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The Supreme Court of California 1966-1967: Introduction

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The Board of Editors of the California Law Review introduces with this issue an annual review of the work of the Supreme Court of California. Defense of such an undertaking is not necessary. The outstanding work of the California Supreme Court itself both inspires and justifies the endeavor. The court, under the leadership of Chief Justice Roger J. Traynor, is acknowledged by many to be among the finest state courts in the nation. Its preeminence rests not only on the distinction of its members, but also on the scope of its work. It monitors the judicial activity of the most populous state in the Republic, containing over one-tenth of the nation's citizens. In the words of Chief Justice Warren:

There is no more cosmopolitan State in the Union, because here there are people of every race, color, creed, and culture on earth. Nor is there a State of greater diversity in geography, climate, or natural resources. It is larger than most European nations and far more complex in its social, political, and economic life than many. One the one hand, it has great metropolitan areas with world ports and teeming international airports and the commerce they generate. On the other, it has an incomparably diversified agricultural economy as well as a large mountain back country. These factors have naturally brought to the California Supreme Court a wider range of litigation than is to be found in most other States.

The court's early years had the character of a pilgrimage marked by singular difficulty and occasional melodrama. The delegates to the Constitutional Convention of 1849 who met in Monterey to create the first California Supreme Court confronted a labyrinth of jurisprudence con-

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1 *Time* magazine has credited the California Supreme Court with being "the nation's most aggressive and progressive state court." *Time*, Jan. 21, 1966, at 48.


3 A large amount of labor, consequent upon the unorganized state of society, was necessarily imposed upon the tribunal of last resort—the labor of searching for authorities in an unfamiliar language, and an unfamiliar system of jurisprudence; of ascertaining the law, as laid down in the codes of Spain; in the royal and vice-royal ordinances and decrees; in the laws of the imperial congress of Mexico; in the acts of the republican congress; in presidential regulations; in decrees of dictators, and acts of proconsular governors. Many ordinances and decrees, claimed to have the force of law, had not been printed even in Mexico .... Quoted from the preface to the first volume of the California Reports by Nathaniel Bennett, Associate Justice of the California Supreme Court, 1 Cal. v (1850).

4 The present court is the third supreme court in California history. The first was created by the Constitution of 1849, the second by constitutional amendment in 1852, and
sisting in part of imperial Spanish law of the Corpus Juris Civilis, itself a composite of Roman and canon law, Mexican law—both religious and military—as promulgated by mission padres and pueblo commandantes respectively, natural law as dispensed by the alcaldes, United States military law resulting from the Mexican-American War, English common law, and lynch law—the law of the gold miners. It was not until its first meeting in 1850 that the State Legislature by a resolution introduced by the ill-fated A. P. Crittenden adopted English common law rather than the Louisiana Civil Code as the rule of decision in state courts.

The administration of justice in early California fell to a group of men whose flamboyant, often theatrical lives enriched the annals of California history. None of the early chief justices served out his term of office, purportedly because of insufficient salary. The first chief justice, S. Clinton Hastings, achieved enduring fame by endowing the Hastings College of the Law and becoming its first dean. Henry A. Lyons, the second chief justice, attained renown less for his judicial opinions than for his poker playing, which on one occasion allegedly won him his home on Rincon Hill from Hall McAllister, “one of the real leaders of the California bar and . . . a man of unswerving probity.” Unlike his pre-
decessors, the third chief justice, Hugh C. Murray, did become famous for his opinions. In *People v. Hall*\(^\text{13}\) he held that a Chinese witness could not testify against a white defendant accused of murder on the intriguing ground that Chinese were Indians within the meaning of a law which prohibited Indians from testifying against Caucasians.\(^\text{14}\)

The fourth chief justice of the California Supreme Court came to California from Mississippi with a reputation carved out by his bowie knife.\(^\text{15}\) David S. Terry further enhanced his notoriety when, as an associate justice of the supreme court, he was arrested and tried by the San Francisco Committee of Vigilence for stabbing one vigilante and attacking four other men.\(^\text{16}\) Terry’s two year stint as chief justice terminated in 1859 when he decided that vindicating his honor was more important than his judicial position. Accordingly, he tendered his resignation just prior to engaging Senator David C. Broderick in a duel which ended Broderick’s life and Terry’s political career.\(^\text{17}\) Terry came before the public eye once again when he assisted Sarah Althea Hill in her celebrated attempt to establish that she was United States Senator William Sharon’s wife rather than his paramour.\(^\text{18}\) After marrying his client, Terry argued her appeal before United States Supreme Court Justice Stephen J. Field, himself a former chief justice of the California Supreme Court and an associate justice during Terry’s term on the court.\(^\text{19}\) Field ruled

\(^\text{13}\) 4 Cal. 399 (1854).

\(^\text{14}\) Murray reasoned that Chinese were indeed “Indians” because Christopher Columbus, in calling American aborigines “Indians,” thought he had landed on the coasts of China and India. As he further indicated:

The anomalous spectacle of a distinct people, living in our community, recognizing no laws of this State except through necessity, bringing with them their prejudices and national feuds, in which they indulge in open violation of law; whose mendacity is proverbial; a race of people whom nature has marked as inferior, and who are incapable of progress or intellectual development beyond a certain point, as their history has shown; differing in language, opinions, color, and physical conformation; between whom and ourselves nature has placed an impassable difference, is now . . . claimed, not only the right to swear away the life of a citizen, but the further privilege of participating with us in administrating the affairs of our Government. *Id.* at 404-05.

\(^\text{15}\) See generally, R. Buchanan, David S. Terry of California: Dueling Judge (1956).

\(^\text{16}\) *Id.* at 54-55. Two of the leading spokesmen against such vigilante justice were Hall McAllister and Stephen J. Field. See T. Gamble, *supra* note 12.


\(^\text{18}\) For an account of the Sharon case, see *A History of the Bench and Bar of California* 173-88 (O. Shuck ed. 1901).

\(^\text{19}\) Field succeeded Terry as chief justice of the California Supreme Court. In 1863 he accepted an appointment by Abraham Lincoln to become an Associate Justice of the Supreme Court of the United States, from which he was assigned as a circuit judge to the 10th Circuit. It was as a circuit judge that Field experienced his fateful encounter with Terry.

Field was the first of three Californians to serve on the Supreme Court of the United
against Mrs. Terry, provoking a courtroom outburst by her husband for which Field found him in contempt of court. Several months later, Terry found the Supreme Court Justice eating breakfast in a railroad station, approached, and struck him twice across the face. As Terry lifted his hand a third time, Field's bodyguard, fearing assassination, shot and killed him.\(^{20}\)

Whatever the misadventures of its predecessors, the Supreme Court of California presently figures as our nation's leading state court.\(^{21}\) In some cases, particularly in the area of criminal procedure, its opinions have foreshadowed decisions by the Supreme Court of the United States. Its 1955 decision in *People v. Cahan*\(^ {22}\) to exclude evidence obtained in violation of fourth amendment guarantees presaged adoption by the United States Supreme Court of the exclusionary rule in *Mapp v. Ohio*;\(^ {23}\) and its decision in *In re Harris*\(^ {24}\) not to make the exclusionary rule retroactive prefigured a similar decision by the Supreme Court in *Linkletter v. Walker*.\(^ {25}\) Its decision in *People v. Thayer*\(^ {26}\) rejecting the "mere evidence" rule concerning the admissibility of evidence obtained in violation of the fourth amendment augured a recent decision by the Supreme Court in *Warden v. Hayden*.\(^ {27}\) Its decision in *People v. Dorado*\(^ {28}\) concerning warnings of right to counsel was closely followed by the Supreme Court in *Miranda v. Arizona*.\(^ {29}\) Its foresight in the area of equal protection also

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20 The subsequent confinement of Field's bodyguard, David Neagle, on a charge of murder by the sheriff of San Joaquin County, generated considerable constitutional furor. On appeal to the U.S. Supreme Court from a grant of habeas corpus, Neagle's lawyers argued that Field, as a federal circuit judge, was discharging his duties as much in traveling the circuit as in attending court, that a personal attack on a federal judge discharging his duties was a breach of the "peace of the United States," that Neagle as a federal marshal had authority to prevent a breach of the federal peace, and that his act under that authority was therefore immune from punishment by the laws of California. *In re Neagle*, 135 U.S. 1, 69 (1890). Field took no part in the Court's decision affirming judgment in favor of Neagle—a decision heralded as "the broadest interpretation yet given to implied powers of the National Government under the Constitution." 3 C. Warren, *The Supreme Court in United States History* 419 (1922).


is impressive. Justice Traynor's opinion in *Perez v. Sharp* anticipated by nineteen years a decision of the Supreme Court invalidating a state antimiscegenation law.

Whatever its impact on the United States Supreme Court, the California Supreme Court has a record unmatched by any state court for landmark decisions in criminal law—such as those concerning right to competent counsel, diminished responsibility and criminal discovery—in conflict of laws both for purposes of jurisdiction and choice of law, in family law, in civil procedure particularly collateral estoppel, and in torts both in the germinal area of emotional injury and in enterprise liability.

The following selection of cases represents what the Board of Editors of the *California Law Review* considers the most significant work of the California Supreme Court from June 1, 1966 to May 31, 1967. Because the court sits continuously throughout the year, it was necessary to designate arbitrarily a year for the purposes of selection. During that year, the court devoted its attention primarily to consideration of criminal procedure and substantive criminal law.

In the area of criminal procedure, the court concerned itself with interpreting decisions of the United States Supreme Court in *Miranda v. Arizona* and *Escobedo v. Illinois*, particularly because of the court's decision to apply Escobedo retroactively. It also demonstrated diligence for the proper application of the exclusionary rule, particularly concern-
ing evidence taken in violation of constitutional precepts by law enforce-
ment officers of other jurisdictions. In the area of substantive crimes, the
court delineated California rules of mental responsibility, for the purposes
of defining both requisite guilt and the capacity to stand trial. In the area
of torts, the court discussed concepts of strict liability and res ipsa
loquitur in defining responsibility for personal injuries and indicated a
willingness to adopt the sections of the *Second Restatement of Torts*
concerning scope of duty. Additionally, the court gave detailed considera-
tion to serious problems in the areas of insurance law, contracts and civil
procedure.

The Board of Editors initiates the following study with the hope that
it will prove helpful to members of the bar and students of the law and
with the expectation that future years will find it an annual feature of the
*California Law Review*.

Peter Kay Westen