

*A Retrospective of*

# THE COMMITTEE ON HISTORY OF LAW IN CALIFORNIA

## EDITOR'S NOTE

The oral history of Justice Mildred Lillie was the final oral history of a California Supreme Court or Court of Appeal justice to be undertaken by the former State Bar Committee on History of Law in California, and it is the only one that remained unpublished when the committee was retired by the State Bar in 1992. Its publication now provides the occasion for a review of the committee's work.

### *The Early Years*

The committee was first appointed on November 18, 1948 by the State Bar Board of Governors.<sup>1</sup> This occurred during the presidency of F. M. McAuliffe of San Francisco, who was appointed to chair the new committee.<sup>2</sup> The committee's original charge — as reflected in its initial name, the "Committee on the History of the Bench and Bar in California" — was to plan and organize the "publication of a history of the accomplishments and contributions of the profession to the progress of California."<sup>3</sup> Such

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<sup>1</sup> *Journal of the State Bar of California* 34:4 (July–Aug. 1959), 452.

<sup>2</sup> Florence M. McAuliffe became a partner of Heller, Ehrman, White & McAuliffe in 1921.

<sup>3</sup> *Journal of the State Bar of California* 23:6 (Nov.–Dec. 1948), 383.

a charge would have placed the committee's output within the long line of "bench and bar" biographical works published throughout the United States since the late nineteenth century.

By the mid-twentieth century, however, a new direction had also begun to emerge in the United States, namely, the organized study of American legal history in all its aspects. For both practical and theoretical reasons, the committee chose to align itself with this new movement. They recognized that the funding required for a project of statewide scope could more easily be attracted if their topic was not limited to biographies of leading lawyers and judges. In addition, they were attracted to the broader concept of California legal history envisioned by committee member Lawrence A. Harper, who was also a professor of history at UC Berkeley.

In May of 1953, the committee submitted to the Board of Governors an outline prepared by Harper for a comprehensive "Introduction to the History of Law in California."<sup>4</sup> Of its sixteen proposed chapters, only the last deals with personalities in the legal profession. The preceding chapters are grouped into four broad topics: the history of law and administration in "Earlier Eras"; the "Modern Institutional Structure" created by the Constitution and codes — as seen in the functioning of courts, the organized bar, and administrative agencies; the "Development of Modern Legal Concepts" reflected by the history and theory of the law itself; and "Today's Achievements and Tomorrow's Challenges," in which California's position as a national trendsetter is given early recognition.

As both a historian and attorney, the author emphasized the importance of "Introducing the Historian to Legal Data and Sources" commonly used by lawyers but unfamiliar to the academic historian. The outline also provided a wide-reaching guide to published and unpublished materials likely to be useful in researching the proposed work.

The formal transformation of the committee's charge occurred the following year. In August 1954, Chair McAuliffe requested Board of Governors' approval of a change in name to either the "Committee on the History of Law in California" or "Committee on California Legal History."<sup>5</sup> The former name was adopted (with the word "the" before "History" variously

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<sup>4</sup> The complete outline is available in *Journal of the State Bar of California* 29:6 (Nov.–Dec. 1954), 486-495.

<sup>5</sup> *Ibid.*, 486.

present or absent throughout the committee's existence). In his request, he informed the Board that, having previously undertaken the "necessary but tedious work of amassing historical data and bibliographical references," the committee had devoted the current year to "preparing an introduction to the legal history of California." He further explained that the work was necessary because "the need for paying greater attention to legal history has become more apparent," but attorneys "are too busy practicing and scholars shy away because they believe the subject too difficult."<sup>6</sup>

Three years later, McAuliffe announced that the committee's *Introduction and Guide to the History of Law in California* was available in mimeographed form at the State Bar office in San Francisco.<sup>7</sup> The guide itself indicates that its more than 200 pages were being duplicated as quickly as possible for distribution to attendees of the 1956 State Bar Convention.

McAuliffe's 1957 report to the Board of Governors places the work of the committee in national context. He notes the founding of the American Society for Legal History in 1955 and the creation of the *American Journal of Legal History* at Temple University School of Law in January of 1957. He says that this new society and new journal "offer an outlet for the initiated," but that "California seeks to lure others into the field." He then asks assistance from California lawyers in distributing the *Guide*, and offers a brief overview to stimulate interest.<sup>8</sup>

McAuliffe's successor, Presiding Justice A. Frank Bray of the First District Court of Appeal,<sup>9</sup> stated in 1958 that the *Guide's* purpose was "to introduce the scholar to legal data and the lawyer to the standard sources of the social scientist and historian." Like McAuliffe, he noted the growth nationally of interest in legal history, and he proposed a five-year plan for promoting interest in the legal history of California — "not so much to

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<sup>6</sup> Ibid., 485.

<sup>7</sup> This consists of two separate works, the *Introduction* and the *Guide to Material on the History of Law in California* by Lawrence A. Harper, 1956. McAuliffe indicates that "Dr. W. N. Davis, Jr." (State Historian William Newell Davis, Jr.) was coauthor of the *Guide*. Copies are at present available in at least three California libraries: UC Berkeley Law Library, UCLA Law Library, and Stanford University Crown Library.

<sup>8</sup> *Journal of the State Bar of California* 32:4 (July–Aug. 1957), 394.

<sup>9</sup> Bray served from 1951 to 1981 as founding president of the Contra Costa Historical Society.

prepare legal histories as to stimulate others to work in the field.”<sup>10</sup> Thereafter, the committee undertook a single major project of its own.

The final publishing project of the committee’s early years was the preparation of the two-volume *History of the Supreme Court Justices of California*, edited by J. Edward Johnson. Volume I, covering 1850–1900, appeared in 1963, and Volume II, covering 1900–1950, appeared in 1966.<sup>11</sup> Both are large-format, illustrated books with biographies of the Court’s justices from those periods. Most were written by Johnson and had appeared during prior years in the *State Bar Journal*.

The publisher’s introduction to the first volume states that the committee’s manuscript “made it clearly apparent to the publisher that this work was an important literary contribution,” and that it was not a work of fleeting importance, “but one that will endure for generations as an honest appraisal of a group of men who exerted major influence on the development of California jurisprudence.” The introduction to the second volume states that the work resulted from Johnson’s lifelong interest in judicial biographies: “For more than 35 years he has collected clippings, sought family papers and interviewed those who could add to our knowledge of California’s Supreme Court Justices.” A note indicates that the materials collected by Johnson remained in his own possession at that time, but that he had willed them to the Bancroft Library at UC Berkeley (where they are now located).<sup>12</sup>

During the late 1960s and early 1970s, the committee published a series of approximately fifty articles in the *Los Angeles Daily Journal* on historic California courthouses and jails.

### *The Later Years*

The committee’s most recent period of productivity extended from the early to late 1980s. During this period, the committee described its charge

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<sup>10</sup> *Journal of the State Bar of California* 33:4 (July–Aug. 1958), 456–458.

<sup>11</sup> J. Edward Johnson, *History of Supreme Court Justices of California*, vol. I, 1850–1900, San Francisco: Bender-Moss, 1963; vol. II, 1900–1950, San Francisco: Bancroft-Whitney, 1966.

<sup>12</sup> At present, the Bancroft Library catalogue states that its collection of “J. Edward Johnson Papers” consist of 14 cartons of material, not yet arranged for use, and that inquiries “should be directed, in writing, to the Head of the Manuscripts Division.” It also indicates that Johnson’s album of photographs of 53 early Supreme Court justices has been transferred to the Bancroft Pictorial Collections.

as follows: “Works with the State Bar and its members to promote the study and preservation of legal history; conducts oral history interviews and programs; makes public presentations; and prepares publications in the field.”<sup>13</sup> The notable addition to its earlier charge is in the area of oral history. Here, again, the committee’s evolution parallels that of society at large, in which the collecting of oral histories received increasing emphasis during the second half of the twentieth century.

The committee’s most ambitious project was the creation of a guide to the California legal history manuscripts held by the Huntington Library in San Marino. The project was initiated in 1983 under the chairmanship of Eric Chiappinelli and was pursued to completion by five succeeding chairs. Legal historian Gordon Morris Bakken was engaged to prepare the work, and the committee secured funding from foundations and law firms. The completed book was published in 1989,<sup>14</sup> during the term of committee chair Rosalyn Zakheim. The occasion was marked by the appearance of an illustrated feature article in the *Los Angeles Daily Journal*, subtitled “A Scrappy State Bar Committee Chronicles the Development of California Law.”<sup>15</sup>

One outgrowth of the book project was a bibliographic essay by Fritz and Bakken on materials in the field of California legal history, published in 1988.<sup>16</sup> Another — and the most recent — is the article by Peter L. Reich in the present volume of *California Legal History* that surveys additions to the Huntington collection in the years following publication of the committee’s book.<sup>17</sup>

In the area of oral history, the committee pursued three separate projects. The first was the recording of audiotaped oral interviews of leading lawyers and judges in 1987. Four such interviews were conducted, of which

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<sup>13</sup> “State Bar Report,” *California Lawyer* 8:11 (Dec. 1988),

<sup>14</sup> Henry E. Huntington Library and Art Gallery. *California Legal History Manuscripts in the Huntington Library: a guide / by the Committee on History of Law in California of the State Bar of California*. San Marino, Calif.: The Library, 1989.

<sup>15</sup> Arlene Silberman, “Our Story, Her Story, History,” *Los Angeles Daily Journal*, May 11, 1989.

<sup>16</sup> Christian Fritz and Gordon Bakken, “California Legal History: A Bibliographic Essay,” *Southern California Quarterly* 70 (1988), 203-222.

<sup>17</sup> Peter L. Reich, “California Legal History in the Huntington Library: An Update,” 5 *California Legal History* (2010), 323-336.

audiotapes and transcripts were deposited in research institutions for public use.<sup>18</sup> The interviews were as follows:

Sharp Whitmore,<sup>19</sup> interviewed by Ray Roberts,<sup>20</sup> January 9, 1987.

Leon T. David,<sup>21</sup> interviewed by Ray Roberts, January 16, 1987.

George Yonehiro,<sup>22</sup> interviewed by Ray Roberts, January 21, 1987.

Ruth Church Gupta,<sup>23</sup> interviewed by Rosalyn Zakheim,<sup>24</sup> Sept. 28, 1987.

A second project in the area of oral history was the creation of a booklet titled, “The Story of the State Bar of California” (1989) which consisted primarily of excerpts of audiotaped recollections by past State Bar presidents solicited by the committee. It included statements from twenty-three past presidents, ranging in years of service from 1937 to 1988, on the history of the State Bar and their terms in office.

The committee’s third, and best known, oral history project was the recording of videotaped interviews of leading California Supreme Court and Court of Appeal justices. Four such interviews were conducted. Transcripts of the first three were published in the *Hastings Constitutional Law Quarterly* in 1987 and 1988, and the fourth — of Justice Mildred Lillie — remained unpublished until its inclusion in the present volume of *California Legal History*. The first three were published as follows:

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<sup>18</sup> These were deposited in the State Bar Archives in San Francisco, the Bancroft Library at UC Berkeley, and the Department of Special Collections at the UCLA Research Library.

<sup>19</sup> Whitmore served as president of the Los Angeles County Bar Association and was a member of the Board of Governors of both the American Bar Association and the California State Bar.

<sup>20</sup> Roberts was a retired judge of the Los Angeles Superior Court.

<sup>21</sup> The interview of David commences with his playing an audiotaped self-interview recorded on July 31, 1977, in which he says he was serving at that time as chair of the Committee on History of Law in California. He was a retired judge of the Municipal and Superior Courts in Los Angeles County.

<sup>22</sup> Yonehiro was then serving as a Superior Court judge in Placer County.

<sup>23</sup> Gupta was the first woman president of the Lawyers Club of San Francisco (1975–1976).

<sup>24</sup> Zakheim conducted the interview on behalf of the committee and also the Women Lawyers’ Association of Los Angeles (of which she was president, 1983–1984.)

“Oral History: Justice Bernard S. Jefferson,” *Hastings Constitutional Law Quarterly* 14 (Winter 1987), 225-287.

“Oral History: Justice Otto Kaus,” *Hastings Constitutional Law Quarterly* 15 (Winter 1988), 193-268.

“Oral History: Justice Joseph R. Grodin,” *Hastings Constitutional Law Quarterly* 16 (Fall 1988), 7-68.

### *Personal Accounts*

The theme of oral history also provides the concluding section of this review of the committee’s work. By good fortune, four of the later chairs of the committee agreed to share recollections of their periods of service on the committee. Personal accounts by past chairs Kenneth Crews (1985–1986), Laurene Wu McClain (1986–87), John Hanft (1987–1988), and Rosalyn Zakheim (1988–1989) are presented below.

Following these four accounts, further good fortune provides a final narrative by David C. Long, formerly director of research for the State Bar, who agreed to describe the creation in 1989 of the California Supreme Court Historical Society. As early as 1954, Chair McAuliffe had proposed seeking a foundation grant for the committee’s activities, and thereafter to “establish a legal history society which can continue the activities after the foundation grant has expired.”<sup>25</sup> A grant does not appear to have been secured, and formation of the society was not pursued. In the late 1980s, when societies for legal history had become well established in other jurisdictions, the State Bar proposed such a society for California. The realization of this proposal is the subject of the concluding narrative by David Long.

— SELMA MOIDEL SMITH

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<sup>25</sup> *Journal of the State Bar of California* 29:6 (Nov.–Dec. 1954), 486.