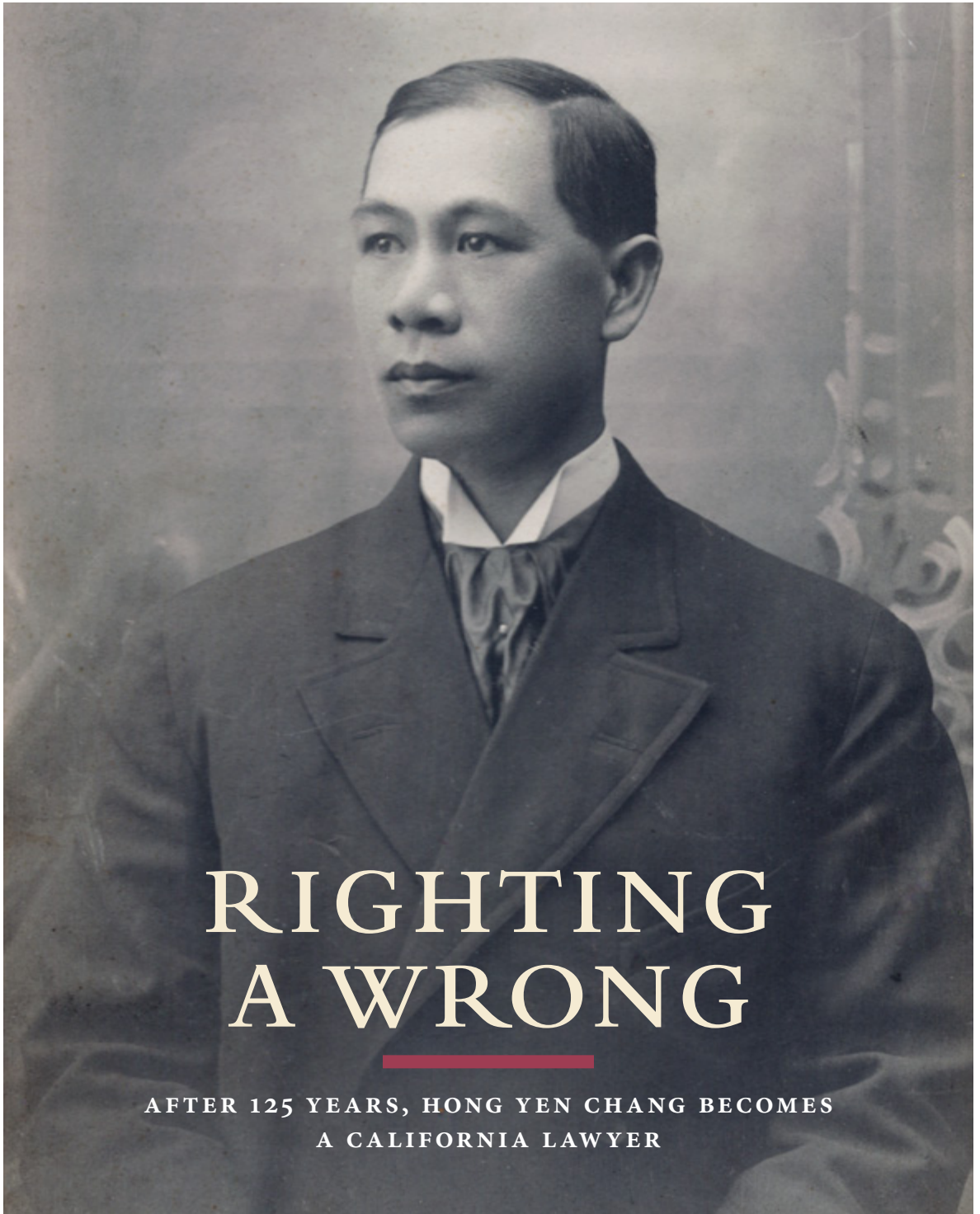




CALIFORNIA SUPREME COURT

Historical Society

NEWSLETTER • SPRING/SUMMER 2015



RIGHTING A WRONG

AFTER 125 YEARS, HONG YEN CHANG BECOMES
A CALIFORNIA LAWYER

Righting a Historic Wrong

THE POSTHUMOUS ADMISSION OF HONG YEN CHANG TO THE CALIFORNIA BAR

BY JEFFREY L. BLEICH, BENJAMIN J. HORWICH AND JOSHUA S. MELTZER*

ON MARCH 16, 2015, the California Supreme Court unanimously granted Hong Yen Chang posthumous admission to the State Bar of California. In its ruling, the court repudiated its 125-year-old decision denying Chang admission based on a combination of state and federal laws that made people of Chinese descent ineligible for admission to the bar. Chang's story is a reminder of the discrimination people of Chinese descent faced throughout much of this state's history, and the Supreme Court's powerful opinion explaining why it granted Chang admission is an opportunity to reflect both on our state and country's history of discrimination and on the progress that has been made.



Hong Yen Chang

HONG YEN CHANG'S STORY

In 1872, a 13-year-old boy named Hong Yen Chang came from China to the United States as part of the Chinese Educational Mission, a program designed to teach Chinese youth about the West. Chang studied at Phillips Academy

HONG YEN CHANG WAS REJECTED DURING AN ERA OF WIDESPREAD DISCRIMINATION AGAINST PEOPLE OF CHINESE ANCESTRY.

in Andover, Massachusetts, and then at Yale College. When the Chinese government cancelled the mission in 1881, Chang was forced to suspend his studies at Yale temporarily and return to China. After coming back to the United States he enrolled at

Columbia Law School, where he earned his law degree.

After graduating from Columbia, Chang applied for admission to the New York bar. The examiners gave him high marks and unanimously recommended his admission. But in a 2-1 decision, the New York

Supreme Court rejected his application on the ground that he was not a citizen. Undeterred, Chang continued to pursue admission to the bar. In 1887, a New York judge issued him a naturalization certificate, and the state legislature enacted a law permitting him to reapply to the bar. *The New York Times* reported that when Chang and a successful African-American applicant "were called to sign for their parchments, the other students applauded each enthusiastically." Chang became the only regularly admitted Chinese lawyer in the United States.

Later Chang applied for admission to the California bar. Notwithstanding his credentials, the California Supreme Court denied his application in a published opinion in 1890.¹ The Court acknowledged that Chang was licensed to practice in another state, that his "moral character [was] duly vouched for," and that he therefore met the requirements for admission — if he were a citizen.² But the Court held that Chang's naturalization certificate was void, under the Chinese Exclusion Act and other federal statutes, because "persons of the Mongolian race are not entitled to be admitted as citizens of the United States."³ Only citizens or those eligible for citizenship could be admitted to practice under California law at the time. So the Court rejected Chang's application for bar membership.

Chang's application was rejected during an era of widespread discrimination against people of Chinese ancestry. As the Court noted in its recent decision, the Chinese Exclusion Act, enacted by Congress in 1882, prohibited the immigration of Chinese laborers for 10 years and made Chinese persons ineligible for naturalization. Congress later reauthorized and expanded the act and adopted a number of other measures to restrict Chinese immigration. Anti-Chinese sentiment served as a major impetus for the California Constitutional Convention of 1879, and the ensuing California Constitution dedicated an entire article to restricting the rights of Chinese residents. Among other things, the constitution prohibited corporations or the government from employing "any Chinese or Mongolian"

* Attorneys at Munger, Tolles & Olson. The authors represented UC Davis School of Law's Asian Pacific American Law Students Association in seeking posthumous admission to the bar of Hong Yen Chang.

person, barred Chinese persons from working on public works projects, and authorized localities to remove Chinese immigrants.

Notwithstanding the discrimination he faced, Chang went on to a distinguished career in diplomacy and finance. He served as an adviser at the Chinese Consulate in San Francisco and then became a banker. He eventually rose to the post of Chinese consul in Vancouver and served as first secretary at the Chinese Legation in Washington, D.C. Yale later awarded him an undergraduate degree and listed him with the graduating class of 1883. Before retiring, Chang returned to California and served as the director of Chinese naval students in Berkeley. He died of a heart attack in 1926.

A XENOPHOBIC ATTITUDE

In the 125 years since Hong Yen Chang was denied admission to the California bar, the laws that made him ineligible for bar membership have been repealed or found to violate the state and federal constitutions. In 1972, the California Supreme Court held that excluding non-citizens from the bar violates the equal protection clauses of both the state and federal constitutions. Banning non-citizens from the practice of law, the Court

ruled, was a reflection of “the lingering vestige of a xenophobic attitude” and should be left “among the crumbled pedestals of history.”⁴ The United States Supreme Court followed suit the next year, holding that a state could not constitutionally bar non-citizens from the legal profession.⁵ Additionally,

THE COURT HAD NOT PREVIOUSLY GRANTED POSTHUMOUS ADMISSION, AND DID NOT HAVE A PROCESS FOR SO DOING.

Congress repealed the Chinese Exclusion Act in 1943, and recently both Houses of Congress adopted resolutions expressing regret for the Chinese Exclusion Act and other laws that discriminated against Chinese immigrants. The anti-Chinese provisions of the California Constitution were repealed in 1952. Most recently, the California Supreme Court granted admission to an undocumented immigrant who came to the United States as a child and put himself through college and law school.⁶

Several of Hong Yen Chang’s descendants are now lawyers in California. His grandniece Rachele Chong is a pioneer in her own right, having served as the first Asian-American member of the Federal Communications Commission and the first Asian-American member of the California Public Utilities Commission.

Notwithstanding the many changes, however, Hong Yen Chang’s denial of admission remained undisturbed as a published opinion of the California Supreme Court.

“EVEN IF WE CANNOT UNDO HISTORY, WE CAN ACKNOWLEDGE IT”

IN GRANTING Hong Yen Chang posthumous admission as a California lawyer, the California Supreme Court did not simply hand down an order. Instead, it issued a unanimous opinion repudiating its earlier decision. The opinion noted:

It is past time to acknowledge that the discriminatory exclusion of [Hong Yen] Chang from the State Bar of California was a grievous wrong. It denied Chang equal protection of the laws; apart from his citizenship, he was by all accounts qualified for admission to the bar. It was also a blow to countless others who, like Chang, aspired to become a lawyer only to have their dream deferred on account of their race, alienage, or nationality. And it was a loss to our communities and to society as a whole, which denied itself the full talents of its people and the important benefits of a diverse legal profession.

Even if we cannot undo history, we can acknowledge it and, in so doing, accord a full measure of recognition to Chang’s path-breaking efforts to become the first lawyer of Chinese descent in the United States. The people and the courts of California were denied Chang’s services as a lawyer. But we need not be denied his example as a pioneer for a more inclusive legal profession. In granting Hong Yen Chang posthumous admission to the California Bar, we affirm his rightful place among the ranks of persons deemed qualified to serve as an attorney and counselor at law in the courts of California.

— *In re Hong Yen Chang on Admission*, No. S223736 (March 16, 2015).

To remedy this injustice, students in the UC Davis School of Law’s Asian Pacific American Law Students Association and their faculty adviser, professor Gabriel “Jack” Chin, took up the cause of seeking posthumous admission for Chang. The students worked initially with the UC Davis School of Law California Supreme Court Clinic. Building on that work, in December 2014 the authors filed a motion on behalf of the student association in the California Supreme Court. Although the Court had not previously granted posthumous

admission and did not have a process for doing so, the motion made the case that Hong Yen Chang's unique circumstances warranted posthumous admission.

On March 16, 2015, the California Supreme Court unanimously ruled: "We grant Hong Yen Chang posthumous admission as an attorney and counselor at law in all courts of the state of California."⁷ The Court engaged in a "candid reckoning with a sordid chapter of our state and national history" and resolved that it was "past time to acknowledge that the discriminatory exclusion of Chang from the State Bar of California was a grievous wrong."

One need only consider the composition of today's California Supreme Court to see how far the state has come since Hong Yen Chang was denied admission to the bar. But as the Court recognized, we must have the courage to grapple with difficult chapters of our his-

tory and to acknowledge the lasting harms visited upon members of our community. As we strive to achieve a legal profession that fully reflects the diversity of California, the Supreme Court has taken a bold step to recognize Hong Yen Chang's "example as a pioneer for a more inclusive legal profession." ☆

ENDNOTES

1. *In re Hong Yen Chang*, 84 Cal. 163 (1890).
2. *Id.* at 164.
3. *Ibid.*
4. *Raffaelli v. Comm. of Bar Exam'rs*, 7 Cal.3d 288, 291 (1972).
5. *In re Griffiths*, 413 U.S. 717 (1973).
6. *In re Garcia*, 58 Cal.4th 440, 451 (2014).
7. *In re Hong Yen Chang on Admission*, No. S223736 (March 16, 2015).



Hong Yen Chang and his wife Charlotte with their children Ora and Oliver in the early 1900s

PHOTOS: AH TYE FAMILY ARCHIVES

Bury My Bones in America

A FAMILY HISTORY OF HONG YEN CHANG

BY LANI AH TYE FARKAS

HONG YEN CHANG came to the United States under a program called the Chinese Educational Mission. Its originator, Yung Wing, was the first Chinese to be educated at a major American university, graduating from Yale in 1854. This project fulfilled his life-long desire to help reform and regenerate China. The plan was to educate 120 young Chinese boys in the United States for Chinese government service and the imperial government paid all expenses. They would acquire technological knowledge of the West, and it was hoped this would help China resist foreign aggression in the future. It would also give China a growing body of trained engineers to build railroads, erect telegraph lines, construct warships, and manufacture guns and ammunition.

In the summer of 1872, the first group of 30 students started on their journey to the United States. Thirteen-year-old Hong Yen Chang was among them. His merchant father, Chang Shing Tung, had died when Hong Yen was only 10. His mother was Yee Shee. Hong Yen came from Yung Wing's district, Heungshan, a district adjoining the Portuguese port of Macao.

Upon arriving in the United States, Chang lived with the Guy B. Day family in Bridgeport, Connecticut, to learn English and American customs more quickly. Once these skills were mastered, Chang and fellow classmate Mun Yew Chung attended the Hartford Public High School in Connecticut and boarded with William B. and Virginia (Thrall) Smith. At first the boys were required to wear the traditional long gowns of Chinese scholars and braided queues. But this attire gave rise to unmerciful teasing because they looked like girls. After many fights, the Chinese dresses gave way to American coats and pants. The boys either hid their queues under their coats or coiled them around their heads.

From 1878 to 1879, Hong Yen Chang was enrolled in a college preparatory program at the exclusive Phillips Academy in Andover, Massachusetts. He completed his studies in the classical department and graduated from Phillips in 1879. Hong Yen showed unusual intelligence and gave an English oration at his 1879 commencement exercises.

Since the primary goal of the program was to educate Chinese students to return for government service, it was important that the students maintain their studies in Chinese language and Confucian classics. These courses were provided at the permanent headquarters



Hong Yen Chang on the day he graduated from Phillips Academy in 1879.

in Hartford, Connecticut, in a large, double, three-story house spacious enough to accommodate Yung Wing and his co-commissioner, teachers, and 75 students. The facilities included a schoolroom where Chinese studies were taught exclusively, a dining room, a double kitchen, dormitories, and bathrooms. Pupils were divided into classes of 12, and each class stayed at the Mission House for two weeks every three months. They rose at 6 a.m., retired at 9 p.m., and between those hours took Chinese instruction in reading, calligraphy, recitation, and composition.

EDUCATIONAL MISSION'S END

The last group of Chinese students arrived in the United States in 1875, and the program continued to go well for six more years. Arriving in America at the impressionable ages of 12 to 16, the Chinese boys quickly became

Americanized. Indeed, it became increasingly difficult to keep them focused on their Chinese studies.

Yung Wing favored this complete break with Chinese culture because he felt was the only way the youths would be able to overcome the difficulties of introducing Western technology and machinery into the hostile Chinese government environment. However, the increasing neglect of the students' Chinese education proved to be a major factor in the premature end of the Educational Mission. Attendance at Sunday school and church services, play and athletic games produced Chinese boys far too Westernized for many conservative Chinese leaders.

Yung Wing's "ardent championing of westernization" on a personal level was also a factor in the mission's premature end. He had converted to Christianity and in 1852 became an American citizen. In 1875, he took another step toward Americanization when he married Louise Kellogg, the daughter of one of Hartford's leading physicians. His marriage was personally very happy, but it furthered conservative Chinese statesmen's suspicions and opposition.

In the climate of growing anti-Chinese sentiment in Washington, D.C., the State Department refused to admit qualified Chinese Educational Mission students to the Military Academy at West Point and the Naval Academy in Annapolis. This affront moved the Chinese

THE STATE DEPARTMENT REFUSED TO ADMIT QUALIFIED CHINESE STUDENTS TO THE MILITARY ACADEMY AT WEST POINT AND THE NAVAL ACADEMY IN ANNAPOLIS. THIS AFFRONT MOVED CHINESE CONSERVATIVES TO RECALL THE STUDENTS.

conservatives to recall the government-sponsored students under the pretext of protecting them from being "contaminated" by American ideas.

The Chinese Educational Mission lasted from 1872 to 1881 — five years short of its goal. The recall came at a disastrous time for the students, since they were only half prepared to carry out their goal. More than 60 students were enrolled in colleges and technical schools, but the majority of them were just beginning their technical training.

The students eventually proved themselves in the fields of science and technology but only after years of discouragement and always under the handicap of insufficient training. Some became leaders in establishing

HONG YEN CHANG WAS ONE OF THE FEW STUDENTS WHO DID NOT REMAIN IN CHINA, RETURNING INSTEAD TO AMERICA ON HIS OWN TO COMPLETE HIS EDUCATION.

modern Chinese communications through the development of railroads, telegraph lines, and coal mines, as hoped. Others became China's first modern-trained army and navy officers or consuls and diplomats.

CHANG'S RETURN TO AMERICA

Hong Yen Chang was one of the few Chinese Educational Mission students who did not remain in China, returning instead to America on his own to complete his education. Chang had been studying at Yale College (now Yale University) since 1879 when the Chinese government recalled the Educational Mission students in 1881.

The *Hartford Daily Courant* reported that Chang was "very much disappointed and chagrined at not being able to complete his studies. He went, however, with the determination that he would return to America as soon as practicable to resume his course."

Upon Chang's return to China, Chang was placed in the naval school at Tientsin. When the students first returned, their Western training and attitude was so markedly different from the old-style, Confucian-trained officials, they were treated with hostility and looked upon as only a little above coolies. The *Hartford Daily Courant* reported that Chang soon grew tired of the monotony of the naval school and obtained a release. He visited his aging mother, but only to say farewell for a second time. With the help of friends and his small savings, he reached Shanghai, then in 1882 sailed for Honolulu, where his brother was a merchant. He read law in the office of A.S. Hartwell for a year, and "showed himself so apt a student that at the end of the year he was offered a salary of \$1,200 to remain. He was anxious to become better educated in law, however, and so returned to the United States." Chang went to New York in 1883 and managed to enter Columbia Law School without his Yale undergraduate degree. He obtained his law degree in 1886.

FIRST CHINESE LAWYER IN AMERICA

A newspaper article reported that Hong Yen Chang was the first Chinese lawyer educated in America. Known also as Henry Chang, he received his diploma among 108 Americans at the 1886 Columbia Law School commencement. The article described Hong Yen as "taller than the majority of his race" and "unusually intelligent



CHANG CAME TO CALIFORNIA, WHERE HE PLANNED TO SERVE THE LARGE CHINESE COMMUNITY OF SAN FRANCISCO AS A LAWYER.

in his looks.” His “abilities in legal investigation” were among the finest in his class, and he had excelled in special branches of the law.

Chang had been in America for 16 years and was said to be extremely fond of it. During the rule of the foreign Ching (Qing or Manchu) Dynasty from 1644 to 1911, the queue was imposed upon Chinese men. It was the emblem of obedience and loyalty to the Manchu regime; those who refused to wear one were severely penalized. If a man wanted the option of visiting or returning to China, it was important to have a well-kept queue because of its significance socially and politically. After finishing law school in 1885, Hong Yen Chang cut off his queue.

CHINESE EXCLUSION ACT’S EFFECTS

The brutal effects of the 1882 Chinese Exclusion Act dashed Hong Yen’s hopes of being admitted to the New York bar with the rest of his classmates. Citizenship was required, but was forbidden to the Chinese under the 1882 act. A well-known judge became interested in Chang’s plight and succeeded in passing a special bill in the New York legislature that removed the disability in Chang’s case. Hong Yen drafted the bill and argued in support of it before New York Governor David Hill in April 1887.

The solution was to naturalize Chang as a United States citizen in the Court of Common Pleas in New York City on November 11, 1887, then admit him to practice law in the state of New York on May 17, 1888. On June 12, 1889, he obtained a certificate of passport describing him as an American citizen. The document was signed by Secretary of State James G. Blaine.

Chang then went West to California, where he planned to serve the large Chinese community of San Francisco as a lawyer. In 1890, he went before the California court and made a motion to practice law. He had to meet two conditions under California civil code: he could present a license to practice law in the highest court of another state, and he was a United States citizen or was eligible and intended to become a citizen. Chang presented his New York license and his certificate of naturalization to the California court. However, the court refused to give him permission to practice law despite the fact that he had met both criteria.

NATURALIZATION OF CHINESE FORBIDDEN

Under United States statutes, the naturalization of aliens was limited to free white people and those of African nativity and descent. In addition, a California act passed on May 18, 1882, expressly forbade the naturalization of a “Chinaman.” It was on the basis of this act that the court ruled that Chang’s certificate of naturalization had been issued “without authority of the law” and was therefore invalid.

Chang took his plea all the way to the California Supreme Court. His case was widely reported in the San Francisco newspapers. A headline in the May 18, 1890, edition of the *San Francisco Examiner* read: “Chinese Cannot Practice; Chang Not an Attorney Though (Secretary of State) Blaine Says He is a Citizen.”

The *San Francisco Morning Call* announced “A Mongolian Refused Admission to the Bar.” It pointed out that in an earlier case, a lawyer who had been disbarred in New York applied for admission to the California Bar. When his California application was denied, he immediately went to Nevada, was admitted to that state’s bar, then returned to California at once and reapplied for admission. In admitting him, the California court said it had no power to inquire behind the genuine certificate of the highest court of a sister state. It reached a different result in Chang’s case, however, where there had been no prior disbarment, but the applicant was Chinese.

Despite the devastating setback, Chang went on to a very successful and distinguished career in banking and diplomacy. ☆

— Excerpted from *Bury My Bones in America: The Saga of a Chinese Family in California 1852-1996* by Lani Ah Tye Farkas.

Governor Swears In Two New Justices

PHILOSOPHICAL AND REMINISCENT, HE RECALLS HIS HISTORY WITH THE COURT

SACRAMENTO — After he was sworn in by Chief Justice Tani Cantil-Sakauye for a fourth term on January 5, 2015, Governor Jerry Brown walked across the Capitol lawn to swear in the two newest justices he appointed to the California Supreme Court.

Justices Mariano-Florentino Cuéllar and Leandra R. Kruger took their oaths in the wood-paneled ceremonial courtroom on the sixth floor of the Stanley Mosk Library & Courts Building.

“Welcome to our building,” said the Chief Justice, who presided. “This is a special place. I like to say it is a jewel of the judiciary — and we have many jewels.”

She noted that the building was constructed to lure the Supreme Court to return from San Francisco to Sacramento.

“This beautiful courtroom was built for us back in 1928,” she said. “But then Chief Justice William Waste came to Sacramento and said, ‘What’s the court doing in the attic?’ At that point all work ceased and a new courtroom was built on the first floor, very similar to the courtroom you see here.”

The ploy didn’t work. The court’s headquarters remains in San Francisco. But the justices return regu-

larly to hear arguments in the first-floor courtroom in Sacramento.

In introducing the Governor, the Chief Justice pointed out that he appointed approximately 900 judges during his first three terms.

“He has outdone himself with our latest two,” she said, acknowledging the two new justices sitting beside her.

The Governor peppered his remarks during the swearing-in with references to his own history with the California Supreme Court, and alluded to his common bond with the newest justices as graduates of Yale Law School.

“Since there’s been so much talk of Yale Law School, I have to tell you a little secret: how I got into Yale Law School,” the Governor said. “Justice [Roger] Traynor wrote a letter saying I was going to become a great legal scholar. I always felt that was the deciding factor that got me in.”

Brown recalled his time as a clerk on the California Supreme Court.

“I did get a little taste of the judicial branch when I served as a law clerk to Justice [Mathew] Tobriner in 1964,” he said. “I really learned how to write by writing conference memos.”

He noted the historic preeminence of the Court.

“California is somewhat of an international jurisdiction,” he said. “We’re doing things to influence the rest of the world. I would expect that our Supreme Court, by the quality and depth and wisdom of their opinions, will have a similar impact on courts throughout the country and maybe even throughout the world.”

Brown cited with approval Justice Cuéllar’s writings on administrative law urging that the practical effects of rules and rulings be considered.

“I like that,” he said. “Because I want you to know what the hell the consequences are when you make all these rulings — very, very important. This is not some rarefied theological world. It’s the real, ultimate, other branch of government, and we’re here to govern a very complicated world.”

He also lauded Justice Cuéllar’s experience in regulatory policy.



The ceremony was held in the courtroom built in 1928 to entice the Supreme Court to return to Sacramento.

PHOTO: JAKE DEAR



CALIFORNIA SUPREME COURT IN ITS SACRAMENTO COURTROOM

Chief Justice Tani Cantil-Sakauye (CENTER) and (LEFT TO RIGHT) Associate Justices Mariano-Florentino Cuéllar, Kathryn M. Werdegar, Carol A. Corrigan, Goodwin H. Liu, Ming W. Chin, and Leondra R. Kruger

PHOTO: BOB KNAPIK

“God knows we’ve got too many regulations,” the Governor said, “so as many as we can get rid of, I’m all for it — except the ones I like.”

Brown noted the youthful age of his appointees. Justice Cuéllar was 41 when appointed, Justice Kruger 36.

“By the way,” he told Justice Kruger, “you’re two years older than I was when I was elected Governor. So you are a little late.”

He added, philosophically: “And I can tell you the world looks very different at 76 than it does at 36. Quite different. The trick is can you develop the insight and wisdom when you’re 36 not to do too many things that you will regret later in life when you’re 76.”

Brown noted the new justices were joining “a court that is as diverse and as interesting and as reflective of California as I can possibly imagine.”

He responded to those who complained Justice Kruger was not really a Californian.

“This idea of coming from Washington — they say, ‘Why didn’t you pick a Californian?’ She is a Californian. Everybody in California came from somewhere

else, anyway — even the native peoples 12,000 years back. We’re always on a journey, we’re always immigrants of one kind or another.”

The Governor also discussed his approach to choosing new justices.

“What I’m looking for is real wisdom,” he said. “These problems that we’re facing are complicated. It’s not clear what are the right pathways. The implications are rather obscure in many instances. What I’m looking for is insight and growing wisdom over time so that we can create a measure of harmony in what is a very conflicted society. We do have our divisions, which some people call diversity, but it also is divisive. And how we can forge the respect for the law — that is really a challenging task.”

He added: “I think we are going to do very well in helping build the respect for the law, for the courts, for their independence, so that all of us — whatever our particular ideological or philosophical proclivities — at the end of the day are very thankful that we have honest, intelligent, and fair-minded people making sense out of the complexities.”

— THOMAS R. REYNOLDS

Creating a Repository for California Judicial History

SPECIAL COLLECTIONS & ARCHIVES AT THE CALIFORNIA JUDICIAL CENTER LIBRARY

BY MARTHA R. NOBLE AND NOAH D. POLLACZEK*

THE SPECIAL COLLECTIONS & ARCHIVES repository at the California Judicial Center Library began when the founding gift, the Stanley Mosk Papers, was received in 2001. From this auspicious beginning, the repository has developed and expanded in accord with its three major goals: acquiring and collecting personal papers, records, and other memorabilia of members of the California Supreme Court; preserving, organizing, and indexing the collections; and providing access to the collections for researchers of California history, especially judicial and legal history.

The archives also contain video recordings of oral histories completed by the Appellate Court Legacy Project. Research materials related to the project, including articles, obituaries, and tributes to the justices, complement the oral history collection.

Now in its 15th year, the repository aims and promises to become a major locus for the study of legal and judicial history in California.

Four categories of resources for the study of California court history enrich the holdings: manuscript collections, institutional records, research compilations, and physical objects. Manuscripts are collections of the personal and professional papers of members of the California Supreme Court, with one exception: the papers of the late legal scholar, Bernard E. Witkin. Institutional records include dockets of cases filed in the California Supreme Court in the 19th and early 20th centuries, early records of the California Supreme Court Historical Society, and records donated by Lynn M. Holton on her retirement as Public Information Officer for the Judicial Council and the California Supreme Court. Research compilations are developed by staff in response to request or identified need, and are available to researchers for ongoing study. Physical objects include furnishings, textiles, awards,



and other non-textual items. Since 2001, when Special Collections & Archives was established as a new unit at the library,¹ approximately 700 cubic feet of manuscripts and records, all related to California court history, have been donated or transferred to the repository.

MANUSCRIPT COLLECTIONS

The eleven manuscript collections are invaluable original sources for the study of California legal and judicial history because of the insights they offer into the work of history makers. Manuscript collections include the papers of Chief Justices Ronald M. George (1996–2011) and Niles Searls (1887–89), as well as the papers of Associate Justices Allen E. Broussard (1981–91), Joseph R. Grodin (1982–87), Otto M. Kaus (1981–85), Joyce L. Kennard (1989–2014), Wiley W. Manuel (1977–81), Stanley Mosk (1964–2001), Frank C. Newman (1977–82) and Kathryn M. Werdegarr (1994–present). The Bernard E. Witkin papers are also included in this category.

Of highest significance, the donation of the papers of Chief Justice Ronald M. George was completed in

* Martha R. Noble is assistant to the director and Noah D. Pollaczek is an archivist at Special Collections & Archives, California Judicial Center Library. Director Frances M. Jones contributed to this article.

TOPIC No. 2. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS,
introduces to the relatively new subject of RELIGIOUS TORTS.
The background was laid down for California in the 1988
case of MOLKO v. HOLY SPIRIT ASSN., 46 C.3d 1092, in which

the Reverend Moon went into partial eclipse when Deprogrammers
vanquished his Bastard Brainwashers. The essence of the MOLKO
holding was that, while religious/BELIEF of any kind is
absolutely protected under the old United States Supreme
Court BALLARD decision, RELIGIOUSLY MOTIVATED CONDUCT
such as FRAUD, [REDACTED] is not; and a tort action will
lie for intentional infliction of emotional distress. *suffered at the*

*hands of the
church deprogrammers*

WOLLERSHEIM v. CHURCH OF SCIENTOLOGY (1989) 212 C.A.3d 872

gives us another basis for the

action

COERCION

BERNARD E. WITKIN'S TYPEWRITTEN TEXT WAS HEAVILY ANNOTATED BY THE TIME HE DELIVERED IT TO BENCH AND BAR.
LEFT: WITKIN'S DESK AND TYPEWRITER — AND SENTIMENTS — AND A 90TH BIRTHDAY LAPEL BUTTON.

IMAGES: CALIFORNIA JUDICIAL CENTER LIBRARY

October 2014. This collection includes more than 120 cubic feet of textual materials, awards, and other three-dimensional objects and comprises a wealth of original sources for the study of the Chief Justice's life and work, and of California's courts in the recent past. The George papers document his work in the California Attorney General's office beginning in 1960s and his service as a Los Angeles Superior Court Judge (1978–87), Associate Justice of the California Court of Appeal, Second Appellate District, Division Four (1987–91), Associate Justice of the California Supreme Court (1991–96) and Chief Justice of California (1996–2011).

Upon her retirement in 2014, Associate Justice Joyce L. Kennard donated papers, including selected subject files, articles, and clippings relating to her opinions, "extern books" documenting her role as a mentor, and a marble nameplate from her service as an Associate Justice of the California Court of Appeal, Second Appellate District. The Kennard papers date from 1988 to 2014.

The papers of Associate Justice Wiley W. Manuel (1977–81), the first African-American justice to serve

on the California Supreme Court, were received in 2011 from Judge Charles Smiley on behalf of Justice Wiley's family. Spanning the period from 1939 to 2010, this collection includes academic records, certificates and awards, photographs, and the writings of family members, as well as Justice Manuel's gavel and robe. The papers of Associate Justice Allen E. Broussard (1981–91), also received in 2011, include a wide array of awards, certificates, and resolutions honoring Justice Broussard received from 1971 to 1996.

In May 2010, Justice Joseph R. Grodin (1982–87) donated his professional papers dating from 1979 to 1989. The papers include textual materials compiled by Justice Grodin before and after the 1986 California Supreme Court retention election, as well as reports, articles and clippings, speeches, and correspondence relating to Justice Grodin's service on the California Court of Appeal, First Appellate District, and the California Supreme Court.

Alba Witkin's donation of the remarkable papers of the late Bernard E. Witkin was completed in 2008. Cali-



CHIEF JUSTICE RONALD M. GEORGE WAS ADMITTED TO THE STATE BAR OF CALIFORNIA ON JUNE 7, 1965.

fornia Reporter of Decisions (1940–49) and author of four of the most influential and highly regarded treatises in California,² Bernard E. Witkin's contribution to the development of California law remains unparalleled. In more than 60 cubic feet, the collection spans the full arc of his career, beginning with his undergraduate years at the University of California, Berkeley, in the 1920s and continuing through 1995, the year of his death.

The papers of Associate Justice Frank C. Newman (1977–82) were received in 2003 following a donation by Frances Burks Newman, wife of the late law professor and California Supreme Court Justice. The papers date from 1968 through 1982, the last year of Justice Newman's service on the Supreme Court.

In 2002, the papers of Associate Justice Otto M. Kaus (1981–85) were donated by Peggy Kaus. The papers span the years 1950 through 1995 and include material from his service on the California Court of Appeal, Second Appellate District, and the California Supreme Court, as well as his years in private practice.

The papers of Justice Kathryn M. Werdegar (1994–present) have come in a series of donations beginning in 2002. Materials date from 1994 through 2013 and include judicial opinions, articles and clippings, and audiovisual materials.

The Stanley Mosk papers, described in detail in an earlier article,³ were donated to in 2001 by Justice Mosk's son, Justice Richard M. Mosk. The Mosk papers date from 1912 through 2007 and chronicle Stanley Mosk's extraordinary life of public service, beginning with his appointment to the staff of Governor Culbert Olson in 1939 and continuing through

2001, his final year of service on the California Supreme Court.

In 1998, the papers of 19th century Chief Justice Niles Searls (1887–89) were given to the California Supreme Court. This collection, a gift of Fred and Ruth Searls, spans the years 1855 through 1940.

INSTITUTIONAL RECORDS

Special Collections & Archives in 2004 received its first transfer of institutional records, from the California Supreme Court Historical Society. Records from 1989 to 1993, together with notes and research predating the founding of the Society in 1989,

depict the Society's early development. Minutes, bylaws, correspondence, memoranda, reports, photographs, and publications document the Society's progress from its first year of existence through 1993.

The transfer of more than 350 volumes of 19th and 20th century California Supreme Court registers of actions, minutes, judgment books, indexes, and other bound records from the former Los Angeles office of the Clerk of the California Supreme Court was completed in 2011. The holdings are indexed in detail and document the Court's workload from 1850 to 1991. Record descriptions, including date and docket number ranges, are available to researchers on the California Supreme Court and Courts of Appeal Database.⁴ Additional copies of these records are held by the California State Archives. Examples of handwritten 19th century registers of actions and minutes can be viewed in the online exhibit of Vital Records.⁵

The 2012 transfer of records from Lynn Holton's office was an opportunity for noteworthy expansion of the resources related to recent court history. This collection dates from 1987 through 2012, and documents Court outreach projects, judicial appointments and service, media coverage of high-profile opinions, policy initiatives, and legislation related to the judicial branch, in more than 13 cubic feet of textual records, audiovisual materials, images, and publications.

The records of California Supreme Court Bailiff Elliott Williams, dating from 1963 to 1980, and those of Randolph V. Whiting, Reporter of Decisions from 1917 to 1940, are also of value to researchers.

RESEARCH COMPILATIONS

Research compilations that gather published and unpublished information about justices of the California Supreme Court strengthen the repository's historical resources because they respond to inquiries and researcher interests. Research compilations include articles and clippings, oral histories, briefs, speeches, commemorations, programs and flyers, brochures, memoranda, and other communications. Collection guides to papers of California Supreme Court justices held by other repositories are an essential resource for ongoing study.

Research compilations also provide important secondary sources for study of the lives and work of Chief Justices, including Rose E. Bird, Tani G. Cantil-Sakauye, Ronald M. George, Phil S. Gibson, Malcolm M. Lucas, Hugh C. Murray, Niles Searls, Roger J. Traynor, and Donald R. Wright. Additional compilations inform researchers about Associate Justices Janice R. Brown, Carol A. Corrigan, Allen E. Broussard, Mariano-Florentino Cuéllar, Marcus M. Kaufman, Joyce L. Kennard, Marshall F. McComb, Stanley Mosk, Goodwin Liu, Edward A. Panelli, Raymond E. Peters, Cruz Reynoso, and Kathryn M. Werdegar.

Topical research compilations relating to court history and the development of California law have also been developed. Examples of topics are: the historic sites and more recent locations of the California Supreme Court, judicial opinions, commissioners and clerks of the Court, and individuals influential in the development of California law and legal practice including Clara Shortridge Foltz, California's first female attorney, and Peter Belton, senior staff attorney to Associate Justice Stanley Mosk.

PHYSICAL OBJECTS

Chambers furnishings and other meaningful objects have been donated as parts of manuscript collections or as single gifts, and they also contribute to the understanding of court history. The donation of Chief Justice Rose Bird's chambers furnishings, and the importance of such donations, is discussed in detail in an earlier article.⁶



JUSTICE JOYCE L. KENNARD'S MARBLE
NAMEPLATE, CIRCA 1988

ONLINE COLLECTIONS

Many of the resources of the collection may be explored online. Links from the library's home page take virtual visitors to the California Supreme Court and Courts of Appeal database and the Online Archive of California. The database, described in an earlier article,⁷ contains current and historical records for California Supreme Court justices and justices of the California Courts of Appeal, records describing transcripts of oral history interviews conducted as part of the Appellate Court Legacy Project, and more than 3,000 records that provide brief descriptions or complete listings of holdings.

The Online Archive of California provides public access to descriptions of primary resource collections held by University of California campuses and more than 200 other contributing institutions, including archives, historical societies, museums, and libraries throughout the state. Formally launched in 2002, the online archive now provides online access to more than 20,000 collection guides and more than 220,000 digital images and documents, including those of the library's Special Collections & Archives.

EXHIBITS

Staff of the repository design and install exhibits highlighting the California judiciary to inform general audiences. Displays are accessible to the public on the ground floor of the Ronald M. George State Office Complex in San Francisco and in two locations in the Stanley Mosk Courthouse in Los Angeles. Digital versions of the exhibits are on the library's website.⁸

Two recent exhibits demonstrate how the library highlights its judicial collections through both print and electronic means. *Illustrations: Images from the Special Collections & Archives* provides viewers with a wide-ranging sampling of manuscript pages, political cartoons, and artifacts from the library's collections, including materials originally belonging to Chief Justice Rose E. Bird, Associate Justices Allen E. Broussard, Wiley W. Manuel, and Stanley Mosk, and legal scholar Bernard E. Witkin. The exhibit opened in 2013 and is



JUSTICE WILEY W. MANUEL'S GAVEL

6581

	Blara J. Foltz Respondent	Blara J. Foltz In pro per			
4 th	J. P. Hoge & others members of & constituting the Board of Directors of the ^{College} Hastings of the Law Appellants.	T. B. Bishop De los Lake			
San Francisco 1849					
April 22	Book Transcript		D. K.		15
Aug 4	Respondents Points & authorities.				
July 31	Set for August 5 th 1879 by consent				
Aug 7	Filed appellants Points & authorities				
" 6	Argued & continued to tomorrow				
" 4	" & cause submitted				
Dec 20	Judgment affirmed. Remittitur forthwith				
"	Remittitur to County Clerk				Court of opinion

A PAGE OF THE CALIFORNIA SUPREME COURT REGISTER FOR *FOLTZ V. HOGE*, 54 CAL. 28 (1879)

currently available for public viewing in the Ronald M. George State Office Complex as well as online.⁹ The trailblazing legal contributions of 12 individuals of Asian and Pacific Islander descent who have served or are presently serving as members of the California Supreme Court or the Courts of Appeal are highlighted in an online display that debuted in 2012, *Asian Americans and Pacific Islanders and the California Courts*.¹⁰

Additional exhibits presented over the past five years reflect the rich diversity of the collections and its collaborations with other individuals and institutions.

They include:

- *California's Chief Justices*
- *Let Freedom Ring*^{11,12}
- *Vital Records: Recordkeeping and the Proper Administration of Justice in the California Supreme Court, 1850–2012*¹³
- *Justice, Balance & Achievement: African Americans and the California Courts*¹⁴
- *African Americans in the California Courts*¹⁵
- *A Tremendous Commitment to Justice: The Judicial Service of Hon. Ronald M. George*.¹⁶

FULFILLING ITS GOALS

Researchers who have visited to consult the holdings of the Special Collections & Archives or requested resources have included judicial officers and staff, historians, biographers, journalists, students, and other interested members of the public.

Examples of publications that have drawn from resources include a biography of Associate Justice Stanley Mosk,¹⁷ an award-winning student paper,¹⁸ articles by Selma Moidel Smith and Justice Richard Mosk,¹⁹ as well as articles prepared for publication in issues of this *Newsletter*.²⁰

Although scholarly recognition is important, more important still is the trust demonstrated by donors and their families when gifts are given or transferred to the repository. By meeting or exceeding national and international archival standards for preservation and access to its resources, the library's Special Collections & Archives continues to fulfill its goals in the belief that its resources endow the past with meaning and the future with knowledge and opportunity. ☆

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17. Jacqueline R. Braitman & Gerald F. Uelmen, *Justice Stanley Mosk: A Life at the Center of California Politics and Justice* (2013).
18. Amber Trumbull, "Mosk and Capital Punishment in California: A Liberal Approach to the Death Penalty," second

Special Collections & Archives

MANUSCRIPT COLLECTIONS AND INSTITUTIONAL RECORDS

- 1998: NILES SEARLS PAPERS
- 2001: STANLEY MOSK PAPERS
- 2001: RECORDS OF CALIFORNIA SUPREME COURT BAILIFF ELLIOTT WILLIAMS
- 2001: RECORDS OF REPORTER OF DECISIONS RANDOLPH V. WHITING
- 2002: OTTO M. KAUS PAPERS
- 2002: KATHRYN M. WERDEGAR PAPERS
- 2003: FRANK C. NEWMAN PAPERS
- 2004: RECORDS OF THE CALIFORNIA SUPREME COURT HISTORICAL SOCIETY
- 2008: BERNARD E. WITKIN PAPERS
- 2010: JOSEPH R. GRODIN PAPERS
- 2011: CALIFORNIA SUPREME COURT REGISTERS OF ACTIONS, JUDGMENT BOOKS, AND OTHER MATERIALS
- 2011: ALLEN E. BROUSSARD PAPERS
- 2011: WILEY W. MANUEL PAPERS
- 2012: RECORDS OF PUBLIC INFORMATION OFFICER LYNN HOLTON
- 2014: JOYCE L. KENNARD PAPERS
- 2014: RONALD M. GEORGE PAPERS



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19. Associate Justice, California Court of Appeal, Second Appellate District, Division Five.

20. Richard M. Mosk, "Stanley Mosk's Letters to His Brother Overseas During World War II," *California Legal History*, 4 (2009), pp. 3-45 and Selma Moidel Smith, "Fifteen Papers by Justice Stanley Mosk: Editor's Note," *California Legal History*, 4 (2009), pp. 50-170.



Seal of the Supreme Court, 1849–1866
CALIFORNIA STATE ARCHIVES



Seal of the Supreme Court of California, adopted in 1866
SACRAMENTO COUNTY CLERK'S OFFICE

Scales, Swords and Squares

THE SEALS OF THE SUPREME COURT OF CALIFORNIA

BY SEBASTIAN A. NELSON*

FOR MOST OF its history the Supreme Court of California has used a seal bearing an image of the Roman goddess of justice, with her familiar blindfold, holding a sword in one hand and scales in the other. The first seal of the court, however — in use from 1850 to 1866 — used a very different image. The original seal depicted a Masonic altar, decorated with a square and set of compasses, beside the figure of an ancient Roman. The figure is shown pointing to or holding his hand above an open book, presumably the Bible, on top of the altar.

The original seal of the Supreme Court was the only seal used by any state agency whose design included symbols from Freemasonry, according to former California State Historian Dr. Jacob N. Bowman. Bowman speculated that the design was influenced by the court's first leader, Chief Justice Serranus C. Hastings (1814–1893), who was an active Mason. By examining historic state and county records, Bowman identified the last known impression of the first seal on a document dated March 2, 1866. The earliest known impression of the Supreme Court's new seal bearing the goddess of justice was located by Bowman on a

document dated April 23, 1866. Bowman concludes the design of the seal was changed because the justices felt that Masonic symbolism "was inappropriate for a seal of a court of all the people."¹

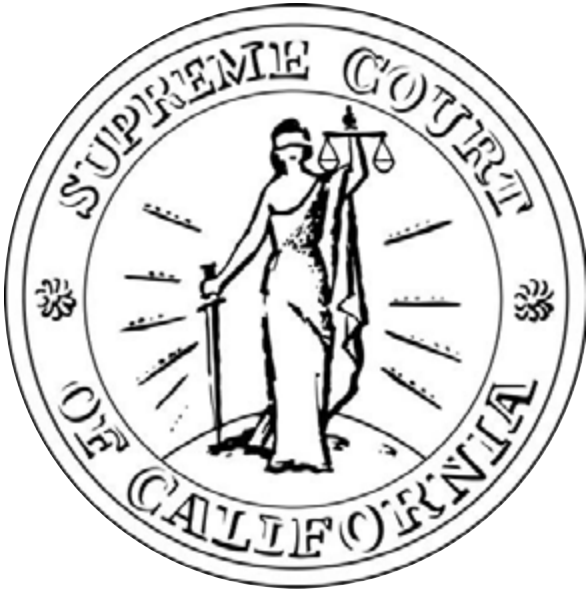
In January 1886, state senator Chancellor Hartson (1824–1889) introduced Senate Bill 128 titled *An Act relating to the Seal of the Supreme Court*.² Hartson's bill was approved on February 9 as chapter 89 of the 1866 Statutes, and reads in part:

The Judges of the Supreme Court are hereby authorized to procure a seal for said Court, to be used in the place and stead of the seal heretofore and now in use by said Court, such seal to have such device as may be selected by said Judges . . . the seal so devised and made shall, by order of Court, be described in its records, and shall thenceforth be the seal of the Supreme Court of this State.

The minutes of the court from February 19, 1866, contain a description of the new seal:

Ordered that the clerk of this Court pursuant to the Act of the Legislature procure a new seal for the Court, one and a half inches in diameter, with the figure of Justice blindfolded holding a scale in one hand, and a sword in the other and

* Court Records Archivist, California State Archives.



Current seal of the Supreme Court
CALIFORNIA JUDICIAL CENTER LIBRARY

the words 'Supreme Court of California' around the outer edge.³

Although anti-Masonic sentiment was, for a time, a powerful force in 19th century American politics, Senate Bill 128 probably had nothing to do with Freemasonry. Hartson in fact was a Mason himself.⁴ The reason for the change was apparently more prosaic. According to an article in the *Daily Alta California* newspaper of January 18, 1866, "Senator Hartson, this morning, introduced an act for a new seal for the Supreme Court. The present one is defaced, and besides not expressive of its design." ☆

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Are Our Courts Keeping Step?

THE STATE OF THE CALIFORNIA JUDICIARY IN 1934

BY CHIEF JUSTICE WILLIAM H. WASTE*

THE JUDICIAL DEPARTMENT of the State of California, like those of practically all the other states, is patterned along the lines of the judicial system of the United States. It was organized along these lines when the first constitution of the state government was framed in 1849. Some new courts have been created, the names and scope of the jurisdiction of others have been changed; otherwise, the system has remained substantially the same.

A technical discussion of these changes need form no part of the present consideration. While procedure in the state courts has been, in many respects, materially changed, the most striking and helpful changes have been made within the last decade, and resulted from a situation throughout the United States which was erroneously attributed to the courts.

SLOW, ANTIQUATED, AND INEFFICIENT

Mr. Chief Justice William Howard Taft, of the Supreme Court of the United States, having departed from a practice not to talk on current subjects while a member of the bench, was widely quoted, a number of years ago, because of certain statements he was alleged to have made concerning the condition of the judicial business of the nation. By reason of the important position the Chief Justice held and his great experience with courts and in judicial matters, wide attention was given to his expression of opinion on the subject. His statements were received and accepted generally as a final “summing up” of the true nature of the condition of the business in the courts of the country. Attention was not given to the fact that the various observations made by the Chief Justice were directed by him to the “crime and lawlessness sweeping over the United States,” and to an analysis of the legal phases of the crime situation. Furthermore, the arraignment uttered by him was directed almost exclusively to *the handling of criminal matters* in the courts, and not to the disposition of civil judicial business. Notwithstanding that fact, his remarks were given general application to the work of the courts, which were assailed as being “slow,” “antiquated,” and “inefficient.”

In the public discussion and editorial comment that followed the statements of the Chief justice, sight

was frequently lost of the fact that, in his opinion, the fault lay not so much with the courts as with the hampering of the courts by legislative restrictions. In one of the most widely circulated interviews, Judge Taft said: “The machinery for the arrest and prosecution of criminals is confronted with obstacles in the character of the peoples themselves that no other country has. . . . In the first place, in many jurisdictions — I mean among the states — the judges of the courts in the trial of criminal cases have had their powers weakened by restrictive statutes. In the matter of charging the jury and helping the jury to understand what the issue is before them, in the conduct of the trial generally, and in winnowing out from the evidence the irrelevant and unsubstantial so that the jury may gain a sense of proportion as to the value and weight of evidence, many of the courts are so restricted that a judge at a trial doesn’t amount to more than a moderator at a religious conference.”

The Chief Justice was striking at the insistence with which state legislatures have allocated to themselves the power of making rules for the direction and guidance of the courts in procedural matters. The consensus of opinion among lawyers and experienced judges has long been that rules promulgated by the courts result in the more prompt dispatch of judicial business and in more efficient methods of procedure. The practicability of such action is easily demonstrable; and the facility with which such rules may be modified by the courts in constant session to conform to discovered needs is highly preferable to dependence upon a legislature meeting at infrequent sessions and composed largely of laymen who have had no court contacts or experiences.

During his service as Chief Justice, Judge Taft succeeded in convincing the Congress that the judges of the federal courts were better qualified to formulate rules of procedure than the lawmaking branch of the national government. He secured from the lawmakers a delegation of power to the Supreme Court of the United States to formulate rules, under which the federal courts have been able to simplify procedure and to expedite the transaction of judicial business.

**IN 1934, THE
COURTS WERE
FACING ISSUES
STILL FAMILIAR
TODAY.**

* Chief Justice of California, 1926–40. The article is excerpted from the January 1934 issue of *California Monthly*.

THERE SHALL BE A JUDICIAL COUNCIL

Court practice in California has, until a very recent period, been governed largely by rigid statutes. Thirty years ago, the old California Bar Association inaugurated a study of the question of changing the Practice Act so that purely procedural matters might be prescribed by rules of court rather than by legislative enactments. Nothing of value was accomplished, beyond the occasional passage *by the legislature* of a law, frequently at the insistence of some member of that body to fit the exigencies of his private practice.

Finally, in 1925, the Commonwealth Club prepared, and caused the legislature to submit to the people for adoption, an amendment to the state constitution creating a Judicial Council, to be composed of the Chief Justice of the Supreme Court, as chairman, and 10 other justices and judges of the different courts, with the clerk of the Supreme Court as secretary. The proposed amendment as drawn by the club provided that the Judicial Council should survey the condition of business in the several courts of the state, with a view to simplifying and improving the administration of justice, and should "adopt or amend rules of practice and procedure for the several courts."

But the lawmakers were not ready to relinquish the opportunity to direct and control action by the courts. On the day of the final vote of approval by the legislature, there was added the provision that such rules should not be inconsistent with laws then in force or that might thereafter be adopted by the legislature.

With this provision in it, the amendment was adopted by a very large vote of the people at the election in November 1926, and the ultimate power to make rules of procedure for the courts remains where it has reposed since California became a state. There are statutes on the books enacted when California was a sparsely settled state and travel was difficult which still apply to the courts in the great centers of population.

However, the constitutional amendment provides that the Judicial Council shall report to the governor and the legislature at each regular session, and make such recommendations as it may deem proper. Consequently, and notwithstanding the power the legislature still has to control or restrict court procedure, the creation of the Judicial Council has had a helpful effect. The recommendations of the council, created by the fiat of the people expressed in the constitution, and composed of experienced members of the courts of the state, have, to a great extent, been favorably received by the legislature and expressed in legislative enactments. Many rules modifying procedure and others establishing new methods of court pro-



Chief Justice William H. Waste

cedure have been adopted by the council, with beneficial results. Much is yet to be accomplished, but a substantial beginning has been made. An interesting sidelight on the situation is the fact that some of the greatest obstacles the council has met in the legislature are those interposed by legislators who are members of the legal profession, thus lending support to the contention often made that the legal profession is the most conservative of callings.

Under the power conferred by the constitution, as the judicial business of the state increased and as demands on the administration of justice enlarged, the situation was met by the creation of new judgeships by the legislature and the filling of the places so created by appointment by the governor. Notwithstanding the increase in the manpower of the courts, with a resulting increase in the cost of the judicial department of the state and its local subdivisions, the courts have practically always been behind in their work, and the time consumed in disposing of litigation has called forth frequent utterance of the trite declaration that "justice delayed is justice denied." The cause has been a natural one — the tremendous growth of the state's

**“THE COURTS
HAVE
PRACTICALLY
ALWAYS BEEN
BEHIND IN
THEIR WORK.”**

population, and industrial development resulting in increased litigation.

The Judicial Council plan seeks to remedy this situation without the constant creation of new courts and additional judgeships. The Chief Justice, its chairman, is vested with wide administrative and executive powers over the entire judicial department of the state. It is made his duty to seek to expedite the judicial business of the state and, so far as is possible, to equalize the work of the judges. For that purpose, he may assign judges of those courts in the smaller communities having little litigation to the courts in the populous centers where the court calendars are congested, or if the judges are disqualified or for any reason unable to act. In case a vacancy occurs in a court, the chairman of the council may, by assigning to such court a judge or justice of another court to sit *pro tem*, care for the work of that court until the vacancy is filled by appointment by the governor or election by the people. When the calendars of any of the courts become congested, or the work of a court is falling behind, the Chief Justice may, in like manner, assign judges of other courts to assist in relieving the situation.

How well this authority to mobilize the manpower of the courts, where needed, works in actual practice is best illustrated by the experience in Los Angeles. When the Judicial Council amendment became effective in 1926, the usual time within which a case

“SOME OF THE PROBLEMS TO BE STUDIED ARE ALMOST AS OLD AS THE LIFE OF ORDERLY PROCEDURE IN COURTS OF JUSTICE.”

could be brought to trial in the Superior Court in that county was from 18 months to two years from the time the cause was actually ready for trial. Many judges of the Superior Courts of other counties were sent to Los Angeles to sit in the trial court. Within a year and a half, the period between the time causes were ready for trial and the actual trial was reduced to about 90 days. It

needs no comment to point out the great benefit to the bar and to those otherwise interested in litigation arising in Los Angeles County resulting from such an improved situation.

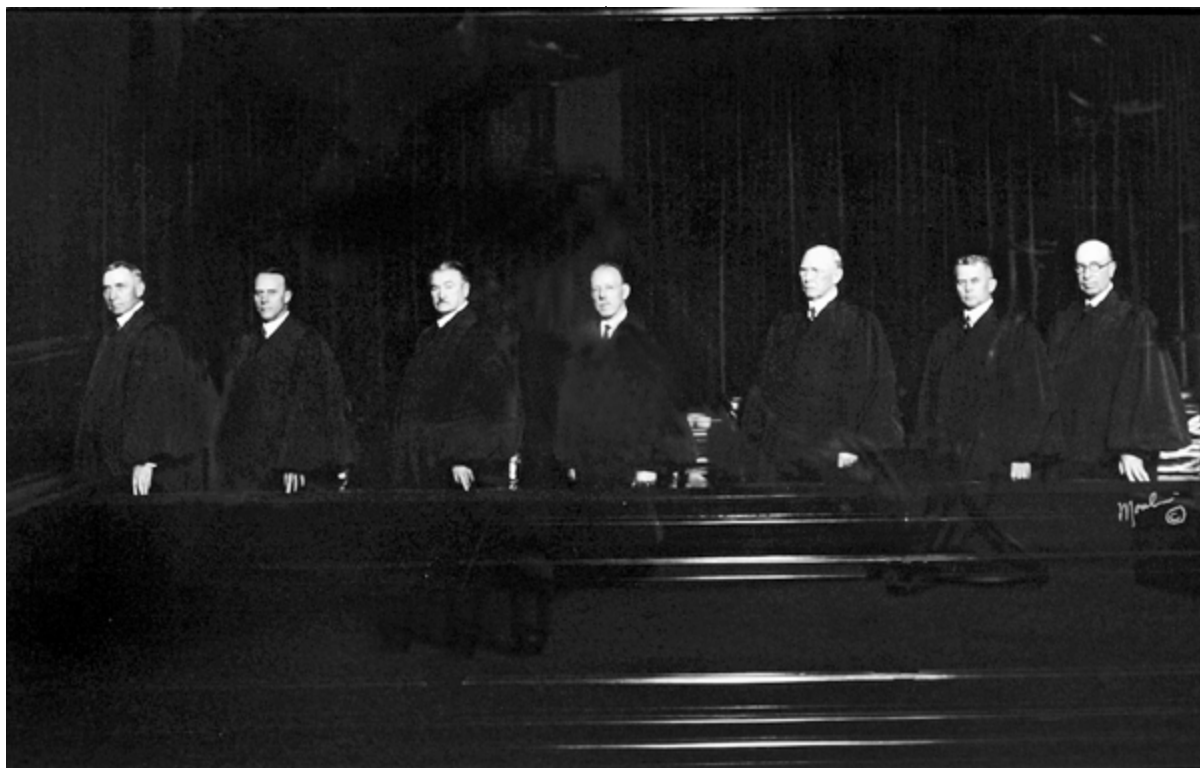
The smaller localities are not left without adequate judicial service when the judges of their counties are sent to serve in the crowded centers. By a system of assignments worked out by the council, the judges of such smaller counties have annual assignments enabling them to sit in each of the counties adjoining their own. On summons from the clerk of the court thus temporarily without its regular judge, one of the nearby judges carries on the work of the court. In

some instances, a competent local justice of the peace is under similar assignment for the purpose of handling the routine matters of the Superior Court, and frequently trying important cases. Thus, no locality in the state is left without adequate judicial service.

The power of the Chief Justice as chairman of the Judicial Council to assign judges and justices to courts other than their own, when their services are needed, extends to the appellate courts. Judges of the Superior Court serve as justices *pro tem* in the District Courts of Appeal, and justices of the latter courts serve under like assignment when their assistance is needed in the Supreme Court. Acting under this power of assigning justices and judges, that their services may be made available in other courts, the chairman of the council has made nearly 4,000 temporary transfers of Superior Court judges from trial court to trial court. More than 300 assignments have been made of judges of the Superior Court to the District Courts of Appeal, and half a hundred of justices of the latter court to the Supreme Court for varying periods. As a result, the administration of justice in all of the courts of California has been speeded, and court business has been materially advanced.

Another, and a most important, duty imposed by the constitution on the Judicial Council is that of surveying the condition of business in the several courts, with a view to simplifying and improving the administration of justice, and to submit to the court suggestions that may seem in the interest of uniformity of procedure and tend toward the expedition of court business. Until within a decade, rules of procedure in trial courts varied greatly in different counties. Under the provision just noted, the council submitted, and the trial courts of the state on its recommendation are functioning under, the rules of court procedure before referred to, having uniform operation in all material matters. Some of these changes, because not in accord with existing law, required legislative action, which was had. In other instances, efforts to make changes have met with stubborn and successful opposition by the lawmakers.

Another duty of the council is to exercise such functions “as may be provided by law.” The legislature, by appropriate statutes, has in a number of instances directed that certain procedural steps be taken in the courts of both civil and criminal jurisdiction in accordance with rules “to be provided by the Judicial Council.” Therefore, although the legislature still has concurrent power with the courts through the Judicial Council to make court rules, it seems to be a matter of reasonable expectation that a general and harmonious course of action by the two departments of the state government will eventually lead to such power being vested in the courts, where it logically belongs.



SUPREME COURT OF CALIFORNIA, 1927-32

LEFT TO RIGHT: *Associate Justices John W. Preston, John W. Shenk, Emmet Seawell, Chief Justice William H. Waste, and Associate Justices John E. Richards, Jesse W. Curtis, and William H. Langdon*

PHOTO: MOULIN STUDIOS

The California Judicial Council plan was incorporated in and made a part of article VI of the constitution relating to the judicial department of the state. The section providing for the council is found immediately after the enumeration of the different courts. The opening sentence is: "There shall be a Judicial Council." Then follow the various provisions fixing its membership and prescribing its powers and duties. Therein lies its strength. The legislature cannot abolish the council without the vote of the people of the state, although it may, and on one occasion has, seriously crippled its activities by refusing to appropriate sufficient funds to enable it to properly carry on its work.

The consideration by the council of the problems relating to the administration of justice, and its activities in endeavoring to afford a solution of these questions, have so appealed to the people and to the press of the state that it is very doubtful if any effort to abolish it can succeed. It is more probable that additional power and authority will be conferred on it. Some of the problems to be studied as the basis for recommendations looking to improvement in the judicial system are almost as old as the life of orderly procedure in courts of justice. No doubt, the results of the study of

some of them must be submitted directly to the people for consideration and approval. Indifference and antagonism (for some exists) of members of the legal profession, and even of some judges, toward the council's effort to place California in the forefront in the matter of the administration of justice must be overcome. If the people are sufficiently interested in doing that, the prospect for the future is bright.

Until the creation of the Judicial Council, the form of the organization and the jurisdiction of the so-called inferior courts, such as the Justice's Court, were substantially the same as in 1850, when they began to function. By appropriate legislation, initiated by the council, these courts have been reorganized. Their civil jurisdiction in the more largely populated townships has been increased. In a number of the cities they have been merged in, and replaced by, the newly created Municipal Courts, which are courts of record having still wider jurisdiction. In each case the courts possess the substantial features of, and the practice and procedure followed are practically the same as in, the Superior Courts. The result of these changes has been to greatly decrease the volume of civil litigation filed in the Superior Courts.

CLEANING UP THE LEGAL PROFESSION

Within a year after the creation of the Judicial Council another activity came into existence which has had a decided bearing on the practice of law in California, and which has indirectly benefited the courts. Culminating more than a decade of untiring effort by the old voluntary organization known as the California Bar Association, there was organized The State Bar of California. It was created by the legislature as a public corporation, with power to provide for its own organization and government, and was given authority to regulate the practice of law and to provide penalties for misconduct of its members, who are those members of the legal profession entitled to practice law in California. No one not an active member of the State Bar is permitted to practice law in this state.

“PURGING OF THE PROFESSION OF UNDESIRABLES HAS BEEN MOST WHOLESOME, AND THE WORK IS NOT COMPLETE.”

Following its complete organization in 1927, its board of governors devoted itself to a “cleaning up” of the legal profession in California. About the time the State Bar was created, there was a “hue and cry” being raised all over the land about the “inefficiency” of the legal profession, its “rotteness,” its “crookedness,” and its “venality.” Warnings appeared from many sources that if the profession “did not clean its own house, the people would do it.” The threat did not seem without foundation and, disagreeable as the task was, the State Bar took up the duty and has consistently and bravely carried on.

One hundred and twenty cases have reached the Supreme Court, after careful consideration and hearing by the Bar, with recommendations that members of the bar be disciplined. As a result, 34 attorneys have been disbarred from practice, 71 have been suspended for varying periods, and several publicly reprimanded. Further purging of the profession of undesirables through these disciplinary activities has been most wholesome, and the work is not complete. With the approval of the Supreme Court, the State Bar governors have formulated and are enforcing rules of professional conduct for all members of the bar in this state. These rules rest upon the highest ideals of the legal profession, and follow closely approved rules laid down by the American Bar Association and by the bars of other American jurisdictions.

Another of the general powers conferred on the State Bar by the act creating it is that of aiding “in the

advance of the science of jurisprudence and in the improvement of the administration of justice.” Local committees and sections of the members throughout the state engage in studying measures which have been, or are about to be, submitted to the people or to the legislature. Well advised action of the Bar at its annual meetings may determine the disposition of such proposed legislation.

A matter of vital concern to students and others preparing to enter the legal profession, and one having a very material connection with the administration of justice, is the power conferred on, and courageously assumed by, the State Bar to determine the qualifications for admission to practice law. An important duty is owed the public, that of seeing that unprepared and unworthy persons do not enter the profession. A discussion of this phase of the work of the State Bar since its creation merits a separate article in order to do it justice. It cannot be indulged in here.

The result of the constructive work that has been directed toward the betterment of the legal profession and the improvement of the courts during the past 10 years is reflected in a like distinct improvement in the administration of justice in the state. California is a state of vast areas and great distances. When it was formed, travel was hard and communication uncertain. Many of the laws, when enacted, and rules of court procedure as laid down were adequate for the times and conditions. The state’s population has increased tremendously. Its commercial and industrial pursuits have multiplied. Rapid transportation and methods of quick communication now exist. Every form of business in the state now functions under improved and up-to-date forms of organization and along efficient lines of operation. Other departments of the state are highly organized and function according to approved business methods.

FORWARD MARCH

The judicial branch of the state government, by far the most important in the many of its relations to the people, has been slow to move. Its conservative antipathy to changes and innovations has held it from a progressive forward movement. The people of the state, by a great vote of confidence in adopting the Judicial Council plan, and their representatives, the legislators, by fine experimental legislation creating the incorporated State Bar of California, have challenged the courts and the legal profession to a “forward march,” with great opportunities ahead. The most encouraging feature of the progressive movement already under way will be the confidence and intelligent support of the educated men and women of the state. ★

Message From the President

THE THREE PILLARS OF THE HISTORICAL SOCIETY

BY JENNIFER KING

I AM HONORED TO have served as the Society's President for almost one year now. At the beginning of my term, I identified what I viewed as the three pillars of the Society's: its publications, programs, and people. Each has an integral and unique role in carrying out the Society's work and mission, and the interrelationship between the three is what continues to make the Society successful.

PUBLICATIONS

Most practitioners know the Society through this Newsletter. But what they do not realize is how the Newsletter has evolved over time — from a brief update of Society business to a full-fledged independent publication that includes scholarly articles, articles both by and about our Supreme Court Justices, and brilliant photographs and illustrations. Our editor Thomas Reynolds continues to improve and enhance the Newsletter with every issue.

Most in academia know the Society through our annual Journal. Editor and board member Selma Moidel Smith continues to work tirelessly to produce the Journal. Her efforts have resulted in increased submissions every year, and thanks to the high quality of the Journal articles we accept, our Journal is now routinely cited in other scholarly publications.

Moving ahead, we look forward to adding to our list of publications the long awaited *History of the California Supreme Court*. Editor Harry Schieber is currently finishing up this ambitious, comprehensive history of our state's highest court. The book will be the culmination of the Society's efforts for the past several years, and we look forward to sharing the book with you this year.

PROGRAMS

Our David Terry program was the template our future programs. It involved significant Board participation, and was written by Board member Richard Rahm; our Supreme Court Justices participated in its presentation; we collaborated with other bar associations and historical societies; and the program was presented in multiple venues throughout the state. The Society intends to use this model for the development of upcoming programs associated with the publication of the history.

During much of this past year, the Society focused on another way in which we convey information to our members and others — through our website. Thanks



Society President Jennifer King

to the efforts of Board members David McFadden and Joyce Cook, the Society presented a redesigned website that included new content and an improved functionality and organizational structure. We continue to make enhancements to the website that have enabled it to become not only a source for information about the Society, but also a destination for research about California law and jurisprudence.

PEOPLE

The few individuals identified above are just a handful of those who comprise the Society's third and most important pillar. Our Board has a level of depth and diversity rarely seen in a law-related organization. We have been fortunate enough to join together attorneys, judges, professors, and other professionals, from the public and private sector throughout California, all of whom are at the top of their field. These individuals sustain the Society in myriad ways — for example by contributing articles to our publications, facilitating our development efforts, or researching organizations and programs for collaboration opportunities.

Beyond our Board, our members who support the Society also help to uphold our most important pillar. While the Society appreciates the necessary financial support that our members provide, we want to encourage participation in additional ways — attending our programs, joining a committee, or submitting an article for one of our publications. Please visit our website, www.cschs.org, or contact us at director@cschs.org for more information on how to get involved. ★

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