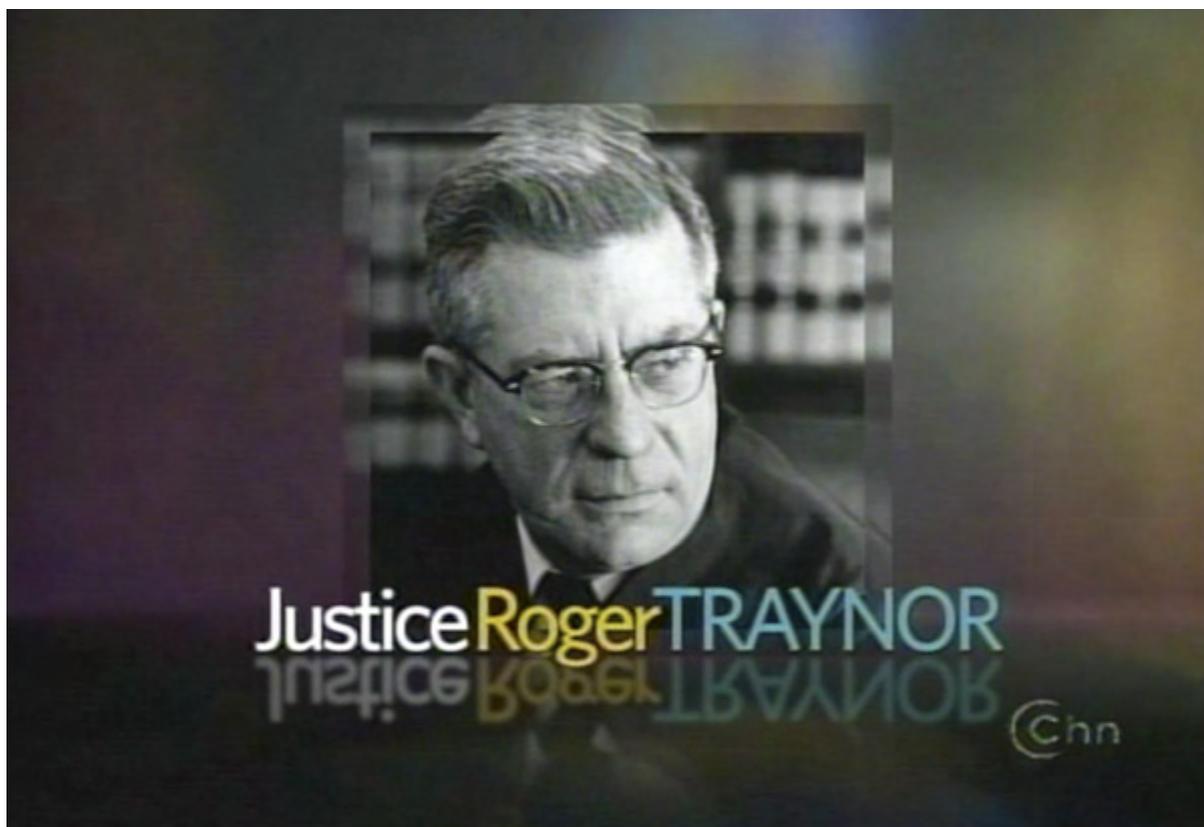




THE CALIFORNIA SUPREME COURT

Historical Society

NEWSLETTER • SPRING/SUMMER 2012



Chief Justice Roger J. Traynor inducted into the California Hall of Fame. (FULL STORY ON PAGES 10–13.)

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A Tribute to Selma

BY HON. KATHRYN MICKLE WERDEGAR,
ASSOCIATE JUSTICE OF THE CALIFORNIA SUPREME COURT

Selma Moidel Smith was elected to the Board of the CSCHS in September 2001, and from that time forward has been a devoted and energetic member of our Board. As chair of the Publications Committee, she has served as editor of both the Society's Journal, *California Legal History*, and its semi-annual Newsletter, elevating the quality of both publications to the highest level. She inaugurated the Society's successful writing competition, inviting students in law schools and graduate programs to submit essays relevant to California's legal issues and history. Since Selma joined the Board, the success of each of the Society's educational programs has been in large measure due to her creative spirit, her generous gift of time, her attention to detail and her willingness to assume any task, large or small. Selma, in short, has over the years been at the heart of the Society's many diverse endeavors.

But there is more. The California Supreme Court Historical Society is not the only organization fortunate enough to have engaged Selma's attention and talent. This past April (coinciding with her 93rd birthday), the ABA Senior Lawyers Division accorded Selma the extraordinary honor of dedicating the Spring 2012 issue of the Division's *Experience* magazine to her in gratitude for the many articles she has written for the Division's publications, her innovations for the benefit of the magazine, and her outstanding service as chair of the magazine's Editorial Board, the first woman to hold that office. As stated in the Prologue to the issue, "What a gift we got in Selma!"

This latest accolade is just one in a treasure chest of honors that have been showered on Selma over the span of her career, and not all related to the law. Selma is a gifted musician: she is a pianist, violinist, and Spanish guitarist, as well as a composer of more than 100 piano and orchestral pieces, many with a Latin flavor. Her music has been performed at the National Museum of Women in the Arts in Washington, D.C. and, most recently, at Walt Disney Concert Hall in Los Angeles by the Los Angeles Lawyers Philharmonic, resulting in a standing ovation. She is listed in the *International Encyclopedia of Women Composers*. Fluent in Spanish, she was the first bilingual docent of the Los Angeles Philharmonic, giving in-school music



Selma Moidel Smith, at the meeting of the National Association of Women Lawyers, Miami, Florida, February 2007.

presentations in Spanish-speaking communities and appearing, at the piano, on educational television. Selma expresses her love of music through dance as well, and is gifted with a fine soprano voice. During her years of law practice, she also continued her music studies and was selected by audition to sing in the UCLA University Chorus and, later, to participate in a month-long international piano master class at the Royal College of Music in London. Her gifts in the arts also include poetry, as evidenced by the poem, "Dawn and Sunset" (see page 5), written and published when Selma was 16 years old.

Selma has always been supportive of issues important to women, in both the law and other significant arenas, and has held positions of leadership in numerous organizations directed to women's professional advancement; indeed, every

organization Selma joins ultimately places her at its helm or in a position of leadership. In 1953 she was invited by the college president to become a charter member of the National Board of the Woman's Medical College of Pennsylvania (later the Medical College of Pennsylvania), which was founded in 1850 to enable women to train as physicians, and she later served as president of the Board. In 1965 she was invited to attend the Washington World Conference on World Peace through Law as the official representative of numerous women's legal organizations, as well as to serve as host for Latin American judges and lawyers. She has been president of the Los Angeles Business Women's Council and has held many posts in the International Federation of Women Lawyers, the National Association of Women Lawyers (which has honored her with its Lifetime of Service Award and the creation of the annual Selma Moidel Smith Law Student Writing Competition), and the Women Lawyers Association of Los Angeles, which in 1998 awarded her its first and only honorary life membership in recognition of her then-55 years of commitment and service including two terms as president. Throughout her career and to this day, Selma has been an inspiration to all who know her.

Although we are neither the first nor the only organization to appreciate the "gift of Selma," appreciate her we do. Members of the Board had occasion to express their admiration, affection and appreciation of Selma

last fall, when, after three years, she announced (in the email reproduced below) that while she would continue as editor of our Journal, she would hand on her editorship of the Newsletter. At that time members of the Board wrote to Selma, expressing heartfelt thanks for her work with the Newsletter and the Society. (See below and pages 4–5 for some of those messages of appreciation.)

Thank you, Selma, for all you have done and continue to do for the Society. We honor you for your leadership, dedication and generosity in the sharing of your talents, all to the benefit of the Society and the wider community of judges, lawyers, and scholars that it serves. We are privileged to have you in our midst.

★ ★ ★

Dear Board Members, August 2011

I would like to share with you some news about our Newsletter. You may recall that in the summer of 2008, shortly after I was appointed publications chair, it was necessary to replace our staff Newsletter editor, and so I agreed to “fill in” for one issue. That is now seven Newsletters ago. As you also know, I was appointed editor of our annual Journal that same fall, and have been doing both simultaneously since then.

Earlier this year, I decided it was time to lighten my workload, and spoke with Ray McDevitt and Jake Dear about the possibility of their taking on the Newsletter together, so that I could recommend their appointment to Dan, and thereafter focus my efforts on the Journal. I’m pleased to say that Dan has now appointed Ray as Newsletter editor, and Jake will serve as associate editor. Thank you both, Ray and Jake, and I’m wishing you the great pleasure that I have had in editing our Society’s Newsletter.

With best regards to you all,
Selma

EMAIL RESPONSES FROM BOARD MEMBERS

Dear Selma, thank you for your extreme dedication and hard work on behalf of the Society, especially editing both the Newsletter and Journal in recent years. Not only the Society’s board, but the entire legal historical community is very much indebted to you, a debt that can never be fully repaid except by the great affection we all have for you. You are a wonderful treasure! You certainly deserve to lighten your load.

Warmest Personal Regards,
— Jim [Shekoyan, Past President of the Society]



Celebrating the 20th Anniversary of the National Board of the Medical College of Pennsylvania — in the receiving line with (fellow board member) Princess Grace of Monaco, Sheraton-Carlton Hotel, Washington, D.C., December 1973.

I agree with Jim — Selma, you have set new high standards for both the Journal and Newsletter, and for that we all owe you a sustained round of applause and thanks.

— Jake [Dear]

.....

Mostly, THANK YOU, SELMA!

— Fritz [Frederick Ohlrich]

.....

Let me add my voice to the chorus of thanks and deep appreciation. Selma — you have done a magnificent job with the Newsletter. The countless hours you have spent over the years working on the Newsletter have greatly benefited the Society and all of us who care about the organization, its mission and its future. On behalf of all of us — please accept our profound and abiding thank you!!

— Dan [Grunfeld, President of the Society]

.....



At the U.S. Supreme Court — with Chief Justice Earl Warren during the Washington World Conference on World Peace through Law, September 1965.

Selma, the Newsletter has certainly improved tremendously, and I join in the expression of gratitude.

— Mitch [Keiter]

Selma, I too want to express my personal gratitude to you for your diligence and dedication in connection with the Newsletter, the Journal and all other aspects of the work of the CSCHS. All the very best,

— Eric [Joss, Vice President of the Society]

Selma — I want to add my voice to the crescendo of congratulations and thanks. You are an amazing renaissance woman, and the Society has been incredibly fortunate to have had the benefit of your extraordinary talents. Everything you have touched has been spectacular!

— Kent [Richland, Past President of the Society]

I join in the thanks. Selma, you have done a fantastic job!

— Tom McDermott

Selma — you have to receive the “fill-in” editor of the decade award for all you have done in producing an outstanding Newsletter. It and the Journal are publications I look forward to receiving and truly enjoy reading. I hope you will continue with the Journal for many years. All best wishes,

— John [Burns]

Selma, I just returned from my vacation and read your email. I want to express my personal thanks for all that you have done for the Society, especially how you volunteered to “fill in” as editor and championed the writing competition for law students. Since you are such a wonderful, articulate writer and an excellent editor yourself, you realize how important it is for students to be encouraged to pursue legal scholarship and to be recognized for doing so. But this is but one of many benefits we have received by having you on the Board. We are so much better as an organization because you have stepped up and shown us the way. Thank you, Selma,

— Karen Smith [Professor]

Dear Selma, I’ve been happy to read all the accolades sent your way in response to your announcement that you are passing the torch for editing the Newsletter to Ray and Jake. I concur in them all, and I want to add that your dedication to the task and your skill, creativity, and good nature in tending to all the myriad aspects of producing the Newsletter — both onerous and pleasurable — have been beyond compare. Your contribution has been extraordinary and, of course, continues to be so with the Journal. We are deeply indebted to you. With warmest good wishes,

— Kathryn Werdegar

[Associate Justice, California Supreme Court]

Dear Selma, Justice Werdegar and other Board colleagues have said it beautifully, and I concur on every point! Having had my own immersion in the Newsletter editorship while managing in addition only a fraction of the range of duties you take on for us, I am especially appreciative for the wonderful way in which you have carried on the Newsletter, your other Board duties, and — not least — editorship of the now-enlarged and impressively upgraded Journal! Thank you so much for your dedication, your wisdom, and your energy, given so generously to the Society as it has expanded its agenda and its outreach.

— Harry [Professor Harry Scheiber]

Hi Selma, let me add my voice to the chorus: we are all so grateful to you for the splendid work you've done on behalf of the CSCHS! Best,

— Molly
[Professor Molly Selvin, Secretary of the Society]

It was great to see so many emails expressing appreciation for your fine work with the Society. All of the praise expressed, and more, is justly deserved. You do such a wonderful job on all of the projects you undertake.

— Joyce [Cook]

Good afternoon, Selma. It has been very gratifying to see the spontaneous outpouring of admiration and affection for you, and I do wish to associate myself with that expression of gratitude for all that you have done, and continue to do, for the Society. All the best,

— Ray [McDevitt, Past President of the Society]

★ ★ ★

DAWN AND SUNSET

Dawn — and the world awakens
From its peaceful slumber;

The pinkish hues of the morning sun
Are tinting the hills and valleys.
What can this new day bring?
Perhaps a smile, perhaps a tear.
But always inspiration!

As it turns a page in the Book of Life
It turns our hearts once more and again
Toward the God of Eternal Hope —
Dawn!

Sunset — the darkness has triumphed
And the world returns to its slumber:
But over the distant hills and valleys
Spreads a blanket of flame and gold —
The last farewell of a dying day.
Reluctantly it falls from view
With one brief pause as if to say,
“A day has passed — a day well done;
What matters if there was a tear?
There's always inspiration!”

As it turns a page in the Book of Life
So turn our hearts once more and again
Toward the God of Peace, and Rest, and Memory —
Sunset!

— S.M.S. (at age 16)



On the premiere of her orchestral suite, “Espressivo” — feature story and photo (at her piano), Los Angeles Times, October 1986.

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Presenting an award to Los Angeles Philharmonic Conductor Zubin Mehta in his office at the Los Angeles Music Center, November 1975.

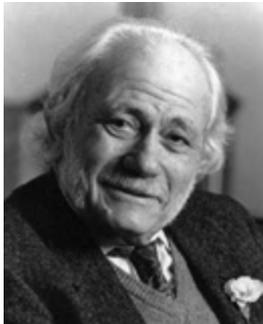
The Mathew O. Tobriner Memorial Lectures at UC Hastings

BY HON. JOSEPH R. GRODIN*

Mathew O. Tobriner was one of the finest justices ever to sit on the California Supreme Court. His opinions, always elegantly crafted, always tuned to the role of the law in protecting individuals against preventable harms and the abuses of government and corporate power, came to be studied by law students and lawyers throughout the country. And his personal warmth and enthusiasm inspired love and devotion in all who knew him. So it was natural and predictable that upon his death in 1982 his closest friends and admirers would join with his relatives to find a suitable public way to keep his legacy alive.

The driving force behind the search for a suitable memorial was Gerald Marcus, a founder and partner in the firm of Hanson Bridgett, and a longtime close friend of Justice Tobriner, with whom he had collaborated over the years on a variety of legal, political, and community activities. Marcus consulted with Tobriner's widow, Rosabelle Tobriner, and his two sons, Michael Tobriner, a lawyer in San Francisco and Stephen Tobriner, a professor at UC Berkeley, along with numerous others to come up with a plan. The plan, reflecting Tobriner's own

interests in legal scholarship and development of the law, was to raise funds to sponsor an annual lectureship in Tobriner's name. Hastings College of the Law, where Tobriner had been scheduled to teach, was chosen as the site of the lectures and as repository of the funds. The lectures were to be of publishable quality, and to be published alternately in the *Hastings Law Journal* and the *Hastings Constitutional Law Quarterly*. In addition



Gerald Marcus

PHOTO COURTESY
HANSON BRIDGETT, LLP

to giving the lecture, the person invited was expected to spend additional time at Hastings, visiting with students and professors, and in the community, meeting with lawyers and judges. After each lecture there would be a buffet gathering to which students and faculty would be invited, followed by a dinner attended by sponsors of the lectures as well as representatives of the Hastings community.

*Retired Associate Justice, California Supreme Court; Distinguished Emeritus Professor, UC Hastings College of the Law.



Hon. A. Leon Higginbotham, Chief Judge Emeritus of the U.S. Court of Appeals for the Third Circuit, delivering the Mathew O. Tobriner Lecture in 1994. Looking on are (LEFT TO RIGHT): Hastings Dean Mary Kay Kane; attorney Michael Tobriner, one of Justice Tobriner's sons; and Hon. Thelton Henderson, Chief Judge of the U.S. District Court for the Northern District of California, who introduced Judge Higginbotham.

PHOTO COURTESY UNIVERSITY OF CALIFORNIA
HASTINGS COLLEGE OF THE LAW

A Memorial Committee was formed, with former Chief Justices Phil S. Gibson and Donald Wright as Honorary Co-Chairs, and an Advisory Committee to advise Hastings on the selection of lecturers and topics. Hon. Robert F. Peckham, Chief Judge of the U.S. District Court for Northern California, served as first chair of the Advisory Committee. Initial members of that committee were Hon. Rose Elizabeth Bird, Chief Justice of the California Supreme Court, Gerald Marcus, Michael Tobriner, and myself, then an Associate Justice of the California Court of Appeal. A broader committee, assisting Gerald Marcus in the raising of funds for the project, included Harry Polland, from Tobriner's former law firm, and many of Tobriner's former law clerks and staff attorneys: David Balabanian, Harold "Hal" Cohen, Paul N. Crane, Antonio Rossman, Laurence A. Tribe, Robert Vanderet, and Michael Willemsen. Dean Bert Prunty of Hastings was a member *ex officio*. Over the years, Marcus and the Financial Committee received donations from more than 500 contributors, thereby endowing a fund sufficient to cover expenses and honoraria for the visiting lecturers.

The first lecture was given in the fall of 1983, by Hon. J. Skelly Wright, Judge of the U.S. Court of Appeals for the District of Columbia Circuit, speaking about the contributions of state courts to the protection of liberties.

Judge Wright was followed in 1984 by Laurence Tribe, a former Tobriner law clerk and a noted constitutional scholar, who spoke of the potential dangers in applying cost/benefit analysis to determine the scope of constitutional rights. U.S. Supreme Court Associate Justice William Brennan spoke in 1985, in defense of his continuing dissents in death penalty cases. In 1986 the lecturer was Anthony Lewis, a renowned journalist and author of "Gideon's Trumpet," the prize-winning story of how the U.S. Supreme Court, acting upon a roughly-drafted petition by a prisoner, established the constitutional right to counsel. Throughout the succeeding years, lecturers included federal jurists Harry A. Blackmun of the United States Supreme Court; Abner Mikva, Chief Judge of the U.S. Court of Appeals for the D.C. Circuit; and A. Leon Higginbotham, Chief Judge Emeritus of the U.S. Court of Appeals for the Third Circuit. State high court Chief Justices Shirley S. Abrahamson (Wisconsin) and Judith Kaye (New York) spoke on state constitutions as independent sources of protection for individual rights. Barbara Black, Dean of Columbia University Law School, spoke on the subject of judicial independence, and journalist Daniel Schorr on the tension between free speech and control over campaign contributions. Civil rights and equality were the topics of lectures by professors John Hope Franklin, noted historian of the Reconstruction, Charles Ogletree of Harvard Law School, Derrick Bell of Harvard and NYU Law School, and Gerald Torres of the University of Texas. International human rights was the subject for Jose Zalaquett, of the International Commission of Jurists; Richard Goldstone, prosecutor at the International Criminal Tribunal for the Balkan States and Rwanda; Gabrielle Kirk McDonald, formerly President of the International Criminal Tribunal for the former Yugoslavia; and Mary Robinson, former U.N. High Commissioner for Human Rights and President of Ireland. Soon after the attack of 9/11, Aharon Barak, President of the Supreme Court of Israel, spoke on the tensions between human rights and state security, and Wael B. Hallaq, Professor of Islamic Studies at McGill University, spoke on "Muslim rage" and Islamic Law.

Individuals associated with the lecture series came and went. When Judge Peckham died, his place as chair of the Advisory Committee was taken by the then-current Chief Judge of the U.S. District Court for the Northern District, Hon. Thelton Henderson. Dean Bert Prunty of Hastings was succeeded by Dean Mary Kay Kane and then by Dean Nell Newton. The original Administrative Committee was supplemented over time by the addition of Hon. John T. Racanelli, Presiding Justice of the California Court of Appeal, District One; David Balabanian, San Francisco attorney and former Tobriner law clerk; Joan Graf, Executive Director of the Legal Aid Society of San Francisco; Thomas J. Nolan, a distinguished Palo Alto attorney; Professor Stephanie M. Wildman (wife of



MATHEW O. TOBRINER

"It is the quality of justice tempered with humanity. It is the ability to see the human being behind the rule of law. It is a sensitivity to the needs of individuals in a society dominated by big government and big institutions. It is a commitment to fairness of procedures, whether the claimants be criminal defendants, welfare recipients, public employees, or business licensees. It is a clear-eyed perception of the reality of relationships, stripped of labels. It is the ability to identify with others, despite differences in age, race, social position, or lifestyle. It is the ability to understand and have compassion for the frailties common to all humanity. It is the quality of eternal youth, that freshness of spirit, openness of mind, and tenacious idealism that served to nourish and inspire all those who came into contact with him or read his opinions. It is the ability to continue to care, when others have given up on caring. It is the maintenance of his own balance, and sense of conviction, in the face of pressures and distortion. It is the ability to translate ultimate human values such as love and respect and responsibility into legal doctrine. It is the persistence of integrity in a world where that commodity is in short supply."

— JUSTICE JOSEPH R. GRODIN,
IN MEMORIAM: MATHEW O. TOBRINER,
33 HASTINGS L.J. XXV (1982)

Michael Tobriner) and Professor Edward Steinman, both of Santa Clara University Law School.

What remained constant was the high quality of the lectures and the opportunities they provided for students and members of the legal community to hear and rub shoulders with giants in the world of human rights and legal



U.S. Supreme Court Associate Justice Harry Blackmun meeting with Hastings constitutional law students prior to his 1998 lecture.

PHOTO COURTESY UC HASTINGS COLLEGE OF THE LAW

scholarship, and for the publication of their thoughts and research. Recently, however, recognizing that the increased costs of attending law school present barriers to students wishing to pursue public interest careers, the Tobriner family and the Advisory Committee recommended to the College that the Fund's activities be expanded to support summer public interest internships. This was accomplished through a modification of the original trust, with court approval, to authorize the award of Tobriner Summer Social Justice Fellowships to Hastings students. Tobriner Fellows will serve internships at public interest law firms and institutions, such as the San Francisco Legal Aid Society, which Tobriner helped to found. Annual lectures from public interest law experts, and reports from recipients of Tobriner Fellowships, are also planned, thus continuing a tradition of holding an annual event in honor of Justice Tobriner's memory and commitment to social justice. ★

MATHEW O. TOBRINER MEMORIAL LECTURES

Between October 1983 and October 2004, twenty-one lectures were presented at Hastings College of the Law by distinguished judges, legal scholars, and other prominent figures of national, or international, reputation. The great majority of the lectures were subsequently published in the Hastings Law Journal, the Hastings Constitutional Law Quarterly, or other publications affiliated with the College. The speakers, the titles of their lectures, and the associated publication citations are listed in chronological order below.

J. SKELLY WRIGHT JUDGE, UNITED STATES COURT OF APPEALS DISTRICT OF COLUMBIA CIRCUIT	<i>In Praise of State Courts: Confessions of a Federal Judge,</i> 11 <i>Hastings Const. L.Q.</i> 165 (1983–1984)
LAURENCE H. TRIBE PROFESSOR OF CONSTITUTIONAL LAW HARVARD LAW SCHOOL	<i>Seven Deadly Sins of Straining the Constitution Through a Pseudo-Scientific Sieve,</i> 36 <i>Hastings L.J.</i> 155 (1984–1985)
WILLIAM J. BRENNAN, JR. ASSOCIATE JUSTICE SUPREME COURT OF THE UNITED STATES	<i>In Defense of Dissents,</i> 37 <i>Hastings L.J.</i> 427 (1985–1986)
ANTHONY LEWIS NEW YORK TIMES COLUMNIST LECTURER, HARVARD LAW SCHOOL	<i>Preserving the System: The Role of Judges,</i> 14 <i>Hastings Const. L.Q.</i> 1 (1986–1987)
BARBARA ARONSTEIN BLACK DEAN, COLUMBIA UNIVERSITY SCHOOL OF LAW	<i>Reflections on Judicial Independence,</i> <i>Hastings Community</i> (Summer 1988) <i>(article only, not text of lecture)</i>
HARRY A. BLACKMUN ASSOCIATE JUSTICE SUPREME COURT OF THE UNITED STATES	<i>Trends and Countertrends,</i> <i>Hastings Community</i> (Summer 1989) <i>(article only, not text of lecture)</i>
JOHN HOPE FRANKLIN PROFESSOR OF HISTORY EMERITUS AND PROFESSOR OF LEGAL HISTORY DUKE UNIVERSITY LAW SCHOOL	<i>The Civil Rights Act of 1866 Revisited,</i> 41 <i>Hastings L.J.</i> 1135 (1989–1990)
SHIRLEY S. ABRAHAMSON JUSTICE WISCONSIN SUPREME COURT	<i>Divided We Stand: State Constitutions in a More Perfect Union,</i> 18 <i>Hastings Const. L.Q.</i> 723 (1990–1991)

MATHEW O. TOBRINER MEMORIAL LECTURES

JOSÉ ZALAQUETT CHAIRPERSON, INTERNATIONAL HUMAN RIGHTS INTERNSHIP PROGRAM	<i>Balancing Ethical Imperatives and Political Constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations</i> , 43 <i>Hastings L.J.</i> 1425 (1991–1992)
ABNER J. MIKVA CHIEF JUDGE, UNITED STATES COURT OF APPEALS, DISTRICT OF COLUMBIA CIRCUIT	<i>It's Time to "Unfix" the Criminal Justice System</i> , 20 <i>Hastings Const. L.Q.</i> 825 (1992–1993)
A. LEON HIGGINBOTHAM, JR. CHIEF JUDGE EMERITUS, UNITED STATES COURT OF APPEALS, THIRD CIRCUIT	<i>Justice Clarence Thomas in Retrospect</i> , 45 <i>Hastings L.J.</i> 1405 (1994)
RICHARD GOLDSTONE JUSTICE, CONSTITUTIONAL COURT OF SOUTH AFRICA; PROSECUTOR, INTERNATIONAL CRIMINAL TRIBUNALS FOR THE BALKAN STATES AND RWANDA	<i>Exposing Human Rights Abuses — A Help or Hindrance to Reconciliation?</i> 22 <i>Hastings Const. L.Q.</i> 607 (1994–1995)
DANIEL SCHORR SENIOR NEWS ANALYST FOR NATIONAL PUBLIC RADIO, VETERAN CBS REPORTER/ COMMENTATOR	<i>The First Amendment Under Pressure</i> , 18 <i>Hastings Comm. & Ent. L.J.</i> 433 (1995–1996)
CHARLES OGLETREE PROFESSOR OF LAW HARVARD LAW SCHOOL	<i>The Burdens and Benefits of Race in America</i> , 25 <i>Hastings Const. L.Q.</i> 219 (1997–1998)
JUDITH S. KAYE CHIEF JUDGE OF THE STATE OF NEW YORK	<i>Changing Courts in Changing Times: The Need for a Fresh Look at How Courts are Run</i> , 48 <i>Hastings L.J.</i> 851 (1996–1997)
DERRICK BELL VISITING PROFESSOR, NEW YORK UNIVERSITY LAW SCHOOL	<i>"Here Come de Judge": The Role of Faith in Progressive Decision-Making</i> , 51 <i>Hastings L.J.</i> 1 (1999–2000)
GABRIELLE KIRK McDONALD PRESIDENT OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA	<i>Reflections on the Contributions of the International Criminal Tribunal for the Former Yugoslavia</i> , 24 <i>Hastings Int'l & Comp. L. Rev.</i> 155 (2001)
AHARON BARAK PRESIDENT (CHIEF JUSTICE) OF THE SUPREME COURT OF ISRAEL	<i>The Role of a Supreme Court in a Democracy</i> , 53 <i>Hastings L.J.</i> 1205 (2001–2002)
Wael B. Hallaq PROFESSOR, INSTITUTE OF ISLAMIC STUDIES MCGILL UNIVERSITY	<i>"Muslim Rage" and Islamic Law</i> , 54 <i>Hastings L.J.</i> 1705 (2002–2003)
GERALD TORRES PROFESSOR, UNIVERSITY OF TEXAS AT AUSTIN	<i>The Evolution of Equality in American Law</i> , 31 <i>Hastings Const. L.Q.</i> 613 (2003–2004)
MARY ROBINSON FORMER UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS; PRESIDENT OF IRELAND	<i>A Human Rights Challenge: Advancing Economic, Social, and Cultural Rights</i> , 56 <i>Hastings L.J.</i> 1059 (2004–2005)

Chief Justice Roger J. Traynor Inducted into California Hall of Fame

Roger J. Traynor, former Chief Justice of California, was inducted into the California Hall of Fame in ceremonies held in Sacramento on December 8, 2011. Governor Edmund G. (Jerry) Brown, Jr. presented the award to Joseph Traynor, one of the late Justice Traynor's sons. In his remarks preceding the formal presentation of the award, the Governor spoke eloquently of Justice Traynor's youth in a hard-scrabble mining town, his academic achievements as a student and later as a professor at the University of California at Berkeley and its law school, Boalt Hall, and his vision and leadership over 30 years as a member of California's high court. Governor Brown also recalled Justice Traynor's personal contribution toward his own early success:

I have a special fondness in my heart for Justice Traynor. He wrote a letter of recommendation for me to Yale Law School, which is the only reason — I think — I got in. I don't know whether he wrote it because he thought I was going to be a great legal scholar or because my father appointed him Chief Justice. But, whatever, I'm here. (The text of Governor Brown's remarks appears on the following page.)

Other notable Californians inducted into the Hall of Fame concurrently with Chief Justice Traynor included astronaut and moon explorer Buzz Aldrin, the legendary surf-rock band The Beach Boys, basketball superstar Magic Johnson, and celebrated novelist Amy Tan. Inductees to the Hall of Fame are men and women who have made lasting contributions to the state, the nation and the world in many walks of life including the arts, education, science, business and labor, athletics, philanthropy and public service. (A partial list of the 63 Californians already honored through inclusion into the Hall of Fame appears below.)



The 2011 California Hall of Fame ceremonies were held in Sacramento's Memorial Auditorium, a venerable building that has been the site of many gubernatorial inaugurations.

PHOTO CLIP COURTESY OF COMCAST HOME NETWORK

The California Hall of Fame, implemented in 2006 by former First Lady Maria Shriver, is a featured program of the California Museum. After each year's formal induction ceremonies, a photograph and an account of each inductee's life and accomplishments are added to the permanent exhibit installed within the Museum, which is located within the State Archives building in Sacramento, one block from the State Capitol.

Founded in 1998, the Museum is affiliated in a public-private partnership with the State Archives and the Secretary of State's Office, but receives most of its funding from private sources. The Hall of Fame and its glittering annual induction ceremony has become a landmark destination for visitors from throughout the State, and the world. ☆

☆ ☆ ☆ *Partial List of Members of California Hall of Fame* ☆ ☆ ☆

ANSEL ADAMS	FRANK GEHRY	DOROTHEA LANGE	JONAS SALK
EDMUND G. (PAT) BROWN	A. P. GIANNINI	GEORGE LUCAS	LELAND STANFORD
DAVE BRUBECK	ANDY GROVE	WILLIE MAYS	KEVIN STARR
CESAR CHAVEZ	STEVE JOBS	ROBERT MONDAVI	JOHN STEINBECK
WALT DISNEY	HIRAM JOHNSON	JULIA MORGAN	LEVI STRAUSS
AMELIA EARHART	RAFER JOHNSON	LINUS PAULING	EARL WARREN
CLINT EASTWOOD	HENRY J. KAISER	RONALD REAGAN	ALICE WATERS

GOVERNOR BROWN'S REMARKS AT
CALIFORNIA HALL OF FAME CEREMONIES
DECEMBER 8, 2011 (edited for length)

Welcome, everyone, to this great celebration in recognition of some of the finest citizens of California.

I have a special fondness in my heart for Justice Traynor. He wrote a letter of recommendation for me to Yale Law School, which is the only reason — I think — I got in. I don't know whether he wrote it because he thought I was going to be a great legal scholar or because my father appointed him Chief Justice. But, whatever, I'm here.

If the California legal system had a favorite son it would be Justice Roger Traynor. He was a scholar among scholars, a professor beloved by his students, and, of course, California's Chief Justice.

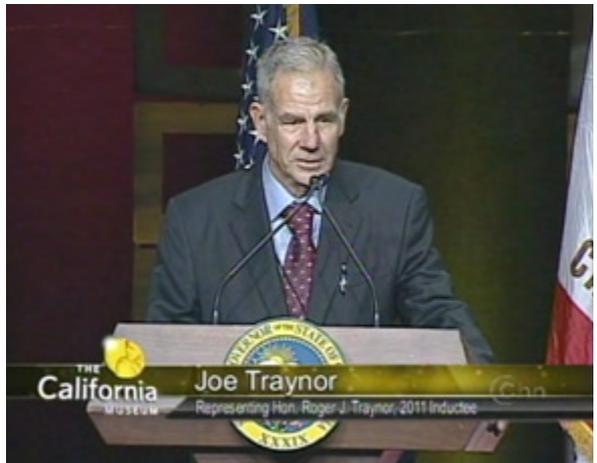
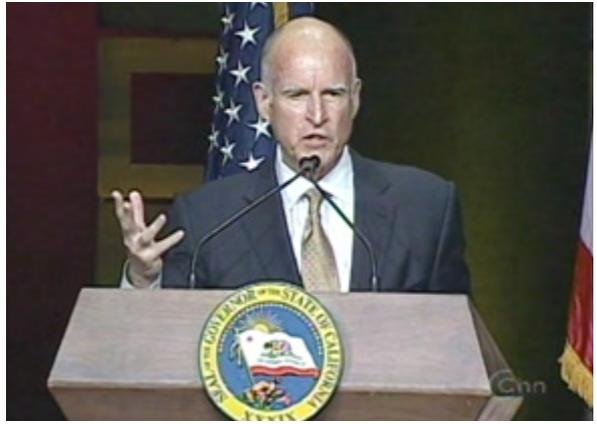
He was born in 1900 to Irish immigrants and raised in the rough-and-ready mining town of Park City, Utah. Traynor knew the meaning of a hard day's work. He also discovered a love of learning. With very little money but with lots of enthusiasm he arrived at the University of California. There he earned his PhD in Political Science and a law degree in the same year of 1927. He took the Bar Exam the same day as my father, who went to a night law school. . . .

After he passed the Bar Exam, he started to teach at Berkeley, teaching the first course in taxation. . . . He helped to create California's modern system of taxation: its sales tax, its car tax — he figured the whole thing out. We could sure use his help today.

He was appointed to the Supreme Court in 1940 as an Associate Justice and then was elevated as Chief Justice in 1964. He served on the Supreme Court for over 30 years and authored 900 decisions. Some say he is the greatest jurist not to have been appointed to the United States Supreme Court.

In the tradition of Lord Mansfield, who abolished slavery in England, Justice Traynor was willing to use intelligence, humanity, and the authority of the judiciary to challenge existing assumptions. In 1948 he authored the first decision in the country to strike down a law prohibiting interracial marriages. That was *Perez v. Sharp*. And in 1963 he created a new rationale, one that has been universally adopted by other states, establishing the principle that businesses must be responsible to the public when their products cause harm.

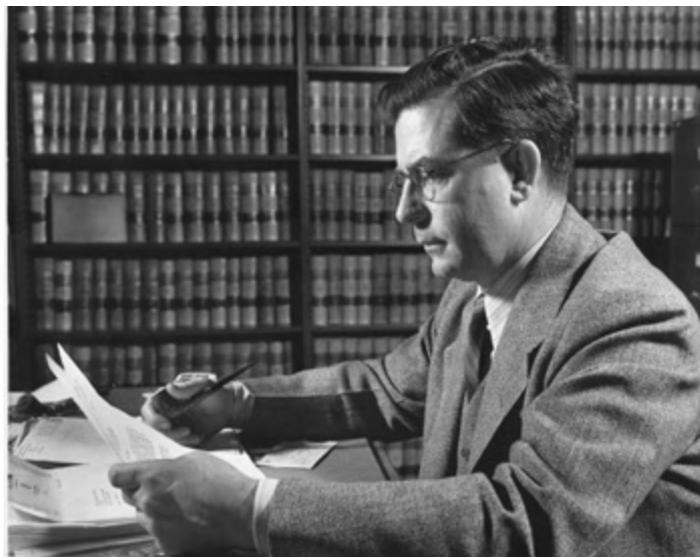
Justice Traynor was a champion of people's rights. He was a careful jurist; didn't always agree with one position, one interest, or one ideological positioning. But he was a wise person who saw the judiciary as a co-equal branch of government that had its own power and responsibility to make sure that our framework of law worked, was just, and adapted to the ever-changing times in which we live. Justice Traynor — a very fitting first inductee. ★



Statewide coverage of the Hall of Fame ceremonies was provided by COMCAST Home Network. The images above show (TOP TO BOTTOM): Gov. Brown delivering his formal induction address; the Governor receiving the Hall of Fame medal from Staff Sgt. Richard Aller, California Army National Guard for presentation to Joe Traynor, one of Justice Traynor's sons, who is approaching the podium; and Joe Traynor, accepting the medal on behalf of his father, speaking to the audience of over 750 and recalling his father's emphasis on the importance of hard work.

PHOTO CLIPS COURTESY OF COMCAST HOME NETWORK

FORMER CHIEF JUSTICE ROGER J. TRAYNOR: IMAGES FROM HIS LIFE



FORMER CHIEF JUSTICE ROGER J. TRAYNOR: IMAGES FROM HIS LIFE



PAGE 12, CLOCKWISE FROM UPPER LEFT:

Traynor as Chief Justice, formal portrait.

Traynor the scholar: Roger Traynor was a member of the faculty at Boalt Hall for ten years, beginning in 1930. This photograph was taken at Boalt in 1940, shortly after his nomination to the California Supreme Court.

Four-year-old Roger Traynor in his Park City, Utah hometown.

Traynor as a student at Park City High School.

Traynor the family man: With his son Joe, on the Berkeley Municipal Pier, circa 1944.

THIS PAGE, TOP TO BOTTOM:

Justice Traynor leading a discussion on American legal principles in Salzburg, Austria in 1956. The prestigious Salzburg Seminars were held for many years in the aftermath of World War II to provide European opinion leaders an opportunity to learn about America from American judges, journalists, labor leaders, corporate executives, university professors and government officials.

Traynor the teacher: Lecturing at Hastings College of the Law in the 1970s, after his retirement as Chief Justice.



ALL PHOTOS ON PAGES 12–13 COURTESY OF THE ROGER J. TRAYNOR MEMORIAL COLLECTION AT UNIVERSITY OF CALIFORNIA HASTINGS COLLEGE OF THE LAW



Justice Werdegar delivers the 2012 Jefferson Memorial Lecture, “The California Supreme Court and the Initiative Power — 100 Years of Accommodation,” at UC Berkeley.

PHOTO BY DICK CORTEN, UC BERKELEY

Justice Kathryn M. Werdegar Delivers the 2012 Jefferson Memorial Lecture

Associate Justice Kathryn Mickle Werdegar delivered the Jefferson Memorial Lecture on March 20, 2012, at the International House Chevron Auditorium on the UC Berkeley campus. Her topic was “The California Supreme Court and the Initiative Power — 100 Years of Accommodation.”

The Jefferson Memorial Lectures were established in 1944 through a bequest from Elizabeth Bonestell and her husband Cutler Bonestell. A prominent San Francisco couple, the Bonestells cared deeply for history and sought through the lectures to encourage students, faculty, visiting scholars, and others to explore the legacy of Thomas Jefferson and the values inherent in American democracy.

Since then, a number of distinguished scholars and public servants have delivered Jefferson Memorial Lectures at Berkeley, addressing a broad spectrum of topics, including the early years of the Republic, American politics, economics, law, government, education and religion, as well as Jefferson himself. Among the prominent figures in American intellectual life who have delivered lectures over several decades are:

- ◆ James Conant (President of Harvard University and U.S. Ambassador to Germany)
- ◆ Richard Hofstadter (historian and Pulitzer Prize-winning author)
- ◆ Archibald Cox (Harvard law professor, U.S. Solicitor General, and Watergate Special Prosecutor)
- ◆ Jeanne Kirkpatrick (Georgetown University professor and U.S. Ambassador to the United Nations)
- ◆ U.S. Senator Alan Simpson
- ◆ E. J. Dionne (*Washington Post* political columnist)
- ◆ David M. Kennedy (Stanford history professor and Pulitzer Prize-winning author)
- ◆ Linda Greenhouse (Pulitzer Prize-winning reporter covering the U.S. Supreme Court for the *New York Times*)
- ◆ A. Wallace Tashima (Judge, U.S. Court of Appeals for the Ninth Circuit)
- ◆ Elizabeth Warren (Harvard law professor and special assistant to President Obama)



LEFT TO RIGHT: *Professor Harry Scheiber, Chair of the Jefferson Memorial Lectures Committee; Andrew Szery, Dean of Graduate Studies; Goodwin Liu, Associate Justice of the California Supreme Court; Justice Werdegar; Robert Birgenau, UC Berkeley Chancellor.*

PHOTO BY DICK CORTEN, UC BERKELEY

The large and appreciative audience was welcomed by Harry Scheiber, Chair of the Jefferson Memorial Lectures Committee and Riesenfeld Professor of Law and History at UC Berkeley School of Law. Professor Scheiber characterized Justice Werdegar as “an eloquent and highly respected voice in the vital dialogue of recent years regarding constitutional principle and democratic governance. Her contributions both to scholarship and to the jurisprudence of California’s high court are of enduring importance and her lecture will deal with an issue — the initiative power in relation to the judicial role — which has been a key feature of conflicts over modern-day legal process in our state.”

Introducing Justice Werdegar, UC Berkeley Chancellor Robert Birgenau noted both her having been the first woman to be elected Editor-in-Chief of the Boalt Hall Law Review and her service as a “central figure” on the California Supreme Court Historical Society board of directors.

Justice Werdegar opened her presentation by observing that her delivery of the lecture at the International House was an especially meaningful homecoming since she had lived at the “I-House” during her first year of law school at UC Berkeley. She also

acknowledged the presence in the audience of two of her favorite teachers from Boalt — Professors Jesse Choper and Herma Hill Kay.

Justice Werdegar began by acknowledging that, although Thomas Jefferson believed that the people are the “sole and safe depository” of the wisdom necessary for governance, he was not a proponent of “direct democracy” as the term is now understood. Rather, he, like the other founders of the American Republic, was apprehensive about, in Madison’s words, the “passions of the popular will.” Hence, their preference for indirect democracy, effected through elected representatives. She traced the growing interest in direct democracy throughout the western and mid-western states in the late 19th century as a means to reduce corrupt influence on state legislatures and to encourage popular involvement in government. In California, the initiative, along with the related mechanisms of referendum and recall, were adopted in 1911 as Progressive Party reforms. She noted that not all Californians were enthusiastic, observing that the *Los Angeles Times* expressed fear that the “ignorance and caprice of the multitudes” would subject business interests, and property rights in general, to “constant turmoil.”

Today, the initiative has been adopted in 24 states and the District of Columbia and is now an established part of the fabric of California government. The challenge for California courts has been to give effect to the wishes of the majority, as expressed through the initiative power, while holding true to the fundamental principles in the federal Constitution and in other provisions of the state Constitution. The balance of the lecture dealt with the efforts by the California Supreme Court to meet that challenge.

The principles evolved by the Court over the century that the initiative has been in effect imposed both procedural and substantive standards on initiative measures.



Professor Herma Hill Kay, one of Justice Werdegard's favorite teachers at Boalt Hall, poses a question after the lecture.

PHOTO BY DICK CORTEN, UC BERKELEY

Justice Werdegard described the procedural limits: (1) an initiative may amend, but not revise, the Constitution; and (2) an initiative measure may address only a single subject.

Justice Werdegard explained that the Court evaluates whether an initiative substantially alters basic government structure and framework. If it does, it constitutes a revision, which may be accomplished solely through a constitutional convention or legislative initiative. In only two cases has the Court held

a voter initiative measure invalid as an attempted revision.

The "single subject" rule requires that all parts of an initiative measure be germane to a common subject and focused on achieving a common purpose. The rationale for the rule is, as Justice Werdegard explained, to prevent proponents of an issue from linking it up with other, politically-popular but unrelated, issues, thereby preventing an accurate expression of voter preferences. In only one instance has the Court invalidated an initiative measure on this ground.

The few occasions on which initiatives have been held invalid on procedural grounds illustrate the Court's restraint — itself a recognition that, were it to be more restrictive, it would invite charges of judges thwarting the will of the people.

By contrast, there is no difference between the Court's evaluation of the substantive legality of an initiative statute and that of a statute passed by the Legislature when challenged as violating a provision of the California or federal Constitution. Justice Werdegard provided two examples. Proposition 14 in 1964 authorized racial discrimination in housing. The California Supreme Court overturned it as a violation of the U.S. Constitution's Equal Protection guarantee. Similarly, Proposition 22, passed in 2000, was a statutory initiative prohibiting same-sex marriage. This was held invalid by the Court as violating the California Constitution's guarantee of equal protection. (The Court later upheld the constitutionality of the subsequently enacted Proposition 8, which amended the state Constitution to allow the prohibition.)

Justice Werdegard concluded her lecture with a summary of some of the contemporary issues that the initiative presents. First, it raises the question of the appropriate balance between the people and their Legislature. Second, it is a "winner takes all" process, with less accommodation to, or protections for, minority interests than legislation typically affords. Third, opponents of successful initiatives often challenge them in court, extending a struggle between polarized opponents: political parties; unions and employer groups; insurance companies and trial lawyers. Finally, the expense of gathering signatures and conducting statewide campaigns gives formidable advantages to well-funded interest groups. All these considerations, however, Justice Werdegard emphasized, are matters for the Legislature and the voters, not for the courts.

As Chancellor Birgeneau mentioned in his introduction, Justice Werdegard ranked first in her class in law school. One of her former teachers, Professor Herma Hill Kay, complimenting Justice Werdegard for a "clear and lucid presentation," confirmed that she remains at the top of the class. ★

In the Corridors of the Supreme Court: Historic Photographs

On the walls of the Supreme Court's private hallways are hundreds of framed photographs and images. In addition to 114 formal portraits — one of each justice — there are group photos of the justices (in chambers and on the bench), and photos memorializing special sessions held throughout the state. Intermixed with these are scenes from San Francisco and Los Angeles in

the nineteenth and early twentieth centuries, copies of the original architectural plans for the court's current headquarters at 350 McAllister Street in San Francisco, maps, and memorabilia. Most of these items are never seen by members of the public. In this and future issues, we will share a representative sampling of the court's historic hallway images and photographs. ★

THE JUSTICES AT SPECIAL SESSIONS HELD IN COLTON HALL, MONTEREY, 1959 AND 1970



The court is pictured at a special session held September 1-2, 1959, commemorating the 110th anniversary of the signing of the first California Constitution at Colton Hall. LEFT TO RIGHT: Raymond E. Peters; Homer R. Spence; Roger J. Traynor; Phil S. Gibson, C.J.; B. Rey Schauer; Marshall F. McComb; and Thomas P. White.



At this May 1, 1970 special session commemorating Law Day at Colton Hall are shown, LEFT TO RIGHT: Louis H. Burke, Mathew O. Tobriner; Marshall F. McComb; Donald R. Wright, C.J.; Raymond E. Peters; Stanley Mosk; and Raymond L. Sullivan. According to the minutes of the court, immediately prior to the session, "[o]n the balcony of historic Colton Hall, in view of many persons, Acting Chief Justice Mosk administered the oath of office to the Honorable Donald R. Wright as the twenty-fourth Chief Justice of California."

IN THE CORRIDORS OF THE SUPREME COURT



THE JUSTICES AT SPECIAL SESSION HELD IN COLTON HALL, MONTEREY, 1979

At this October 17, 1979 special session at Colton Hall are shown, LEFT TO RIGHT: Wiley W. Manuel; William P. Clark, Jr.; Mathew O. Tobriner; Rose Elizabeth Bird, C.J.; Phil S. Gibson, former C.J.; Stanley Mosk; Frank K. Richardson; and Frank C. Newman. According to the minutes of the court, "The Chief Justice announced that this session would be dedicated to former Chief Justice Phil. S. Gibson."



THE STATE BUILDING, SAN FRANCISCO, 1924

In 1923 the court moved to its current home and headquarters, depicted here — 350 McAllister Street, San Francisco. Later renamed the Earl Warren Building, it is part of the present Ronald M. George State Office Complex.



CLEMENCY HEARING, *IN RE BILLINGS*, COURTROOM, STATE BUILDING,
SAN FRANCISCO, JULY 21–AUGUST 20, 1930

This photo depicts the justices during the Billings clemency hearing (see accompanying description), in the courtroom at 350 McAllister Street. Sitting immediately below the bench and without robes, are LEFT TO RIGHT: John W. Preston, John W. Shenk, Emmet Seawell, unknown, William H. Waste, C.J., W.H. Langdon, and Jesse W. Curtis. (John E. Richards, also a member of the court at that time, is not pictured.) In the foreground are witnesses, their counsel, and members of the press and public.

PHOTO COURTESY OF SAN FRANCISCO HISTORY CENTER,
SAN FRANCISCO PUBLIC LIBRARY.



San Francisco Police Officers guarding entrance to the Supreme Court courtroom during the Billings clemency hearing. The site looks very much the same today.

PHOTO COURTESY OF SAN FRANCISCO HISTORY CENTER,
SAN FRANCISCO PUBLIC LIBRARY.

**THE “PREPAREDNESS DAY” BOMBING
AND THE BILLINGS HEARING**

Labor leaders Tom Mooney and Warren K. Billings were tried, convicted, and sentenced to death for the 1916 dynamite bombing that killed ten and injured many at San Francisco’s “Preparedness Day” parade on Market Street. The convictions aroused national

attention, resulting in a commission, appointed by President Wilson, which concluded that the prosecution’s verdict was “discredited.” Thereafter the sentences were commuted to life imprisonment, and both Mooney and Billings requested pardons from a succession of California Governors.

Under the California Constitution, a Governor may not pardon a twice convicted felon unless four members of the Supreme Court recommend such a pardon. Billings (but not Mooney) had a prior conviction as a felon, and Governor Young exercised his discretion to forward Billings’ request to the justices of the court, who “sitting as a non-judicial fact-finding Commission,” held an extraordinary session in the courtroom both at 350 McAllister Street, and also in Folsom Prison, from July 21 to August 20, 1930. The hearings, comprising nearly 2,000 pages in three volumes of reporters’ transcripts, featured questions by the justices and testimony by Billings and numerous other witnesses.

The justices voted 6-1 to withhold the recommendation for a pardon. Their published response to the Governor’s request generated numerous and extensive separate opinions. (*In re Billings* (1930) 210 Cal. 669-785.) Mooney was ultimately pardoned by Governor Olson in 1939. Billings was released from prison that same year, and finally pardoned in 1961. ★

Society's History of the California Supreme Court Nears Completion

Publication of an authoritative history of the California Supreme Court, from the Gold Rush to the modern era, has long been a major item on the Society's agenda. The ambition has come a step closer to realization in recent months, as a team of authors commissioned by the Society has expanded its subject matter to include the years of the George Court, complementing research and writing fully or nearly completed on the Court's history prior to this most recent era.

Six authors, all prominent in their fields of specialization, have joined forces for this project. And in recent weeks, a prominent publisher in the academic world, the University of Nebraska Press, has contracted to bring their work into print, as a volume in the Press's series on legal history of the American West. Once all the materials are in hand and the final work of integration and editing of the volume in accord with the Press's specifications is completed, scheduled for later this year, the manuscript will be submitted for a final round of vetting by the Press and the commencement of actual production, normally a year-long process.

Editor of the volume, and contributor of one of the chapters as well, is Professor Harry N. Scheiber, a member of the School of Law faculty at UC Berkeley. "Our authors have based their research on intensive work in original sources" Scheiber states, "this being the only way in which we can do justice to a subject so important — yet not previously explored and analyzed in nearly the depth it merits — and this has made for a process that has taken long years to reach our goal." That goal, he continues, is to provide a full but accessible account of the Court's history in all its dimensions.



PROFESSOR
HARRY N. SCHEIBER

Thus the scope of each author's chapter embraces, among other topics, major doctrinal developments; the roles of the judges most influential in shaping the state's constitutional jurisprudence; and the tensions over federal versus state authority. On a large canvas, the authors seek to portray vital interactions of legal and constitutional developments with key aspects of social, cultural, and economic change in California; and they give attention to public controversies and political battles generated by the Court's decisions. Changes in judicial structures

and the reform and professionalization of court administration are themes that run through the entire history.

SIX AUTHORS ARE CONTRIBUTING THE BOOK'S SEVEN CHAPTERS, WHICH CARRY THE STORY FORWARD BY CHRONOLOGICAL PERIODS

Author of the opening chapter, on the Court's founding and its operation from 1849 to 1878, is Dr. Charles McClain, emeritus on the faculty of Boalt Hall's undergraduate Legal Studies Program at UC Berkeley. He is author of an acclaimed study, *In Search of Equality: The Chinese Struggle Against Inequality in 19th Century America* (a UC Press book that was honored with an award by the Ninth Judicial Circuit Historical Society) and articles on both federal and state constitutional law published in law reviews and historical journals. McClain earned a PhD in history from Stanford and also the JD degree from UC Hastings.



DR. CHARLES
MCCLAIN

The period from 1879 to 1910, an era that opens with the adoption of California's second (and current) state Constitution, is the subject of a chapter by Professor Gordon Bakken. Long a faculty member in the department of history at California State University at Fullerton, Bakken was on the founding board of directors of the Society. He is a leading figure in the study of California and western regional history — author or editor of sixteen books, among them *Practicing Law in Frontier California* (University of Nebraska Press) and classic works on mining law and property rights in the West. A past president of Phi Alpha Theta, the national history honor society, he has played an important role in both national and regional historical organizations devoted to teaching and research in history. Bakken



PROFESSOR
GORDON BAKKEN

holds the PhD and JD degrees from the University of Wisconsin.

Professor Lucy Salyer has written the chapter that follows, on the California Supreme Court in the Progressive era, the 1920s, and the New Deal years. An associate professor of history at the University of New Hampshire, she obtained her doctorate in UC Berkeley Law's Program in Jurisprudence and Social Policy. Her dissertation was revised to become the acclaimed book *Laws Harsh as Tigers: Chinese Immigrants and the Shaping of Modern Immigration Law* (University of North Carolina Press), awarded the Theodore Saloutos Book Prize for best book in immigration history in 1995. She has also won several prestigious prizes for her journal articles, and she has drawn from her research on California law to contribute to the Society's Journal a major study of judicial administrative reform.



PROFESSOR
LUCY SALYER

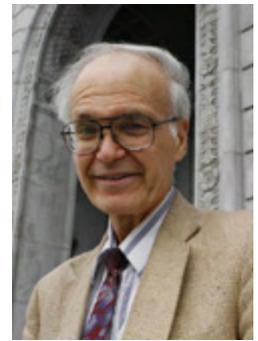
Dr. McClain has also written on the modern period for this volume, authoring the chapter on the Court during the period 1940 to 1964, the years of Phil Gibson's chief justiceship that inaugurated the first phase of California's "torts revolution," regulatory innovations by the Legislature, the pressures of World War II and a burst of population growth and industrialization.

Bringing the history forward to more contemporary times (1964-1986) is the chapter following, by Harry Scheiber. It chronicles the record of change during the years of the Traynor, Wright, and Bird Courts. Featured in this era were equal protection issues, the increasing role of the direct ballot in the state's law, the Court's expanded assertion of independent state grounds as a vital element of national and state federalism, death penalty issues, and a period of intensive political attacks.

Scheiber is the Riesenfeld Chair Professor of Law and the director of Berkeley Law's Institute for Legal Research, former president of the American Society for Legal History, and an elected fellow of the American Academy of Arts and Sciences. He is author or editor of fifteen books, among them *The State and Freedom of Contract* (Stanford University Press). He holds the doctorate from Cornell University, and in 1995 was awarded the D.Jur. honorary degree in law from Uppsala University, Sweden.

Bob Egelko, longtime legal writer for the *San Francisco Chronicle* and contributor of articles in that newspaper on the California Supreme Court, individual justices of the Court, and major issues in both national and state constitutional law, is author of a chapter exclu-

sively focused on history of the Lucas Court, 1987-1996. Egelko, a Stanford graduate, has also been a reporter for the Associated Press, and has written for the *California Journal* as well as other journals of news and commentary. The tensions between so-called judicial liberalism and judicial conservatism kept the Court at a high profile in state politics during this period; but it was also a time marked by ambitious advances in judicial administrative reforms, to which Chief Justice Malcolm M. Lucas was deeply dedicated.



BOB EGELKO

Dr. Molly Selvin, assistant dean and adjunct professor of law at Southwestern Law School, is author of the book's closing chapter, devoted to the Court during the chief justiceship of Ronald M. George. With strong encouragement from the University of Nebraska Press editors, the Society's board of directors decided last year to commission this chapter on contemporary history, advancing the project's original goal of comprehensiveness as well as authoritativeness. That the latter quality would be achieved, Professor Scheiber states, was assured when Dr. Selvin — an established professional historian who serves as associate editor of *The Journal of Legal Education* and was distinguished as a journalist on the editorial staff of the *Los Angeles Times* — agreed to take on the assignment. She is a PhD in history from UC San Diego, has twice held Fulbright fellowships, did postdoctoral work in law at Harvard Law School, and is the author or coauthor of several well-known monographs on legal history and on the California judiciary.



DR. MOLLY SELVIN

It is expected that the text will be enriched by a selection of historical illustrations, comprising photographs and other images that have been compiled by Jake Dear, Chief Supervising Attorney of the California Supreme Court who has done important research on the subject of the Court's doctrinal influence as measured by adoption of its rulings in the courts of other states.

Our members will be kept apprised of progress in this current, concluding phase of a project which, as Scheiber writes, "has taken many years of research, in its way a labor of love by the authors — and the publication of which we fully expect will fulfill the high hopes with which the Society's board launched the project." ★

My Friend Elwood Lui

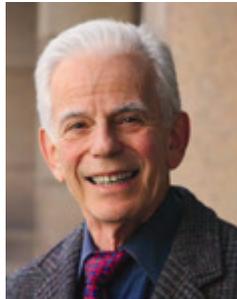
BY HON. ARTHUR GILBERT*



ELWOOD LUI

When the California Supreme Court Historical Society requested Elwood Lui to write a piece about his distinguished career, he demurred. That I, his good friend and colleague of 37 years, am writing the article instead of Elwood confirms that the demurrer was sustained without leave to amend. The motion might more accurately be characterized as one to be relieved of counsel. Whatever one calls it, you can be assured there is no appeal.

The ever-modest Elwood thought it unseemly that he trumpets his countless accomplishments. Therefore he assigned me the task from which he so artfully extricated himself. To make sure I did not miss anything, he e-mailed me his unpretentious two-page "bio." The elite type is decipherable when one is in a well-lit room and has the aid of a large magnifying glass.



ARTHUR GILBERT

It was on August 18, 1975, that our youthful Governor Jerry Brown called Elwood to inform him of his appointment to the Los Angeles Municipal Court, a court that no longer exists. The appointment was noteworthy, not so much because of Elwood's Chinese ancestry, but because his was apparently the first pre-pubescent appointment to the judiciary in the United States. It is rumored he received a hall pass to attend his swearing-in ceremony. His seniority over me by one day is attributable to the haste with which he arranged to be sworn in so as not to miss Little League practice.

I have known Elwood for 37 years. That is three years longer than Mozart lived. Elwood and I both attended California's famed Judicial College shortly after we were first appointed to the Municipal Court. We stayed in student dorms in Berkeley to participate in an intensive two-week training program. That he aided and abetted in a short-sheeting incident of a student judge does not detract from his distinguished career.

Elwood's parents emigrated from China in the early part of the last century. Elwood was born in Los Angeles, in 1941, just a few miles from the present location of the Court of Appeal where he sat as an Associate Justice in Division Three of the Second Appellate District Court of

Appeal. He was the youngest of seven children and, like them, was delivered at home by a mid-wife. It is rumored that because of his birthing experience, he gave serious thought about going into obstetrics while in grammar school.

Elwood went on to L.A. High School where he ran track, excelled in his studies, and established friendships that have lasted until this day. He and now-retired federal District Court Judge Dickran Tevzizian were classmates. Elwood says that he and Dickran would be the last two people his classmates would predict would be judges. My classmates at Hollywood High School would have said the same about me.

Elwood's classmates included Burt Pines, who was once the Los Angeles City Attorney, who later became Governor Gray Davis's judicial Appointments Secretary, and a Superior Court judge. Another close friend who attended L.A. High was Richard Maullin, who headed Governor Brown's Energy Commission during his first term as governor. Court of Appeal Justice Kathryn Doi Todd, a dear friend of Elwood's and mine, also attended L.A. High at the time.

We discovered years later that when Elwood and Dickran were kids, they lived near a market where my father owned a delicatessen. The three of us will never forget the pickle barrel in front of the counter, filled with brine in which its tempting dill-green-glistening-oblong delicacies waited their turn to join a slice of rye bread. We also discovered that my wife Barbara and Elwood's wife Crystal were classmates at John Marshall High School. I have been told the school was named after a famous judge.

Was it preordained that the trajectories of our lives would intersect some 25 years later?

Elwood became a CPA, earned an MBA, receiving straight A's, and then a law degree. His sons Bradley and Christopher, whom I saw grow up, became successful lawyers.

The soft-spoken Elwood speaks loudly through his innumerable accomplishments and contributions to the legal profession and to his community. It is no wonder that year after year he is recognized as one of the top 100 most influential lawyers in California.

Elwood was a distinguished jurist who, after serving as a Municipal and Superior Court judge, was appointed

*Presiding Justice of the Second District Court of Appeal, Division Six.

to the California Court of Appeal in 1980, where he authored an array of significant and noteworthy opinions. At the time of his appointment, he was the only Chinese-American state appellate judge. He still is in demand to arbitrate disputes involving complex civil matters.

I am forced to acknowledge that Elwood was appointed to the Court of Appeal two years before I received my appointment to that court. He takes a perverse delight in reminding me of this on occasion. When I was appointed in 1982, my division did not have a building. Elwood shared his chambers with me for a year. To this day he still tells me and everyone in ear shot, "I didn't expect a roommate when I was appointed to the Court of Appeal."

After leaving the bench for private practice in 1987, Elwood became a partner in the Jones Day law firm. Despite the demands of a busy practice, handling a variety of complex litigation matters here and abroad, he gave generously to the community. For years he was on the Board of Public Counsel.

In the late 1980s, the Department of Children's Services was in hopeless disarray. The director had been terminated and someone had to bring order and accountability to this agency which handled abuse and neglect cases for foster children in Los Angeles County. It had a staff of 4,000 employees and a budget that exceeded \$600 million. The Board of Supervisors asked Elwood to step in and "fix the problem." He became interim director and in a matter of months restructured the department and instituted a plan to increase contact between the children and social workers. After the department was functioning again in 1990, I chaired the committee to select the top candidates for the position of director. The Board of Supervisors would make the final selection. It was no surprise that the board wanted Elwood for the position, but his clients and firm also needed him.

When Governor Pete Wilson and the State Bar reached an impasse over policy, the Governor vetoed the bill that would provide fees for the State Bar. This, in turn, brought an end to the State Bar disciplinary system. Again, Elwood to the rescue. Chief Justice Malcolm M. Lucas asked Elwood to be a special master and reorganize the Bar and institute a new streamlined disciplinary system. The California Supreme Court was so pleased that Elwood had accepted the position that the justices mentioned it in *In re Attorney Discipline System* (1998) 19 Cal.4th 582, 624, fn. 27, praising Elwood as the perfect person for the job. The court supported this assertion with impeccable research. Elwood's accomplishments listed in footnote 27 read like the combined achievements of the members of Mensa rather than those of a single individual. Of course, he succeeded in his task. The dispute was eventually resolved and the State Bar is, at last check, alive and well.

I suggested to Elwood that he build an addition to his house, a gallery in which to display all his awards and plaques. He changed the subject. I will highlight a few: President of the California Judges Association, Recipient of the Judicial Council's Witkin Award, Recipient of the Bernard Witkin Medal from the State Bar, UCLA Alumnus of the Year, and top attorney in a variety of polls.

Elwood has been called upon by various United States presidents and California governors to evaluate judicial nominees. And in his spare time he has authored and continues to update the California Judicial Retirement Handbook, an invaluable aid to judges trying to navigate the turbulent waters of financial planning. That CPA degree comes in handy. And then of course there are all those lectures throughout the state and teaching courses at USC. He claims to sleep now and then.

Speaking of judges, the highest rating a prospective judicial nominee can receive from the JNE Commission is "Extremely Well Qualified." That is the rating Elwood earns in all his endeavors from all his peers.

Elwood is also a person with a keen sense of humor, who eschews pretension and self-importance. He is humble, gracious and he reflects the legal profession at its finest.

We both experience satisfaction and joy in our work. Our respective appointments to the bench nearly 37 years ago gave us a bonus. It marked the beginning of a friendship that has endured and grown over the years. We see and speak with one another frequently, and often get together for a sandwich on rye bread with a generous side portion of pickles.

★ ★ ★

EDITOR'S NOTE

It is doubtful whether any person has made a more important contribution to the success of the California Supreme Court Historical Society than former California Court of Appeal Justice Elwood Lui. Justice Lui was a member of the Society's board of directors from 1995 through 2001, serving as its president from 1997 to 1999. He led the effort to secure legislation authorizing the State Bar Board of Governors to allow lawyers to make voluntary donations to the Society through the annual State Bar dues collection process. (Section 6032 was added to the Business & Professions Code in 2002 by S.B. 1897, authored by Senator Sheila Kuehl and passed by overwhelming majorities in both the Senate and Assembly.) While that legislative foundation was being laid, Justice Lui testified before the State Bar Board of Governors urging them to implement the program as soon as it was authorized by the Legislature. Director Kent Richland, who succeeded Elwood Lui as president of the Society,

remembers accompanying him to the Board of Governors meeting in May 2002 and recalls his quietly persuasive address to the Board:

“Elwood eloquently explained the many ways in which the Society pursues its unique role of celebrating and preserving the history of California’s court system. After he completed his presentation, the enthusiasm among the Governors was palpable; the vote in favor of including the Society on the State Bar dues form was a landslide.”

The inclusion of the Society among the organizations to which attorneys may direct donations via the State Bar dues form has provided the Society with a significantly increased, and more reliable, source of revenue that has allowed it to undertake many projects and programs that would otherwise be impossible.

The affectionate portrait of Elwood Lui published here was written by his good friend and former

colleague Arthur Gilbert, Presiding Justice of Division Six of the Second District Court of Appeal.

Justice Gilbert also interviewed Elwood Lui as part of the California Appellate Court Legacy Project. (Please see the article about that ambitious oral history project by Associate Justice Judith Haller, below.) The transcript of that interview is available at www.courts.ca.gov/documents/Elwood_Lui_6132.pdf. In addition, a video of the interview can be viewed at www.youtube.com/watch?v=WBvj3Fw5E2s. The video is highly recommended; it both informs and delights. The personality, humor, and wisdom of both justices is evident and a special treat, not shown in the transcript, is the brilliant pink tie that Justice Lui wore for the occasion.

Elwood Lui has continued to be a generous supporter of the Society and continues to serve on its Advisory Board. Our thanks go to him, and to Justice Gilbert for his warm-hearted profile of his friend. ★

Appellate Court Legacy Project Now Online

BY HON. JUDITH L. HALLER*



The California Appellate Court Legacy Project is an oral history endeavor that has resulted in an extraordinary archive of the personal and professional experiences of individual justices and the changes that have emerged over the years in the California judicial system and the legal profession.

The Legacy Project Committee is pleased to announce that more than 81 transcripts of interviews with retired or senior California Court of Appeal justices are available on the Legacy Project page of the California Courts public website at <http://www.courts.ca.gov/4199.htm>. The

*Associate Justice of the Fourth District Court of Appeal, Division One; Chair of the Appellate Court Legacy Project.

site also includes photos and biographies of the justices, as well as information and brief video montages about the Legacy Project.

The committee continues to explore opportunities for expanding direct public access to the Legacy interview footage. The interview DVDs are currently stored in the California Judicial Center Library in San Francisco and in many of the appellate court libraries. To schedule a time to view the Legacy DVDs in San Francisco, please contact CJCL Research and Reference Services by email at reference@jud.ca.gov or by phone at (415) 865-7178. To purchase copies of the DVDs, please send requests to Legacy staff at legacyproject@jud.ca.gov.

Several law schools have purchased the DVDs of their alumni who were interviewed through the Legacy Project. The USC Gould School of Law has posted the Legacy interview footage of its graduates online at www.youtube.com/USCGould.

Interviews will continue to be conducted with retiring justices as they leave the bench. ★

EDITOR'S NOTE

Prior articles concerning the Legacy Project can be found in the Spring/Summer 2010 Newsletter, Paula R. Bocciardi, *Appellate Court Legacy Project — An Introduction and Preview*, at pp. 2–3; and in the Fall/Winter 2010 Newsletter, Paula R. Bocciardi, *Appellate Court Legacy Project*, at pp. 8–22 (quoting excerpts from various interviews).

JOHN BRISCOE has practiced law for 40 years from offices in San Francisco. For the past ten of those years he has served as president of the Historical Society of the United States District Court for the Northern District of California. He reports that the manuscript of a history of that court, commissioned by the Society, has recently been completed. *The Court That Tamed The West: A History of the Federal District Court for Northern California* begins with Judge Ogden Hoffman's first day on the bench in 1850. Authored by Chicago writer Richard Cahan and two assistants, it is being read by several publishers. The Society hopes to see it printed late this year.



A self-described dilettante in history, Briscoe has himself written a number of books and articles on historical themes. An article on the life of his late law partner Louis Claiborne, who argued 73 cases before the United States Supreme Court, appeared in the *Supreme Court Historical Society Quarterly* in 2002 and an appraisal of colorful San Francisco trial lawyer Garrett McEnerney was published in the Summer 2004 issue of *The Argonaut*, the journal of the San Francisco Museum and Historical Society. Others have been more light-hearted, such as his book *Tadich Grill: The Story of San Francisco's Oldest Restaurant* (Ten Speed Press 2002). More recently, at the importuning of legendary San Francisco writer and rascal Warren Hinckle, Briscoe wrote a tongue-in-cheek history of the birthplace of the martini for the November 2011 issue of Hinckle's online magazine, *Argonaut 360* (<http://www.argonaut360.com>). His newly-completed history of wine in California is, in Briscoe's words, currently "wandering the deserts of the publishing world in search of a believer."

Briscoe's legal practice combines natural resources and environmental law with international law. Following the Gulf War, Briscoe advised the United Nations Commission established to hear claims against Iraq arising from that country's 1990 invasion and subsequent occupation of Kuwait. By far the largest claims were those for environmental damage and natural resource spoliation. The Commission's work represented the first time that a nation was held liable by an international tribunal for environmental damage caused by its belligerency. In 2005, he tried and argued the case for Ethiopia against Eritrea in the Permanent Court of Arbitration. That case presented claims by

each side that the other had violated the laws of armed conflict during their 1998–2000 war, as well as claims under treaties governing diplomatic and consular relations. A frequent lecturer for many years at Boalt Hall (UC Berkeley Law), he is a Distinguished Senior Visiting Scholar at the Law of the Sea Institute at UC Berkeley Law. He has written several articles on the Law of the Sea, the most recent of which, *The U.N. Convention on the Law of the Sea Turns 27, and American Ratification is Still Not in Sight*, co-authored with Peter Prows, appeared in 2009 in the inaugural issue of the *Berkeley Journal of International Law Publicist*.

Briscoe is a published poet, an author of two books on law, and chairs the board of the St. Mary's College MFA Program in Creative Writing.

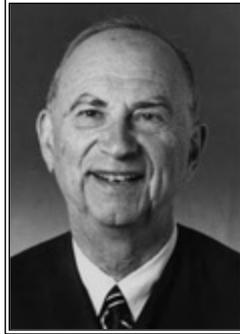
THEODORE BOUTROUS, JR. served as lead counsel for Walmart in a case before the United States Supreme Court challenging an order certifying the largest employment class action in American history. In June 2011 the Court ruled in favor of Walmart, establishing important principles applicable to class actions in federal courts. (*Wal-Mart Stores, Inc. v Dukes*, 131 S.Ct. 2541 (2011).) Boutrous also served as one of the lead lawyers for the plaintiffs in a challenge to Proposition 8, California's ban on same-sex marriage. His clients prevailed in both the trial court and the United States Court of Appeals, Ninth Circuit. (*Perry v. Brown*, 671 F.3d 1052 (2012).)



In addition, Boutrous has represented Chevron Corporation in environmental lawsuits arising out of Texaco's oil exploration activities carried out decades ago in Lago Agrio, Ecuador. Aspects of this multi-billion dollar litigation are now pending in cases before the highest appellate court in Ecuador, as well as in federal courts in the Southern District of New York and the District of Columbia, and the United States Courts of Appeal for the Second and D.C. Circuits. An article concerning the Lago Agrio litigation in the February 2012 issue of *California Lawyer* described Ted Boutrous as "outwardly sunny of disposition but merciless in the courtroom." In light of the foregoing it is not surprising that in 2011 both the Los Angeles and the San Francisco *Daily Journal* named Boutrous as one of the 100 best lawyers in California — the seventh consecutive year in which he has been thus honored. Boutrous is a partner in the Los Angeles and

Washington, D.C. offices of Gibson, Dunn & Crutcher. He is a member of the Society's board of directors.

QUENTIN L. KOPP, retired San Mateo County Superior Court judge, recently told a *San Francisco Chronicle* reporter that his childhood ambition was to become a radio sports announcer. His parents, on the other hand, envisioned a career in medicine. After his grades in science and math during his first two years at Dartmouth College made that goal improbable, they were persuaded to accept his plan to pursue the law. Judge Kopp graduated from Harvard Law School in 1952, and has never slowed down since.



Judge Kopp was admitted to the California Bar in 1954, while serving in the United States Air Force Judge Advocate General Corps at McClellan Air Force Base in Sacramento. Upon his discharge from military service, he was admitted to the New York Bar and served for one year as assistant counsel to the Waterfront Commission of New York Harbor in Manhattan, after which he returned to California, joining Pillsbury, Madison & Sutro as an associate in 1955. Four years later, he opened his own law office at the Mechanics Institute Building on Post Street in San Francisco and practiced civil and criminal trial law until his appointment, by Governor Pete Wilson, to the Superior Court in January 1999, at the age of seventy.

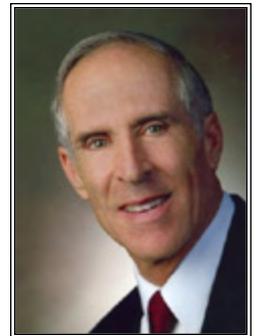
Throughout the more than four decades that he practiced law, Judge Kopp contributed to the Bar. He served as President of the San Francisco Barristers Club, on the boards of directors of the San Francisco Bar Association and San Francisco Legal Aid Society, as a member and then President of the Executive Committee of the State Conference of Barristers and as the Young Lawyers Association delegate to the American Bar Association House of Delegates. During his legal career, he also contributed through service in elective public office at both the local and state levels of government. He was elected to the San Francisco Board of Supervisors in 1971 and subsequently reelected four times, serving until 1986 when he resigned following his election to the State Senate (as the first non-incumbent Independent since 1878). Judge Kopp was reelected to the Senate in 1990 and 1996 — the first Independent in California history to be thusly reelected.

His appointment to the Bench followed immediately upon his leaving the Senate. He retired from the

court in 2004, but continued to preside in San Mateo and other counties (including Humboldt, Los Angeles, Napa, Sonoma and San Diego) through the Assigned Judges Program until 2010. One of the areas on which he concentrated while in the Senate was transportation, serving 11 years as Chairman of the Senate Transportation Committee and sponsoring legislation in 1996 that created the California High Speed Rail Authority as the vehicle for planning and implementing a statewide, intercity high speed passenger train service. Thus it was natural that the State Senate would appoint him to that Authority in 2006. He served on the Authority until March of 2011 (as Chair from August 2006–December 2009) during which time the voters of California passed Proposition 1A, authorizing over \$9 billion to connect the major metropolitan centers of the San Francisco Bay Area and Sacramento in the north to Los Angeles and San Diego in the south with a system of electric-powered trains capable of speeds over 200 mph.

Judge Kopp's wife, Mara, is vice-president of the San Francisco–San Mateo County Cow Palace board of directors. His elder son practices criminal defense law in Southern California, his younger son is a paralegal in San Francisco, and his daughter is Executive Director of the Napa Valley Grape Growers Association. Judge Kopp recently joined the American Arbitration Association. He has been a longstanding member of the California Supreme Court Historical Society.

RICHARD M. MOSK, Associate Justice of the California Court of Appeal (Second District, Division Five) is in the midst of celebrating a host of half-century anniversaries. Within the past few years he has attended the 50th class reunion of both his high school and Stanford University graduating classes, as well as reunions of several of the tennis teams on which he played. (He won three varsity letters while on Stanford's tennis team.)



Next year he is anticipating attendance at the 50th reunion of his Harvard Law School class. Because 2013 will also be the 50th anniversary of the assassination of President John F. Kennedy, Justice Mosk expects a new surge of books challenging, he believes unjustifiably, the report of the Warren Commission, on which staff he served. He has already attended a reunion of the 1991 Christopher Commission, of which he was a

member, and which has, by contrast, received widespread praise for its recommendations concerning the Los Angeles Police Department.

Justice Mosk continues to write about a variety of subjects, including international arbitration, a field in which he achieved expertise by having served for many years as a judge on the Iran–United States Claims Tribunal at The Hague in the Netherlands. That tribunal, established as part of the Iranian hostage agreement, is still operating. He has given courses here and abroad on international arbitration. Justice Mosk also served as Chairman of the Motion Picture Association Rating Administration, which provides guidance to parents about the suitability of motion pictures (the familiar G, PG, PG-13, etc. ratings). He teaches an undergraduate course on Law and Morality at the University of Southern California. And he recently donated his

extensive collection of sports memorabilia to Stanford, which maintains a large collection of materials related to collegiate athletic programs in its Archives.

Justice Mosk argued a case before the United States Supreme Court, as did his father (the late Stanley Mosk, who served as California’s Attorney General, as well as an Associate Justice of the California Supreme Court) and an uncle. He has attempted to find out if any other family has had three members argue before that Court; so far none have come to his attention.

Justice Mosk has a keen interest in the history of the California Supreme Court, due in part to his father’s service on it, his experience as a law clerk to Associate Justice Mathew Tobriner, and his own service as a pro tem justice on the Court. He has been a longtime member of the Historical Society and its Advisory Committee. ★

A NOTE FROM THE EDITORS

The contributions to the worth of a publication made by the authors of the articles that appear in it is apparent to a reader. Your editors wish to express their appreciation, on behalf of the Society’s membership, to the distinguished jurists who have contributed to this issue: Hon. Kathryn Werdegar, Hon. Joseph Grodin, Hon. Arthur Gilbert, and Hon. Judith Haller. However, in assembling the issue the editors, like Blanche Dubois in Tennessee Williams’ Streetcar Named Desire, have also “depended upon the kindness of strangers.” Their contributions, though less evident, have been vital and deserve recognition as well. We are pleased to acknowledge our appreciation to the following, each of whom provided important assistance: Grace Takatani, Reference & Archives Librarian, UC Hastings College of the Law for extraordinary assistance in locating and duplicating photographs that appear in the articles on Chief Justice Traynor and the Tobriner Memorial Lectures; Michael Traynor and Joe Traynor, sons of the late Chief Justice, for allowing use of Traynor family photographs now in the UC Hastings Traynor collection and for providing information about them; Brenna Hamilton, Communications Director, The California Museum; Jason Holmes, COMCAST Cable and Heather Schultz, COMCAST Hometown Network for authorizing use of video excerpts from the broadcast of the 2011 Hall of Fame ceremonies; Ellen Gobler, Senior Public Events Manager, Graduate Division, UC Berkeley; and Brandon Honig, Public Affairs Officer, California National Guard.

★ ★ ★ LET US HEAR FROM YOU ★ ★ ★

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Ray McDevitt at rayemcdevitt@gmail.com*

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