sunday closing law was enacted, the California Supreme Court was given an opportunity to review the statute's constitutionality. The California Supreme Court, in the case of *Ex Parte Newman*, issued what is believed to be the only nineteenth-century case in the United States that overturned a law designed to protect the observance of Sunday, regarded as the Christian Sabbath. In so doing, the court overturned the conviction of Sacramento Jewish merchant Morris Newman (described in the case as an Israelite) who had been arrested by a justice of the peace and imprisoned for keeping his tailor shop open and selling clothing on a Sunday, and for refusing to pay the fine for violating the law.

As Heydenfeldt, Newman's attorney and then a prominent Jewish communal leader in San Francisco successfully argued, Newman's desire to break California's Sunday closing law stemmed from this religious faith

²² Jeremy Zeitlin, "What's Sunday All About? The Rise and Fall of California's Sunday Closing Law," *California Legal History* (2012), p. 3.

²³ Zeitlin, "What's Sunday All About?," p. 3; and Arnold Roth, "Sunday 'Blue Laws' and the California State Supreme Court," *Southern California Quarterly* 55, no. 1 (Spring 1973): 44.

and affiliation. As a religiously observant Jew, Newman (like his attorney Heydenfeldt) followed Jewish religious tradition and celebrated the Sabbath on Saturday. Because Newman's religion required him to refrain from work on Saturday, "he chose to flaunt the Sunday closing law and keep his shop open on the day of rest demanded by the state."²⁴

Heydenfeldt emphasized the Sunday closing law's burden on Newman's freedom of religion in challenging the constitutionality of the law before the California Supreme Court. In the case of *Ex Parte Newman*, Heydenfeldt successfully contended that the Sunday closing law conflicted with article 1, section 4 of the California Constitution that guaranteed that individual rights to "free exercise and enjoyment of religious profession and worship, without discrimination or preference shall be forever allowed in the state."²⁵ Heydenfeldt's victory in the case of *Ex Parte Newman* is considered to have been the highlight of his distinguished career in private law practice.

Heydenfeldt died in San Francisco in 1890 and left an estate of about \$300,000.

Changes in the California Supreme Court

Article VI of California's first Constitution, drafted in 1849, had provided for a Supreme Court consisting of a Chief Justice and two associate justices. By 1862, however, the state's growth had prompted a reorganization of the judiciary. Article VI of the California Constitution was amended in that year to expand the categories of cases the court could hear, increase the number of Supreme Court justices from three to five, and extend the terms of office for justices from six to ten years.

Marcus C. Sloss (1869–1958)

Marcus C. Sloss, who was appointed to the Court in 1906, was the fiftieth justice and the third Jewish justice to serve on the California Supreme Court. Justice Marcus Sloss (known to his family and friends as "Max") came from one of San Francisco's most prominent and wealthy pioneer Jewish families. Born in 1869, Max Sloss was the son of Louis and Sarah (Greenbaum) Sloss. Louis Sloss, who had been born in Bavaria, emigrated to the United States in 1848 shortly after the discovery of gold just north of San Francisco, and the beginning of the California Gold Rush. The next year, Louis and Sarah headed west on a wagon train, and settled in Sacramento, California. In 1861, the Sloss family moved to San Francisco, where Louis founded Louis Sloss and

²⁴ Zeitlin, "What's Sunday All About?," p. 1.

²⁵ Zeitlin, "What's Sunday All About?," p. 1.

Company, later named the Alaska Commercial Company, and sold supplies to the miners prospecting for gold.

Business took a turn for the better when on March 30, 1867, the United States bought Alaska from Russia for \$7,200,000, a move so severely and publicly criticized that it was nicknamed “Seward’s Folly” after the Secretary of State who had negotiated the purchase. In the years following the sale of Alaska to the United States in 1867, the Alaska Commercial Company made a huge fortune for Louis Sloss, his partner Louis Gerstle, and their families. The new Alaskan territory included the Pribilof Islands in the Bering Sea—the site of the annual mating and breeding of hundreds of thousands of fur seals. For twenty years the Alaskan Commercial Company was the largest buyer of sealskins and other Alaska furs, essential in the days before central heating: rare sea otter skins, mink, muskrat, ermine, lynx, beaver, and fox. They also imported sables from Russian Siberia, walrus ivory, and whalebone. The Alaskan Commercial Company expanded their lucrative trade by sending fifty-pound chests of China tea to Alaska.²⁶

By the time of Louis Sloss’s death in 1902, he and his partner Lewis Gerstle were two of the wealthiest Jewish merchants and philanthropists in San Francisco. Sloss served as a Regent of the University of California from 1885 until his death, the first Jew to serve in this position.

In 1886, his son Max Sloss, who would go on to join California’s Supreme Court, entered Harvard University, from which he graduated magna cum laude and was elected to Phi Beta Kappa. He then studied at Harvard Law School, the first San Francisco Jew to do so, from which he graduated with honors in 1893. After graduation, he returned to San Francisco and joined the prominent law firm of Chickering, Thomas and Gregory, many of whose major clients were his father’s companies. Max Sloss soon became a partner. In November 1900, with the strong encouragement and financial support of his father, who was a power in California Republican politics,²⁷ Sloss was elected judge of the San Francisco Superior Court.

Early in 1906, Sloss received a call from California Governor George C. Pardee offering him a seat on the California Supreme Court. Sloss was only thirty-six years old at the time of this appointment, one of the youngest justices to ever serve on the California Supreme Court. The press across the state complimented the governor on his selection of a man of “spotless integrity,”

²⁶ Irena Narell, *Our City: The Jews of San Francisco* (Howell North Books, 1981), 87–95.

²⁷ Narell, *Our City*, 205.

“sound judgment,” and “sternly righteous decisions,” who “possessed the confidence of the bar.”²⁸

Max Sloss was a judge who, according to his son Frank, wrote 583 careful, lucid opinions and participated in more than 1,800 other cases²⁹ that dealt with every facet of state law. In his judicial opinions, Judge Sloss was a gifted legal stylist, who greatly appreciated and admired the epigrams of Supreme Court Justice Oliver Wendell Holmes, Jr., and the literary elegance of Benjamin Cardozo, then the Chief Judge of the New York Court of Appeals³⁰ who later in 1932 would be appointed to the U.S. Supreme Court.

Justice Sloss was one of the three liberals on the seven-member State Supreme Court. His tenure on the Court spanned liberal Governor Hiram Johnson’s two administrations. Several of Judge Sloss’s most famous judicial opinions became landmarks in California labor and water rights laws. Judge Sloss upheld the passage of the eight-hour working day for women championed by, among others, Hiram Johnson and Louis D. Brandeis. In the historic Supreme Court case of *Constitutionality of the Workman’s Compensation Act—Western Indemnity Co. v. Pillsbury*,³¹ he wrote the judicial opinion approving the validity of the Workman’s Compensation Act despite a contrary decision by the New York Court of Appeals, the most prominent and influential state court in the country.

California Governor Hiram Johnson and other progressive advocates of workman’s compensation were delighted with Justice Sloss’s decision, which became one of the most important legal rulings of the progressive era. One of Sloss’s other notable opinions, that of *Title Insurance and Trust Co. v. California Development Co.*, was used by Prof. Zechariah Chafee, Jr. of Harvard Law School to “stimulate the mental processes of generations of students.”³²

In 1910, Justice Sloss had been reelected to a twelve-year term on the Supreme Court but chose to resign in 1919 at the age of fifty. The Sloss resignation and return to private law practice was prompted by a financial disaster involving the Sloss family business enterprises. For years, his judicial salary had been supplemented by income from shares in the Alaska Commercial Company and other Sloss family enterprises. Then, an investment by his brothers and brother-in-law in the Northern Electric Company, an interurban

²⁸ Narell, *Our City*, 205.

²⁹ Frank H. Sloss, “M. C. Sloss and the California Supreme Court,” *California Law Review* 46, no. 5 (December 1958): 719.

³⁰ Sloss, “M. C. Sloss and the California Supreme Court,” 720.

³¹ Sloss, “M. C. Sloss and the California Supreme Court,” 728–29.

³² Sloss, “M. C. Sloss and the California Supreme Court,” 729–31; and Narell, *Our City*, 206.

electric system in the Sacramento Valley, substantially brought down the Sloss family income, leaving Justice Sloss with insufficient income to support his family. With his children getting ready for college, Sloss realized that he could no longer count on an independent income to supplement his judicial salary, and he decided to return to private law practice.

For the next twenty-five years, Max Sloss practiced law, in partnership with two of his sons who had also graduated from Harvard Law School, while devoting much time to leadership in civic affairs as well as leadership in the San Francisco Jewish community. A specialist in water law and a celebrated labor arbitrator, Sloss was often called as a consultant to other lawyers on an appellate level and twice appeared before the United States Supreme Court. In 1933, Sloss headed the Citizens' Emergency Relief Commission created because of the Great Depression. During World War II, he was chair of the National War Labor Board's regional advisory committee. In active practice for twenty-five years after his retirement from the Supreme Court, he continued to come to the office daily until his final illness at age eighty-seven.

Sloss was a member of the American Law Institute and a longtime governor of both the California State Bar and the San Francisco Bar, an officer of the San Francisco Public Library and for thirty years, from 1920 to 1950, a trustee of Stanford University. The Stanford University Law School faculty lounge bears Sloss's name.

Devoted to Jewish charity work, Max Sloss served as president of the Pacific Hebrew Orphan Society for ten years, a director of Mount Zion Hospital, a long-time leader of the American Jewish Committee, and a member of the Board of Governors of the Federation of Jewish Charities. In 1910, when thirteen San Francisco Jewish communal agencies came under one umbrella—the Federation of Jewish Charities—Justice Sloss was elected its first president, a position he held for several years.

Justice Sloss's wife, Hattie Hecht Sloss, played an even more influential role in San Francisco's Jewish communal and charity work than did her husband. Over the years, "she established a long record of personal accomplishments and public service."³³ Hattie Sloss, who was born and raised in Boston, met Max when he was a student at Harvard Law School. They married in 1899. Her distinguished career in San Francisco Jewish philanthropy and public service was launched shortly after the couple's Boston wedding. A founder of San Francisco's National Council of Jewish Women, the first president of San Francisco Women's Zionist organization, Hadassah, an active board member

³³ Narell, *Our City*, 211.

of Temple Emanu-El, and a founder of the state's Social Welfare Commission, as well as of the San Francisco Symphony and Opera Associations, "she could juggle a dozen hats simultaneously."³⁴ When Hattie was nearly sixty-five, "she embarked on a radio career and for fifteen years conducted a lively weekly broadcast, "Know Your Symphony," an extemporaneous introduction to great music. Long-term president of the Browning Society, she compiled an authoritative anthology of Victorian poetry. In 1940 she became the first woman in the United States to head a federal grand jury.³⁵ In the case of Justice Max Sloss, both husband and wife achieved notable careers.

Mathew O. Tobriner (1904–1982)

Matthew O. Tobriner, the fourth Jewish justice to serve on the California Supreme Court and among the most eminent, was born in San Francisco in 1904. Tobriner was educated at Lowell High School, where he was a member of the famed Lowell Forensic Society, the country's oldest high school debate team, of which future U.S. Supreme Court Justice Stephen G. Breyer would be a member twenty years later. After graduating from Stanford University in 1924, from which he received B.A. and M.A. degrees, Tobriner graduated from Harvard Law School in 1927, and subsequently was awarded a Doctor of Juridical Science degree from the University of California at Berkeley in 1932.

After graduating from law school, Tobriner entered private law practice, where he specialized in labor law, representing the American Federation of Labor and other labor unions for over twenty-five years. During his years in private practice, Tobriner was active in Democratic Party politics, playing an active part in formulating and implementing the policies of FDR's New Deal. In 1948, he was state vice-chair of President Harry Truman's reelection campaign. In May 1950, he was Northern California chair of the campaign of Congresswoman Helen Gahagan Douglas for the United States Senate. This race she famously lost to Congressman Richard M. Nixon, who accused Douglas of being a Communist.³⁶ Nixon's victory in this race was, of course, his major step on the road to the vice presidency and subsequently to the White House. During these years Tobriner became a friend and close political ally of Edmund G. "Pat" Brown, the Democrat Party's state attorney general who in 1958 was elected governor of California. This relationship had dividends.

In 1959, the California governor appointed Tobriner as an associate justice of the California Court of Appeals for the First District. And in 1962,

³⁴ Narell, *Our City*, 211.

³⁵ Narell, *Our City*, 211.

³⁶ "Tobriner to Help Douglas Campaign," *Madera Tribune*, May 4, 1950.

Governor Brown elevated Tobriner to Associate Justice of the Supreme Court, where he served until his retirement in 1982.

During his twenty-year tenure on the California Supreme Court, Justice Tobriner was a leader of the Court's liberal majority and notable for several decisions he authored in the areas of constitutional law, civil rights, and other related areas. An unabashed liberal and judicial activist throughout his judicial career, Tobriner believed that the courts must reflect changes in society. "If that's why I am a liberal," he once told a questioner, "Then I'm proud."³⁷ He believed, as he often stated, that judges must accommodate the law to an ever-changing society. His political stance won acclaim from liberals, and his carefully written judicial opinions won praise from scholars.

For example, Tobriner played a key role in extending the free use of hallucinogens in certain religious ceremonies. In 1964, Tobriner wrote the majority opinion in the case of *People v. Woody*, overturning a conviction for peyote use by a Native American Church member on First Amendment grounds. Weighing the asserted compelling state interest in controlling drug use with the Free Exercise Clause, Tobriner found that the balance favored constitutional protection of the peyote use and practice, stating:

The right to free religious expression embodies a precious heritage of our history. In a mass society, which presses at every point toward conformity, the protection of self-expression, however unique, of the individual and the group becomes ever more important. The varied current of the subcultures that flow into the mainstream of our national life give it depth and beauty. We preserve a greater value than an ancient tradition when we protect the rights of the Indians who honestly practiced an old religion in using peyote one night at a meeting in a desert hogan near Needles, California.³⁸

Tobriner was also forward-looking in LGBT matters. In 1966,³⁹ Justice Tobriner explained in *Morrison v. State Board of Education* that gay teachers are entitled to employment in public schools absent a "showing that an individual's homosexuality renders him unfit for the job from which he has been excluded."⁴⁰

In 1976, Tobriner wrote the majority decision in the case of *Tarasoff v. Regents of the University of California*, in which the Supreme Court of California held that mental health professionals have a duty to protect individuals who

³⁷ "California Supreme Court Justice Mathew Tobriner Dead at 78," *UPI*, April 7, 1982.

³⁸ *People v. Woody*, 394 P.2d 813 (Cal. 1964).

³⁹ *Tarasoff v. Regents of the University of California*, 17 Cal.3d 425, 551, P.2d 334, 131 Cal. Rptr. 14 (1976).

⁴⁰ *Morrison v. State Board of Education*, 1 Cal.3d 214 (1966).

are being threatened with bodily harm by a patient. Justice Tobriner famously wrote, “the confidential character of patient-psychotherapist communications must yield to the extent that disclosure is essential to avert danger to others. The protective privilege ends where the public peril begins.”⁴¹

Tobriner also played his part in the sexual revolution of the 1960s and 1970s. In 1976, he authored the majority opinion in the landmark case of *Marvin v. Marvin*, which held that implied contracts may be found in nonmarital relationships. In other words, unmarried couples could assert the same rights as married couples to share earnings or property accumulated while they were living together. Thus, if a couple lives together for a substantial amount of time, one of the parties may be required to make payments to the other upon the dissolution of the relationship—commonly called “palimony.” This landmark judicial decision authored by Tobriner, requiring payment by one member of an unmarried couple, entered the term “palimony” into legal discourse.

As Tobriner wrote in his decision, “The fact that a man and a woman live together without marriage, and engage in a sexual relationship, does not in itself invalidate agreements between them relating to their earnings, property or expenses.”⁴²

The famous Miranda rights also began in Tobriner’s courtroom. Tobriner’s 1965 opinion in the case of *People v. Dorado*,⁴³ ruling that a person accused of a crime must be advised by the police of a right to remain silent and to obtain counsel, blazed the trail that the U.S. Supreme Court was to follow in its landmark decision in the 1966 case of *Miranda v. Arizona*.⁴⁴

Several years later, Tobriner wrote the California Supreme Court’s majority opinion that criminal suspects are entitled to a lawyer at police lineups before they are formally charged. This ruling, like many others of the court, extended a defendant’s right to counsel beyond the requirements set down by the U.S. Supreme Court.⁴⁵

Tobriner achieved perhaps his greatest fame over the issue of affirmative action, as the author of the only dissenting opinion in the well-known Allan Bakke case. In the controversial decision, Justice Tobriner was the lone dissenter in the court’s landmark 1976 decision upholding the contention of a

⁴¹ *Tarasoff v. Regents of the University of California*.

⁴² “Retired Justice Tobriner, 78, Dies in San Francisco,” *Los Angeles Times*, April 8, 1972; this case is discussed in considerable detail in Elizabeth H. Pleck’s book *Not Just Roommates: Cohabitation After the Sexual Revolution* (University of Chicago Press, 2012), 153.

⁴³ *People v. Dorado*, 62 Cal.2d 338, 42 Cal. Rptr. 169, 398 P.2d 361 (Cal. 1965).

⁴⁴ *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁴⁵ “Tobriner: A Formidable Record,” *Los Angeles Times*, December 17, 1981, p. F10.

white medical school applicant that he had unfairly been denied admission to the University of California Medical School at Davis, in favor of less qualified minority group applicants. Every other member of the Court opposed direct quotas, but not Tobriner. To Tobriner, the racial classifications that the UC Davis Medical School used to ensure that minorities made up a fixed 16 percent quota of admissions were not “invidious” but rather were “benign”—and thus constitutionally acceptable.⁴⁶

The U.S. Supreme Court upheld the California high court’s ruling, but Tobriner was not entirely rebuffed. The U.S. Supreme Court also granted Tobriner’s contention that race could be considered as one of many other factors in deciding college admissions. Throughout his judicial career, Tobriner remained a strong proponent of affirmative action overall.⁴⁷

In another vigorously argued issue during his last year on the court, Justice Tobriner wrote a notable majority opinion that required the state of California to pay for abortions sought by low-income women under the Medi-Cal program.⁴⁸

During his twenty-year tenure on the California Supreme Court, several of Justice Tobriner’s law clerks became renowned. These included Jerry Brown, the son of Governor Pat Brown, who had appointed Tobriner to the Court in 1962 and who was still governor when the younger Brown clerked for Tobriner. Jerry Brown would later serve as governor of California from 1975 to 1983, as attorney general of California from 2007 to 2011, and then again as governor from 2011 to 2019.

Another of Tobriner’s law clerks, Laurence Tribe, served as a law clerk for U.S. Supreme Court Justice Potter Stewart after completing his clerkship with Justice Tobriner in 1967, and in 1968 was appointed to the Harvard Law School faculty, where he taught for over fifty years until his retirement in 2021. Tribe, who is considered to have been the preeminent constitutional law authority in the country, received tenure at the age of thirty in 1972, the youngest tenured faculty member in the history of Harvard Law School, and argued thirty-six cases before the United States Supreme Court. Among his many books and articles on constitutional law, Tribe is best known for his widely cited *Treatise of American Constitutional Law*, first published in 1978, which is considered to be the most influential book ever published in the field. He has also been ubiquitous as a commentator on legal affairs appearing on cable television.

⁴⁶ *Bakke v. Regents of the University of California*, 18 Cal.3d 34, 132 Cal. Rptr. 680, 553 P2d 1152 (1976).

⁴⁷ “Tobriner: A Formidable Record,” p. F10; and Philip Hager, “Tobriner to Retire from State High Court,” *Los Angeles Times*, December 15, 1981, p. A6.

⁴⁸ “Tobriner: A Formidable Record”; and Philip Hager, “Tobriner to Retire from State High Court,” p. A6.

In a historic ranking of California’s Supreme Court justices in 1979 by eighteen legal experts, ranging from liberal to conservative, Mathew Tobriner was overwhelmingly ranked as the most able member of the Court. Some ranked him as among the all-time great members of the Court.⁴⁹ Professor Laurence Tribe, the influential authority on constitutional law at Harvard Law School, has called him “the nation’s most outstanding state court judge,”⁵⁰ an assessment with which many other legal scholars would agree.

In both professional and personal terms, Justice Tobriner has often been praised as an incomparable judge and exceptional human being, whose judicial decisions have influenced and shaped California law for many decades. But as Rose Elizabeth Bird, a close friend of Tobriner and Chief Justice of the California Supreme Court during the last years of Justice Tobriner’s tenure has noted, as noteworthy as his achievements as a judge and legal scholar, and his enormous contributions to California law and legal history were, “they do not begin to take the full measure of the man. That measure lies in the quality of his spirit, and it was there that Mat Tobriner was unique.”⁵¹ As Chief Justice Bird remarked at the time of Tobriner’s death in 1982, “Justice Tobriner was a man of uncommon grace. He was unselfish and forgiving. He believed deeply in the ultimate goodness of everyone. There was a harmony to his life that sprang from his sensitivity to both the abstractions of the law and the needs of people. He saw life as a delicate balancing of order and liberty, mercy and justice, passion, and compassion.”⁵²

As Harvard Law School professor Laurence Tribe also reflected after Justice Tobriner’s death,

While his passions ran only to causes and cases—to principles but not the parties—his compassion was altogether human, personal, and particular. To write of the disadvantaged and their rights was for Mat no exercise in abstraction; it was an expression of his inner self. A man of station, even privilege, he clearly felt more than almost anyone else I have ever known what it must mean to be powerless and dispossessed. It showed in the way he treated those who worked for him, or for his court, no less than in the way he treated those who argued before him and those they represented—or failed to represent. Of all the people I have ever met, only

⁴⁹ “Experts Rank Tobriner as Most Able Justice,” *Los Angeles Times*, July 29, 1979.

⁵⁰ Laurence H. Tribe, “Remembering Mathew Tobriner,” *California Law Review* 70 (1982): 876–77.

⁵¹ Rose Elizabeth Bird, “Justice Mathew O. Tobriner—A Man of Uncommon Grace,” *California Legal Review* 70 (1982): 871.

⁵² Bird, “Justice Mathew O. Tobriner.”

my own father seemed to me as totally gentle, as wholly without guile, as completely unmarred by meanness.⁵³

Like Supreme Court Justice Max Sloss before him, Justice Tobriner was active in the San Francisco Jewish community. A member of Temple Emanuel, San Francisco's largest synagogue, Tobriner was also, like Sloss, an active member of San Francisco's Concordia-Argonaut Club, the prestigious Jewish club founded by Levi Straus and others in the nineteenth century when Jews were not accepted as members of the city's exclusive gentile clubs. Tobriner presided over many of the city's Jewish charities and was sought after as the officiator at the wedding ceremonies of leaders of the Jewish community. Notable among these, Justice Tobriner officiated at the much-publicized wedding of Barbara Branstein, descendant of two of San Francisco's most illustrious pioneer Jewish families, both the Haas (Levi Strauss) and Branstein (MJB coffee) families, at the historic Haas-Lilienthal House in San Francisco.

Stanley Mosk (1912–2001)

The fifth Jewish justice of the California Supreme Court, Stanley Mosk, a lifelong Democrat and self-described liberal, was appointed to the California Supreme Court by Governor Edmund G. "Pat" Brown in 1964. He served there until his death in 2001, a thirty-seven-year tenure that made him the longest-serving Supreme Court justice in California history. Upon his appointment in 1964, for the first time since the Gold Rush days of the 1850s, two Jewish justices—Tobriner and now Mosk—served on the state Supreme Court simultaneously. During his tenure, when he wrote landmark decisions on civil rights, free speech, and criminal justice, Mosk wrote 1,500 judicial opinions, another record in California legal history.⁵⁴ As California's state attorney general during the late 1950s and early 1960s, he established the office's civil rights division and helped to persuade the Professional Golfers Association to drop its "whites only" rule.⁵⁵

When Mosk graduated from the University of Chicago in 1933, it was possible to use the last year of a bachelor's degree as the first year of a three-year law degree program.⁵⁶ After earning his law degree in 1935, Mosk opened a solo law practice.

⁵³ Tribe, "Remembering Mathew Tobriner."

⁵⁴ "Stanley Mosk; Justice on Calif. Supreme Court," *Washington Post*, June 21, 2001, p. C1.

⁵⁵ "Stanley Mosk."

⁵⁶ Jacqueline R. Braitman and Gerald F. Uelman, *Stanley Mosk: A Life in the Center of California Politics and Justice* (McFarland & Co., 2012), 23.

While practicing law, Mosk occasionally assisted Democratic politician Culbert Olson. When Olson was elected governor of California in 1938, Mosk was appointed his executive secretary and legal adviser the following year. Mosk handled Governor Olson's pardon of labor activist Tom Mooney, "ending a quest for justice that bounced back and forth between the California Supreme Court and the United States Supreme Court for many years."⁵⁷ After Olson lost the 1942 election to Republican Earl Warren, Olson made a lame-duck appointment of Mosk to the Los Angeles County Superior Court. At the age of thirty-one, Mosk became the youngest justice in the state.⁵⁸

Judge Mosk's rulings on the Superior Court bench included many noteworthy cases. Several of Justice Mosk's decisions preceded similar rulings by the U.S. Supreme Court. Two years before the Supreme Court struck down racially restrictive housing covenants in the historic case of *Shelley v. Kraemer* in 1947,⁵⁹ Judge Mosk upheld the transfer of a Hancock Park home to a black man, ruling that a racially restrictive covenant was unconstitutional.

In the 1950s, Judge Mosk presided over the high-profile trial of a law student accused of murdering the wealthy Bel Air matron who had hired him as a houseboy.⁶⁰ John Crooker was convicted and sentenced to death by Judge Mosk. Eight years before the U.S. Supreme Court's (historic) *Miranda v. Arizona* decision,⁶¹ in *Crooker v. California* the Supreme Court rejected Crooker's claim that his confession should have been suppressed because police did not advise him of his constitutional rights.⁶² In a five-to-four decision, the Superior Court ruled that anyone who made it through the first year at Southwestern Law School should know what his constitutional rights were.⁶³ Crooker's death sentence was the first one commuted by Governor Pat Brown. Governor Brown later said that the main reason he commuted Crooker's death sentence was a note from Stanley Mosk, saying he would not object to a commutation of the death sentence to life imprisonment. Crooker was later released on parole and became a model citizen. In later years Justice Mosk wrote of the "great delight" he felt when he received an annual Christmas card from John Crooker.⁶⁴

In 1958, Stanley Mosk ran for attorney general of California against a formidable Republican opponent, Patrick Hillings, who was a protégé of

⁵⁷ Gerald F. Uelman, "Tribute to Justice Stanley Mosk," *Albany Law Review* 65, no. 4 (2002): 857.

⁵⁸ "Olson Has Number of Appointments to Make," *San Bernardino Sun*, November 12, 1942, p. 5; and "L.A. Judges Named," *San Bernardino Sun*, January 3, 1943, p. 12.

⁵⁹ *Shelley v. Kraemer*, 334 U.S. 1 (1948).

⁶⁰ *People v. Crooker*, 303 P.2d 753, 755 (Cal. 1956).

⁶¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁶² *Crooker v. California*, 357 U.S., 433, 434 (1958).

⁶³ *Crooker v. California*, 440-41.

⁶⁴ Uelman, "Tribute to Stanley Mosk," 9.

Richard M. Nixon. Hillings had actually succeeded Nixon in the House of Representatives when Nixon won election to the Senate in 1950. In his race for attorney general, Mosk received the most votes for the post not only in the State of California but in the entire United States, defeating Hillings by 1,135,000 votes. In his 1958 attorney-general victory, Mosk became the first Jew elected to statewide office in California since the days of the Gold Rush.⁶⁵

During his six-year tenure as attorney general, Mosk established both constitutional and consumers' rights sections within the state's Department of Justice, actively defended civil rights, and restored the enforcement of California's antitrust law. Another of Mosk's notable achievements as attorney general was his successful battle to integrate the Los Angeles Open Golf Tournament and change PGA bylaws to allow black golfers to compete. Thus, as one legal scholar has noted, "it could be said that Tiger Woods is part of Justice Mosk's legacy of justice!"⁶⁶

During the 1950s, Attorney General Mosk was selected as a Democratic Party National Committeeman from California, so Mosk's position became especially important in national politics. In the 1960 presidential race between Kennedy and Nixon, in which California was a key battleground state, Mosk developed a warm friendship with Kennedy, for whom he actively campaigned. Kennedy visited California frequently in 1960, and whenever he came, he was accompanied on the campaign trail by Mosk. The Mosks held fundraisers for Kennedy, and Mosk, it was said, "always attractive to women, held his own in the presence of the handsome and charismatic Kennedy." One of Mosk's friends sent a note after one fundraiser, saying, "It was a joy to see you and Mrs. Mosk at the Kennedy reception," then adding that his wife, "confided in me that she thought our Attorney General had a lot more personality than the honored guest!"⁶⁷

Mosk's turn at the California Supreme Court came in 1964, when Governor Pat Brown appointed Attorney General Mosk to it, beginning his thirty-seven-year tenure that broke the Court's record for longevity. Mosk's term was not only long but indicative of great versatility. While legal scholars celebrate many great judges for their influence in one field of law or another, Stanley Mosk was a master of every legal field. Like others before him, he was also prescient. Many of his most notable judicial opinions anticipated and inspired later decisions by the U.S. Supreme Court. In *People v. Wheeler*, in 1978,

⁶⁵ Braitman and Uelman, *Stanley Mosk*, 85, 87.

⁶⁶ Braitman and Uelman, *Stanley Mosk*, 10.

⁶⁷ Braitman and Uelman, *Stanley Mosk*, 112.

for example, Justice Mosk ruled to ban racial discrimination in jury selection, eight years before the U.S. Supreme Court made the same judicial decision.⁶⁸

Mosk's most notable and controversial opinion was in the historic case of *Bakke v. Regents of the University of California*. During the 1970s, few issues generated more widespread legal debate or more difficult legal problems than that of the idea of special preference for "minority groups" in higher education. In the mid-1970s the various complex issues in the theory and practice of preferential treatment and what was known in some quarters as "reverse discrimination" and in others as "affirmative action" in university admissions were focused dramatically on the decision of the California Supreme Court in the case of Allan Bakke and his applications to medical school.⁶⁹

In 1973 and again in 1974 Bakke, a white, thirty-six-year-old civil engineer from San Francisco, had applied for admission to the medical school on the Davis campus of the University of California. Both times he had been rejected. And yet, during those same years the university had accepted "minority group" students, who were less qualified than Bakke, under a special program that applied separate standards of admissions for them.

Following his second rejection by the University of California at Davis, Bakke filed suit against the university, claiming that he was denied admission only because he was white and that the special admission program for minorities violated the U.S. and California constitutions. In March of 1976, the case was argued before the Supreme Court of California. It was widely assumed that because the California Supreme Court was commonly thought to be the most liberal appellate court in the country, that it would necessarily rule against Bakke and in favor of the UC Davis Medical School's special admission program for minorities. However, on September 16, 1976, in a six-to-one majority decision written by Justice Mosk, the California Supreme Court ruled that the medical school's special admissions program for minorities was unconstitutional, should be abolished, and subsequently Bakke should be admitted to the Davis medical school.⁷⁰

Mosk's majority opinion focused on the rights of Allan Bakke as an individual. Directly addressing Bakke's claim that he was excluded because he was white, and that the special admissions program was unconstitutional for that reason, Mosk wrote:

It is plain that the special admissions program denies admission to

⁶⁸ *People v. Wheeler*, 22 Cal.3d 258 (1978).

⁶⁹ John Bunzel, "Bakke vs. University of California," *Commentary*, March 1977.

⁷⁰ Bunzel, "Bakke."

some white applicants solely because of their race. Of the one hundred admission opportunities available in each year's class, sixteen are set aside for disadvantaged minorities, and the committee admits applicants who fall into this category until these sixteen places are filled. Since the pool of applicants available in any year is limited, it is obvious that this procedure may result in acceptance of minority students whose qualifications for medical study, under the standards adopted by the University itself, are inferior to those of some white applicants who are rejected.

From this perspective, Justice Mosk found the special admissions program impossible to distinguish from the hated "quota" systems that limited the admission of minorities in the past: While a program can be damned by semantics, it is difficult to avoid considering the University's scheme as a form of education quota system, benevolent in concept perhaps, but a revival of quotas nevertheless. "No college admissions policy in history has been so thoroughly discredited in contemporary times as the use of racial percentages." Mosk wrote.⁷¹ Peter Belton, Mosk's principal staff attorney, attributed Mosk's views in the *Bakke* case to the Justice's "personal experience of being Jewish," and being himself a member of a group subjected to the hated quota system.⁷²

Another burning issue of the day in the 1970s was the prevalence of cults or pseudo-churches that took advantage of or otherwise harmed their members. There were charges that such cults "brainwashed" their victims and stories of frantic parents who employed certain persons who claimed that they could "deprogram" their children. In the case of *Molko v. Holy Spirit Ass'n for the Unification of World Christianity*, the California Supreme Court held in 1988 that religious organizations may be sued for fraud and intentional infliction of emotional distress when they use deception to cause candidates for recruitment to unwittingly expose themselves to brainwashing techniques. It also ruled that the members of the Unification Church who recruited Molko had lied by denying any religious connection to their recruitment pitch and, when they gained his trust, brainwashed him. In the majority opinion written by Justice Mosk regarding tactics religious groups use to attract followers, the Court found that any burden on the free exercise of religion was outweighed by the state's interest in protecting against "fraudulent induction of unconsenting individuals into an atmosphere of coercive persuasion" because many people exposed to brainwashing techniques without their knowledge or consent would develop serious and sometimes irreversible physical and psychiatric disorders up to and including schizophrenia, self-mutilation, and suicide. In Mosk's

⁷¹ Braitman and Uelmen, *Justice Stanley Mosk*, 166–67.

⁷² Braitman and Uelmen, *Justice Stanley Mosk*, 167.

opinion, the Court also held that the plaintiffs, when church members, “were incapable of exercising their own will.”⁷³

Law Professor R. Kent Greenwalt argued against the California Supreme Court’s decision, saying that the religious individuals often subject themselves to conditions that may be psychologically harmful, that the defendants did know the identity of the religious group that they were joining, and that courts might rule differently if a more established religion (he uses the Catholic Church as an example) were involved.⁷⁴

As to the development of his own career, in the mid-1970s Stanley Mosk was second in seniority on the Supreme Court and had long hoped that when there would be a new Democratic governor, he would be appointed Chief Justice. But when Jerry Brown was elected governor in 1974, he first appointed his trusted legal adviser Rose Elizabeth Bird to the post of state Secretary of Agriculture, and then in February 1977 Brown appointed Bird Chief Justice of the Supreme Court. This was a big disappointment to Mosk, who was very bitter about it and would never be close to Chief Justice Bird. In a 1998 oral history interview, Mosk said that while Bird was a bright and articulate lawyer, she was a “terrible administrator” (one of the Chief Justice’s major responsibilities). Mosk also claimed Bird required associate justices to make appointments to talk to her for any reason,⁷⁵ which no other Chief Justice had ever done.

In the mid-1980s, a political crisis arose because the justices of the Supreme Court were deemed to be too liberal, allegedly because they were declining to issue or enforce the death penalty. This was at a time when California politics was moving into a more conservative phase. In 1986, Justice Mosk survived the recall election that swept Chief Justice Rose Bird and two other liberal justices, Joseph Grodin and Cruz Reynoso, from the Court. The justices who took their place cleared the way for the first conservative majority on the California Supreme Court in thirty years. At the time of his death in 2001, Justice Mosk was the only liberal on the seven-member Supreme Court.

In dedicating the 1999 volume of the *Albany Law Review* State Constitutional Commentary to Justice Mosk, the editor of the volume recited the pantheon of great state court judges: Tobriner, Traynor, Cardozo, Fuld, Holmes, Shaw, Cooley, Vanderbilt, and then concluded: “No one currently sitting on one

⁷³ *Molko v. Holy Spirit Assn.*, 46 Cal.3d 1092 (1988).

⁷⁴ R. Kent Greenwalt, “Coercion and Religious Exercises,” in *Challenges to Religious Liberty in the Twenty-First Century*, ed. Gerard V. Bradley (Cambridge University Press, 2012), 54–57.

⁷⁵ Hon. Stanley Mosk, *Oral History Interview* (Berkeley: California State Archives Regional Oral History Office, 1998), 54–55.

of America's state benches is more deserving and more likely to be named alongside them than Stanley Mosk.⁷⁶

More than any other California Jewish Supreme Court Justice, Stanley Mosk was a leader of the Jewish community—in his case the Los Angeles Jewish community. In the months after the end of World War II, Mosk began to immerse himself in the affairs of the Jewish community. Mosk spoke at an emergency conference promoting direct relief to Jews in Poland on behalf of the American Federation for Polish Jews Committee. His never-ending round of Jewish appearances and speeches led to leadership positions in the Anti-Defamation League of B'nai B'rith and the Jewish Federation, and to his heading up fundraising drives on behalf of war-torn Yugoslavia, European Jewry, and Israel. Mosk served as a toastmaster to raise funds for several Jewish causes, especially notably as chair of the American Jewish Congress's salute to Free France at the Los Angeles Philharmonic, attended by more than two thousand people.⁷⁷ During the late 1940s and 1950s, Mosk became “a vocal and visible force in Los Angeles Jewish circles,” and from 1951 to 1957 served as president of the Vista Del Mar Child-Care Service, formerly the Jewish Orphans' Home of Southern California.⁷⁸

From 1956 to 1957, Mosk was also Chairman of the Board of the Los Angeles Jewish Federation, on which he continued to play a leadership role throughout much of his career. The Jewish Federation of Greater Los Angeles was and still is the largest Jewish nonprofit in the Los Angeles area. It identifies and funds social service, educational, and humanitarian needs locally, in Israel, and around the world. Through a network of agencies and programs, the Federation helps alleviate Jewish poverty, provides emergency relief, and supports the greater Los Angeles community. A list of Los Angeles's most influential Jewish professionals include many with whom Stanley Mosk was allied over his lifetime, most of them recognizing Stanley Mosk as the titular head of the diverse Jewish community of Los Angeles.⁷⁹

In addition to his non-Court activities, as his biographers have noted, Mosk had “an almost obsessive preoccupation with sports,”⁸⁰ especially baseball. Indeed, more than any other Supreme Court Justice in California history, Stanley Mosk was a lifelong avid baseball fan. As Peter Belton, the senior attorney on Justice Mosk's staff, has noted, “at 5:04 p.m., on October 17,

⁷⁶ Vincent Martin Bonventre, “Editor's Foreword,” *Albany Law Review* 62 (1999).

⁷⁷ Braitman and Uelman, *Justice Stanley Mosk*, 65.

⁷⁸ Braitman and Uelman, *Justice Stanley Mosk*, 76–77.

⁷⁹ Braitman and Uelman, *Justice Stanley Mosk*, 78.

⁸⁰ Braitman and Uelman, *Justice Stanley Mosk*, 18–19.

1989, when the Loma Prieta earthquake struck, Justice Mosk was sitting in the stands at Candlestick Park waiting for the third game of the 1989 World Series to begin, and he was disappointed when the game was called for such a minor inconvenience as 7.1 on the Richter scale.⁸¹ Also, one little known fact about Justice Mosk's career is that he once thought seriously about applying for the job of commissioner of baseball. Unfortunately for baseball, but fortunately for the Supreme Court, he decided not to apply. There was precedent, of course, in the commanding figure of Judge Kenesaw Mountain Landis, who after seventeen years as a federal district judge, served for twenty-three years as the first commissioner of baseball.⁸²

Justice Mosk's son, Richard, followed in his father's footsteps, pursuing a legal career. He graduated from Stanford University, where he earned three athletic letters, and then Harvard Law School. He served as a member of the staff of the Warren Commission⁸³ and as a law clerk to his father's former colleague, California Supreme Court Justice Mathew Tobriner.

While a litigation partner in the Los Angeles law firm of Mitchell, Silberberg and Knupp, Richard Mosk played a prominent role in civic and judicial life. He was a United States appointed judge on the Iran–United States Claims Tribunal when it was formed in 1981, a chair of the Los Angeles County Commission on Judicial Procedures, a member of the board of directors of the Los Angeles County Law Library, of the California Museum of Science and Industry, and of the Christopher Commission that investigated the Los Angeles Police Department in 1991. In October 2001, Richard Mosk was appointed an associate justice of the California Courts of Appeal, Second District, by California Governor Gray Davis, where he served until his death in 2016.⁸⁴

Joseph Grodin (1930–2025)

Joseph Grodin, the sixth Jewish justice to serve on the California Supreme Court, was born in Oakland, California in 1930. His father had immigrated from Lithuania, where his own father and grandfather had been rabbis.⁸⁵ Grodin received his B.A. degree with honors from the University of California at Berkeley in 1951 and his J.D. degree cum laude from Yale Law School in 1954. While a

⁸¹ Peter Belton, "Honoring the Record Service of Justice Stanley Mosk, California Supreme Court," *Albany Law Review* 65, no. 4 (2002): 28.

⁸² Belton, "Honoring the Record Service of Justice Stanley Mosk," 28.

⁸³ Richard M. Mosk, "Truth Was Our Only Client," *Stanford Magazine*, November–December 2013.

⁸⁴ "Richard M. Mosk Dies at 76: California Court of Appeals Justice and Warren Commission Staffer," *Los Angeles Times*, April 20, 2016.

⁸⁵ "Joseph R. Grodin, Professor of Law and California Supreme Court Justice," *Oral History Interview*, conducted by Leah McGarrigle (Berkeley: Regional Oral History Office, The Bancroft Library, University of California, 2004), p. 1.

senior in high school, Grodin had become involved in a student group called the Western States Jewish Youth Conference. As part of its educational activities, after graduation he attended a six-week summer program in Jewish history and leadership at the Brandeis Camp in Southern California. As Grodin would later recall, “Israel had just recently become a state, and Brandeis Camp had a pro-Israel, pro-Zionist flavor to it,” with which he felt especially comfortable; as he wrote, “being identified with Israel was a great thing.”⁸⁶ While on the Supreme Court, and later in his career, Grodin (like Stanley Mosk) was a Jewish leader publicly committed to the State of Israel.

After graduating from Berkeley, Grodin had intended to enroll in a Ph.D. program in political economy at Harvard, and after that to go to law school. But his parents suggested that he first meet with a family friend, Monroe Freedman, who was a prominent attorney in San Francisco. When Freedman heard that Grodin was interested in labor law and history, he suggested that Grodin meet with his good friend Matthew Tobriner, another eminent San Francisco attorney who specialized in labor law. At their meeting, as Grodin would later recall, Tobriner advised him that instead of going to graduate school at Harvard, “you ought to go to law school and you ought to study labor law. Then you ought to come here after your first year and we’ll put you to work” in our firm.⁸⁷ In a decision that would change his life, Grodin followed Tobriner’s advice, applied to and entered Yale Law School. He spent his summers as an intern in San Francisco in the Tobriner law firm and upon graduation from Yale Law, began practicing law in the firm on a full-time basis. Until Tobriner’s death in 1982, he remained Grodin’s mentor and close friend throughout Grodin’s own distinguished legal and judicial career that would culminate in Grodin’s appointment to the California Supreme Court, shortly before Tobriner’s own retirement from it.

After graduating from Yale Law School, Grodin traveled to England on a Fulbright grant, where he earned a Ph.D. in labor law and labor relations from the London School of Economics. Returning to San Francisco, he practiced law full-time in the Tobriner firm, specializing in labor law and working pro bono in a variety of civil rights and civil liberties cases. His prominent clients included labor union boss David Dubinsky.

Between 1972 and 1979, Grodin taught labor law part-time at the University of California, Hastings College of Law, and served as a member of the California Agricultural Labor Relations Board. The Board had been

⁸⁶ “Joseph R. Grodin,” *Oral History Interview*, p. 17.

⁸⁷ “Joseph R. Grodin,” *Oral History Interview*, p. 19.

created in 1975 at the urging of California Secretary of Agriculture Rose Bird, who would subsequently serve as Chief Justice of the California Supreme Court, to help farm workers unionize and bargain with California growers. Grodin was described as the intellectual leader of the Board, which was the first of its kind in the nation and was tasked with resolving high-profile conflicts between agricultural growers and workers.

Grodin had been appointed to the agricultural board by California Governor Jerry Brown, also a Yale Law School graduate who had been a law clerk for Justice Tobriner, who had strongly recommended Grodin's appointment. In July 1979, Brown appointed Grodin to the California Court of Appeals, and in 1981 Brown elevated Grodin to presiding over the court. In 1981, while serving as presiding justice, Grodin authored a landmark judicial decision in the case of *Pugh v. See's Candy*.⁸⁸

The defendant employer in this case, See's Candies, Inc., was in the business of manufacturing fresh candy at its plants in Los Angeles and South San Francisco and marketing the candy through its own retail outlets. After thirty-two years of employment with See's, in which he worked his way up the corporate ladder from dishwasher to vice-president in charge of production and member of the company's board of directors, Wayne Pugh was fired without any stated reason.

There seemed to be no justification for this action. In 1971, when Pugh had been promoted to vice-president in charge of production and placed upon the board of directors of See's Northern California subsidiary, the promotions had come "in recognition of his accomplishments." In 1972, he had received a gold watch from See's "in appreciation of 31 years of loyal service." Yet in June 1973, without any prior warning, Pugh received a letter from Charles Huggins, the president of See's, notifying Pugh that "I have decided that your services are no longer required by See's Candies." The letter contained no reason for Pugh's firing, no statement of "good cause." Pugh's termination was subsequently announced to the candy manufacturing industry in a letter which, once again, stated no reason. During the entire period of his employment, there had been no formal or written criticism of Pugh's work. No complaints were ever raised at the company's annual meetings, and he was never denied a raise or bonus. He received no notice that there was a problem that needed correction, nor any warning that any disciplinary action was being contemplated.

As a result of all this, Wayne Pugh sued See's, claiming that his job of thirty-two years had been terminated without good cause. Grodin's landmark

⁸⁸ *Pugh v. See's Candies*, 116 Cal. App. 3d 311 (1981).

decision in support of the plaintiff in *Pugh v. See's Candies, Inc.*, which was Grodin's best-known and most influential judicial opinion, established the legal principal central to labor law that a contract of employment may contain an implied-in-fact promise that the employee could be terminated only for good cause.⁸⁹

In December 1982, Brown appointed Grodin to the California Supreme Court, where Grodin served together with Chief Justice Rose Bird as one of the most vocal members of the Court's liberal majority. With the Grodin appointment, Democratic Governor Jerry Brown had appointed all but two of the High Court's justices, a record for any governor in recent California history. Yet Grodin's tenure on the Supreme Court was one of the shortest of any Jewish justice on the Court, because during those years liberals in California politics were becoming increasingly unpopular.

A mechanism existed for dissatisfied voters to remove those members of the Court with whom they disagreed. Under the state's procedures, the Governor appointed justices but the Governor's was not the only opinion that counted. A California Supreme Court Justice had to be confirmed by the electorate in the first election for governor after their appointment. This procedure ultimately became Justice Grodin's and others' downfall. The death penalty in particular became a key issue of disagreement among the electorate, though there were others. Grodin and others were basically voted out of office for being too liberal.

While on the Court, Grodin compiled a solid ultra-liberal record, voting mostly with Chief Justice Rose Bird. He, together with Justice Bird, was a vocal and consistent opponent of the death penalty, despite the fact the death penalty was increasingly popular amongst California voters. When the Court abolished the death penalty in the case of *People v. Anderson* (1972), the electorate restored it with the popular California Proposition 17 (1972) and expanded it with California Proposition 7 (1978). While the court upheld Proposition 17, Chief Justice Rose Bird and Justice Tobriner dissented.⁹⁰

On various death penalty cases, Justice Grodin followed his mentor Justice Tobriner, in stringently opposing the death penalty. Chief Justice Bird, a former public defender, voted to reverse every single one of the more than sixty death penalty cases she heard. In these decisions, she was usually joined by Justice Grodin and Justice Cruz Reynoso. In 1982, she also dissented from allowing a victims' rights amendment to the state constitution, Proposition 8, to even

⁸⁹ Joseph Grodin judicial opinion in case of *Pugh v. See's Candies*, 116 Cal. App. 3d 311 (1981), 1–5.

⁹⁰ *People v. Frierson*, 599 P.2d 587, 25 Cal.3d 142, 158 Cal. Rptr. 281 (1979).

appear on the ballot.⁹¹ After Proposition 8 passed, Justice Grodin dissented along with Chief Justice Bird when a bare majority of the Supreme Court upheld the proposition.⁹² Grodin joined Chief Justice Bird and the Court's liberal majority when it granted the American Federation of Labor's 1984 original petition to block a balanced budget amendment proposition from appearing on the ballot.⁹³

From the time of Grodin's appointment to the bench in December 1982 until 1986, the liberal majority on the Court, which always included Chief Justice Bird, Justice Grodin, and Justice Cruz Reynoso, was frequently attacked for its various judicial rulings in general as being "partisan" and "overly political."⁹⁴

As we have seen, California Supreme Court justices must be confirmed by the electorate at the first election for governor after their appointment. No incumbent governor had been defeated since 1926.⁹⁵ Nonetheless, Chief Justice Rose Bird was almost defeated in the 1978 general election when only 51.7 percent of voters supported her.

In 1982, newly elected Republican Governor George Deukmejian, who as Attorney General had voted to approve Joseph Grodin's appointment to both the state Appeals Court and Supreme Court, supported a Republican movement to remove Bird, Grodin, and the other liberal justices from the Court, based primarily on their judicial rulings regarding redistricting, tax reform, ballot propositions, and especially the death penalty. Capitalizing on moral panic over California's crack epidemic, and the California electorate's intense dislike of California Governor Jerry Brown, Governor Deukmejian began a campaign to recall "Jerry's Justices," including Bird and Grodin, by labeling them soft on crime, and overly political in their liberal judicial rulings.

At the same time, California prosecutors joined Deukmejian's campaign, publicizing the fact that there had been zero executions since the electorate restored the death penalty in 1978, and published a white paper attacking the liberal justices appointed by Jerry Brown as biased in favor of criminal defendants.

Grodin, who had served as California treasurer of Eugene McCarthy's presidential campaign in 1968, was considered, together with Chief Justice

⁹¹ *Brosnahan v. Brown*, 651 P.2d 274, 32 Cal.3d 236, 186 Cal. Rptr. 30 (1982).

⁹² *People v. Castro*, 696 P.2d 111, 38 Cal.3d 301, 211 Cal. Rptr. 719 (1985).

⁹³ *American Federation of Labor v. Eu*, 686 P.2d 609, 36 Cal.3d 687, 206 Cal. Rptr. 89 (1984).

⁹⁴ Bill Blum, "Toward a Radical Middle, Has a Great Court Become Mediocre?," *ABA Journal*, January 1991, p. 52.

⁹⁵ Gerald F. Uelmen, *Symposium: California Judicial Retention Elections*, *Santa Clara Law Review* 28 (1988): 333.

Rose Bird, one of the two most liberal justices on the California Court. Republican opponents outspent him. He also became hugely unpopular because of a campaign of negative television attack ads highlighting the victims in murder sentences he had overturned. Grodin was thus removed by the California electorate at his first retention election in 1986.⁹⁶ Grodin, who needed 50 percent of the vote to remain on the Court, was supported by only 43.4 percent of the voters, while Justice Cruz Reynoso was supported by 39.8 percent, and Chief Justice Rose Bird by 33.8 percent. Governor Deukmejian, who had won reelection in a surprise 61 percent to 37 percent landslide, was now able to appoint a conservative majority of the court.

After his defeat, Grodin returned to being a law professor at UC Hastings, where he continued to teach until his retirement in 2005. At the same time, he wrote several scholarly books on labor law as well as a memoir of his four years as a State Supreme Court Justice. He also wrote extensively about the need to abolish judicial retention elections. A hiking enthusiast, he coauthored with his daughter a book about hiking in the California Sierra Mountains.

Having had one of the shortest tenures of any of the twentieth-century Jewish justices on the California Supreme Court, Grodin's most enduring legacy was as a law professor and a legal scholar specializing in labor law.

Joshua P. Groban (1973–)

The most recent Jewish California Supreme Court Justice is Joshua P. Groban, who was born in 1973 and appointed to the California Supreme Court by Governor Jerry Brown in November 2018. He grew up in San Diego, where his father was a physician in private practice and later at the Veterans Administration and the University of California San Diego hospital. His father had grown up in the Jewish community of Bensonhurst, Brooklyn, where he learned to speak both Yiddish and English. According to Justice Groban, when a couple of times a year an elderly patient was admitted to the hospital in San Diego who felt more comfortable speaking Yiddish than English, the elder Dr. Groban would be called on to translate.⁹⁷

Groban's mother, who was a member of the Del Mar City Council, also had a job as a social worker for Jewish Family Services of the San Diego Jewish Federation. Groban's parents were members of San Diego's Temple Beth Am, where Groban became a Bar Mitzvah.

⁹⁶ Bob Gelko, "New Era for High Court Following Defeat of Three Justices," *Associated Press*, November 5, 1986.

⁹⁷ Telephone Interview with California Supreme Court Justice Joshua Groban, September 24, 2024.

Groban received his B.A. degree with honors and distinction from Stanford University in 1995, and his law degree from Harvard Law School in 1998, where he graduated cum laude. In his time as a student at Harvard, Groban took an advanced seminar with Professor Laurence Tribe, with whom he wrote his senior thesis on the First Amendment implications of compelled speech as a form of punishment in the criminal justice system.⁹⁸ Groban considered Tribe to be his law school mentor.

Groban began his legal career as a law clerk to U.S. District Judge William C. Conner in the Southern District of New York from 1998 to 1999. He was in private practice with Paul, Weiss, Rifkind, Wharton, and Garrison in New York City from 1999 to 2005, and with Munger, Tolles and Olson in Los Angeles from 2005 to 2010. Groban served as counsel to Brown's campaign for governor of California in the 2010 California gubernatorial election. Upon Brown's victory, Groban served in his administration as a senior adviser to the governor, advising him on state judicial appointments, litigation, and state legislative issues.⁹⁹ Groban advised Governor Brown on the appointment of over six hundred judges, and received several awards from bar groups for his work on judicial appointments. As Governor Brown's judicial appointments adviser, Groban helped the Brown administration strongly increase the number of minority and LGBTQ judges in the California courts. As Brown's senior adviser, Groban also served as an informal liaison to the Jewish community in California, so he had opportunities to meet with Jewish leaders throughout the state, and the Israeli consuls general in Los Angeles and San Francisco.¹⁰⁰ During this time, Groban also taught State Appellate Practice at the UCLA School of Law. When Groban was named by Governor Brown to the Supreme Court in December 2018, the three-member state Commission on Judicial Appointments unanimously confirmed Groban's appointment after a short hearing in which there was no opposition.

One of Justice Groban's best known and most cited judicial opinions was in *Boermeester v. Ainsley Carry*, in which the California Supreme Court sided with the University of Southern California in a major student misconduct case. The Supreme Court ruled that private California colleges, like USC, do not have to give students accused of sexual misconduct or intimate partner violence the opportunity to cross-examine their accusers during live hearings. The case centered on a football player who was expelled from USC in 2017 after

⁹⁸ Telephone Interview with California Supreme Court Justice Joshua Groban, September 24, 2024.

⁹⁹ Dan Moran, "With Supreme Court Pic, Brown and Dems Eye Another Kind of Majority," *Santa Cruz Sentinel*, November 18, 2018.

¹⁰⁰ Telephone Interview with California Supreme Court Justice Joshua Groban, September 24, 2024.

officials determined that he had violated the campus policy against intimate partner violence. Groban’s judicial opinion reversed a 2020 California Court of Appeals court decision holding that Boermeester was wrongfully denied the opportunity for a live hearing to cross-examine his accuser. Accused students, wrote Groban, have “no absolute right to a live hearing” where they can cross-examine their accusers. Justice Groban wrote in his opinion that colleges must provide accused students with meaningful opportunities to respond to allegations before they are disciplined. However, he wrote, they also need to balance those obligations with ensuring that the process does not retraumatize accusers or dissuade victims from reporting sexual misconduct or intimate partner violence.¹⁰¹

“It is therefore appropriate,” wrote Groban, “to give private universities broad discretion in formulating their disciplinary processes to ensure that they not only provide the accused student a meaningful opportunity to be heard but also embolden victims to report incidents of sexual misconduct or intimate partner violence.”¹⁰²

Another notable case, according to Justice Groban, was *People v. Brown*,¹⁰³ in which the Court held that a statute permitting conviction for “murder by poison” could not be applied to a young mother whose baby had died after drinking breast milk tainted by drugs that the mother had ingested. The Court held that “to prove first degree murder by means of poison, the prosecution must show the defendant deliberately gave the victim poison with the intent to kill the victim or inflict injury likely to cause death.” With Groban’s opinion, the Supreme Court reversed the defendant’s conviction of the first-degree murder of her newborn daughter by poison. Thus, a young woman was spared from spending her life in prison.¹⁰⁴

In his first five years on the Supreme Court, Justice Groban wrote twelve majority opinions in civil cases. Justice Groban has written only one dissent in a civil case—a workers’ compensation case in 2020.

Justice Groban also wrote twenty-one majority opinions in criminal cases, seven of which were death penalty cases.¹⁰⁵

Groban’s appointment in 2018 gave the seven-member Supreme Court a

¹⁰¹ Natalie Schwartz, “California’s Top Court Sides with USC in Student Misconduct Case,” *Los Angeles Times*, August 2, 2023.

¹⁰² Schwartz, “California’s Top Court Sides with USC.”

¹⁰³ *People v. Brown*, 14 Cal.5th 530 (2023).

¹⁰⁴ Telephone Interview with California Supreme Court Joshua Groban, September 24, 2024.

¹⁰⁵ Kirk Jenkins, “Reviewing the Tenure of Justice Joshua Groban,” *California Supreme Court Review*, March 5, 2022, p. 7.G.

majority of Democratic appointees for the first time in decades. And as was the case with Governor Jerry Brown's other three appointees on the state Supreme Court, Groban had no previous judicial experience before his appointment.¹⁰⁶

Groban's appointment to the Court was widely praised by judges and legal scholars alike. California Court of Appeals Justice Arthur Gilbert said Groban "will bring scholarship, practicality and respect for the rule of law to his decisions." Gilbert also said the appointment reflected "the diversity that makes our Supreme Court reflective of the society it serves," noting that the last Jewish justice was Stanley Mosk, who died in 2001, and that Brown's other appointments included the first Asian American justice, and the second Latino and woman on the Court.¹⁰⁷

After his appointment, Groban authored many opinions in which the Court vindicated the rights of the disadvantaged. In addition to the decisions discussed above, he (1) authored an opinion upholding a law prohibiting minors under the age of sixteen from being transferred to adult court (*People v. Cooper*, 14 Cal.5th 735 (2023)); (2) wrote an opinion allowing criminal defendants to be resentenced in cases where the trial court did not clearly indicate at the time of the original sentencing that it understood that the court was permitted to sentence the defendant to a lower sentence (*People v. Salazar*, 15 Cal.5th 416 (2023)); and (3) authored an opinion holding that a youth who had fled El Salvador without his parents to escape gang violence was entitled to have the lower court make certain findings that would assist him in seeking lawful permanent residence in the United States (*Guardianship of Saul H.*, 13 Cal.5th 827 (2022)).

Finally, in July 2020, Groban joined his colleagues in lowering the passing score for the California bar exam, a victory for law school deans who had long hoped the change would raise the number of Black and Latino people practicing law.¹⁰⁸ Thus Groban, a member of a once marginalized and persecuted group, was helping open the door to other marginalized groups to enter the legal profession.

Bernard E. Witkin (1904–1995)

In surveying those Jews who have served on the California Supreme Court throughout its history, there is one figure who was not actually a justice or indeed a judge of any kind but who made such an outstanding contribution to

¹⁰⁶ Maura Dolan, "Newest Supreme Court Nominee Is Confirmed," *Los Angeles Times*, December 22, 2018.

¹⁰⁷ Dolan, "Newest Supreme Court Nominee Is Confirmed."

¹⁰⁸ Maura Dolan, "Easing Path to Pass Bar May Aid Diversity; State Supreme Court's Action on Exam Could Produce More Black and Latino Lawyers," *Los Angeles Times*, July 26, 2020.

the workings of the Court and to California law in general that he deserves to be mentioned.

Bernard E. Witkin, a California legal scholar who was considered to be the preeminent authority on California law, and the world's bestselling author of nonfiction legal books,¹⁰⁹ is best remembered as the author of the monumental 32-volume law treatise, *Summary of California Law*,¹¹⁰ which came to be known as "Witkin," condensing and explaining all the legal rules of the state. This work, and others which he authored, came to have an immense and enduring impact on California law. The main California State Law Library in Sacramento is named after Witkin, as is the Alameda County Law Library. As Witkin's biographer has noted, although "Witkin was never a judge, never held elected office, was never a professor, and except for a short time after graduation, never practiced law," he "arguably had the greatest positive influence on law in California of any person."¹¹¹

Witkin was born in Mt. Holyoke, Massachusetts, and moved with his parents Albert and Paulina, who were Russian-Jewish immigrants from Mogilev, Belarus, to San Francisco in 1909.¹¹² After receiving his B.A. degree from UC Berkeley, Witkin attended Berkeley's Boalt Hall Law School, graduating in 1928. While at law school, Witkin created an outline of notes for all his courses to help him study for the California bar exam and began selling carbon copies of his outlines to fellow law students.

After graduating from law school, Witkin worked briefly for a law firm in San Francisco, then as a law clerk for the California Supreme Court and began teaching a bar review class while continuing to develop and sell his course outlines.¹¹³ In 1936, Witkin developed his outlines into a lengthy hardcover book arranged by subject matter. The current version, the twelfth edition, fills thirteen volumes.¹¹⁴ Witkin was also the author of three other major legal treatises, *California Procedure*, *California Evidence*, and together with 2nd District Court of Appeal Justice Norman Epstein, *California Criminal Law*.

Another of Witkin's notable books is his three-volume set *California Criminal Procedure*. As Herbert L. Packer noted in the *Stanford Law Review*, Witkin "is to be

¹⁰⁹ Myrna Oliver, "Bernard Witkin, Expert on California Law Dies," *Los Angeles Times*, December 28, 1995.

¹¹⁰ John R. Wierzbicki, "A Lawyer by Accident: Bernie Witkin's Early Life and Career," *California Supreme Court Historical Society Review* (Fall/Winter 2020), p. 27.

¹¹¹ Wierzbicki, "A Lawyer by Accident."

¹¹² Wierzbicki, "A Lawyer by Accident," p. 29; and John R. Wierzbicki, Email to David G. Dalin, October 12, 2024.

¹¹³ Harriet Chiang, "Obituary—Bernard E. Witkin," *San Francisco Gate*, January 12, 1996; and Oliver, "Bernard Witkin."

¹¹⁴ Email from retired Justice George Nicholson, editor-in-chief of *California Legal History*, to the author, March 9, 2024.

particularly commended for his painstaking coverage of important substantive areas outside the California Penal Code, notably motor vehicle offenses and narcotics offenses. These crimes bulk large in the work product of the criminal process; they deserve, but do not often get, detailed treatment in books on the criminal law.”¹¹⁵

Overall, it is said that Witkin’s books “are the mainstay of law libraries throughout California and are cited in nearly every legal opinion by a California court.”¹¹⁶ Witkin’s treatises on California law have been cited by California courts in more than fourteen thousand published decisions.¹¹⁷ By the time of Witkin’s death, at the age of ninety-one in 1995, any California law office of significant size had a Witkin library, as did all public law libraries in the state.

What is the background of this remarkable figure? During the 1920s, Witkin was active in political reform politics, publicly campaigning for the progressive candidate Robert LaFollette in the 1924 presidential election, and was also an advocate of legal reform, by playing an active role in the campaign to establish a municipal court in San Francisco. He, together with California Supreme Court Justice Mathew Tobriner, who Witkin had known when both had been university debate opponents, Witkin at UC Berkeley and Tobriner at Stanford University, and future California Governor Edmund G. Brown, were members of the campaign’s speaker’s bureau.¹¹⁸

Witkin was never appointed to a judgeship even though he was considered for one on several occasions. Newspaper accounts portrayed him as a potential nominee for a judgeship, as did the *Independent Journal* of San Rafael, after the death of Justice Jesse W. Carter in 1959.¹¹⁹

Though not himself a Supreme Court justice, Witkin effectively did all the writing for one. Between 1930 and 1939, Witkin, while serving as a law clerk to California Supreme Court Justice William Langdon, wrote all of Justice Langdon’s judicial opinions and legal memoranda for the Court. This was not unusual because in that era law clerks wrote most of the judicial opinions for the justices they served.

In 1940, Witkin became the California Reporter of Decisions. In that role, Witkin standardized the rules of appellate practice and wrote the California Style Manual. In 1977, Witkin published his Manual on Appellate Court

¹¹⁵ Herbert L. Packer, Review of Bernard E. Witkin, *California Criminal Law*, three-volume set (Bender-Moss Co., 1963. vii + 868 pages), in *Stanford Law Review*, July 1964, p. 1143.

¹¹⁶ Packer, Review of *California Criminal Law*.

¹¹⁷ Wierzbicki, “A Lawyer by Accident,” p. 27.

¹¹⁸ Wierzbicki, “A Lawyer by Accident,” p. 31.

¹¹⁹ Wierzbicki, “A Lawyer by Accident,” p. 31.

Opinions, which is still used by all of California's 105 appellate and 7 supreme court justices.

Witkin also served as an influential member of the California Judicial Council for more than thirty years. When he died in 1995, William Vickrey, administrative director of the California courts, called Witkin “the heart, mind and soul of the California justice system.”¹²⁰ After Witkin's death, the California Supreme Court held a memorial for him—the first memorial ever for someone who was never a justice or staff member of the Court.¹²¹

Conclusion

As Jews, the historical experience of having been part of a marginalized, persecuted group was often expressed in service on the California Supreme Court by being much to the liberal side of the spectrum, helping what were seen as disadvantaged groups. This can very much be seen in the careers of Marcus C. Sloss, Mathew O. Tobriner, Stanley Mosk, Joseph Grodin (who effectively lost his seat on the California Supreme Court for being perceived as too liberal), and Joshua P. Groban.

As we have seen, Jews served on the highest levels of the California legal system from the Gold Rush days of the 1850s to the present day. Heydenfeldt and Lyons were among the early Jewish settlers lured to California by the Gold Rush. Marcus Sloss was the youngest justice ever appointed to the Court and in a distinguished career wrote several opinions that became landmarks in California labor and water rights law. Mathew O. Tobriner was ranked as one of the greatest all-time members of the Court and served as a mentor to many distinguished legal figures who came after him. The Hastings College of Law holds an annual lecture named in Tobriner's honor and the Legal Aid Society, which he once headed, gives an annual “Mathew O. Tobriner Public Service Award.”

Stanley Mosk, who served for thirty-seven years, was the longest-serving justice in the history of the California Supreme Court. The Stanley Mosk Courthouse in Los Angeles houses the County Superior Court, and the Stanley Mosk Library and Courts Building can be found on the Capitol Mall in Sacramento.

Joseph Grodin made a name for himself in labor law before losing his seat in a retention election for being seen as too liberal. Joshua P. Groban has taken action to increase racial and ethnic diversity on the Court and in the state's law schools.

¹²⁰ Oliver, “Bernard Witkin.”

¹²¹ Wierzbicki, “A Lawyer by Accident,” p. 27.

It can thus be seen that the contribution of Jews to the California Supreme Court has been substantial and even, in some cases, transformative.

I would like to express my deep appreciation to each of the following individuals, whose sharing of their thoughts and general encouragements have helped make this a better article: Justice George W. Nicholson, Justice Joshua P. Groban, Laurence H. Tribe, Jonathan D. Sarna, John F. Rothmann, John R. Wierzbicki, and especially Miriam Sanua Dalin.

Jewish Justices of the California Supreme Court

*(All photographs courtesy of the California Judicial Center Library,
Special Collections & Archives)*



Chief Justice Henry Lyons, 1849–1852



Solomon Heydenfeldt, 1852–1857



Marcus C. Sloss, 1906–1919



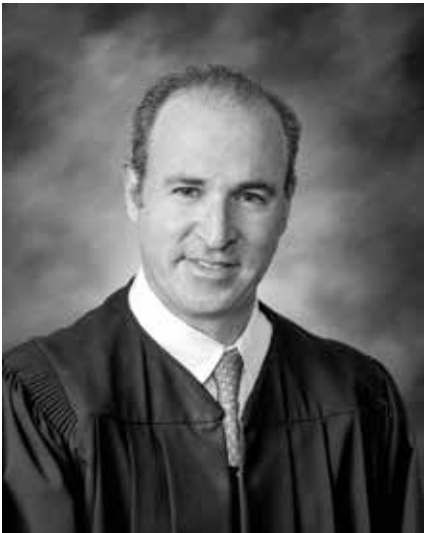
Mathew O. Tobriner, 1962–1982



Stanley Mosk, 1964–2001



Joseph Grodin, 1982–1986



Joshua P. Groban, 2018–present

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