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Dedication: Tribute to Justice Stanley Mosk

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JUSTICE STANLEY MOSK

*Gerald F. Uelmen**

The dedication of *Albany Law Review's* annual *State Constitutional Commentary* issue to Justice Stanley Mosk of the California Supreme Court comes at a unique moment in his career. In November of 1998, at the age of eighty-six, Justice Mosk was confirmed by a 70% margin for another twelve-year term on the California Supreme Court.¹ In February of 2000, he will set a new record for longevity as a Justice of the California Supreme Court, having served for thirty-five years and six months.² What is especially remarkable about this career is the fact that Justice Mosk had a distinguished judicial and political career *before* his appointment to the California Supreme Court in 1964. He served as a trial judge on the Superior Court of Los Angeles County from 1942 to 1958, and as Attorney General of the State of California from 1959 to 1964.

Justice Mosk's service on the California Supreme Court encompassed an era of tremendous upheaval. During his first twenty-two years, serving under Chief Justices Roger Traynor (1964 to 1970), Donald R. Wright (1970 to 1977), and Rose Bird (1977 to 1987), Justice Mosk found only occasional necessity to dissent, and many of his landmark opinions were unanimous rulings of the court,³ or decided over a single dissent.⁴ In 1986, Chief Justice Rose Bird and

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¹ California utilizes a "yes-no" retention election system for appellate justices. Justice Mosk was initially confirmed for the eight years remaining of his predecessor's term in 1966, with a margin of 63.2%, and reconfirmed for twelve year terms in 1974, with a margin of 74%, and 1986, with a margin of 73.6%. See Gerald F. Uelmen, *Supreme Court Retention Elections in California*, 28 SANTA CLARA L. REV. 333, 345-46 (1988).

² The previous record was set by Justice John W. Shenk, who served from April 1924 to August 1959. Justice Mosk was appointed to the court in September 1964. See SUPREME COURT OF CALIFORNIA PRACTICES AND PROCEDURES 41 app. (2d ed. 1997).

³ See, e.g., *In re Marriage of Carney*, 598 P.2d 36 (Cal. 1979); *Pitchess v. Superior Court*, 522 P.2d 305 (Cal. 1974).

⁴ See, e.g., *Bakke v. Regents of Univ. of Cal.*, 553 P.2d 1152, 1172 (Cal. 1976) (Tobriner, J., dissenting), *order vacated by* 438 U.S. 912 (1978); *Ault v. International Harvester Co.*, 528 P.2d 1148, 1154 (Cal. 1974) (Clark, J., dissenting); *Diamond v. Bland*, 477 P.2d 733, 742 (Cal. 1970) (McComb, J., dissenting).

Associate Justices Joseph Grodin and Cruz Reynoso were removed by the voters, and the new composition of the court left Justice Mosk as the chief dissenter. In 1992 and 1993, for example, Justice Mosk dissented in over 46% of the court's decisions.⁵ Justice Mosk's output of vigorous dissenting opinions set a record. In 1998, he published his 500th dissenting opinion, the highest lifetime output of dissents for any justice ever sitting on the court. More recently, with the appointment of Chief Justice Ron George, the California Supreme Court has moved to a more centrist position, and Justice Mosk's dissent rate has dramatically declined. In 1996-1997, he led the court in the production of majority opinions.⁶

Justice Mosk's rulings have had significant impact beyond the borders of California. He was in the vanguard of the movement to reinvigorate state constitutional law. One of the key events in this movement was Justice Mosk's dissenting opinion in the second hearing of *Diamond v. Bland*.⁷ When a majority of the court retreated from its prior ruling that the First Amendment protected orderly free speech activities on the premises of shopping centers open to the public, because of an intervening ruling of the United States Supreme Court,⁸ Justice Mosk urged the same result under "unmistakable independent nonfederal grounds upon which our earlier opinion could have been based."⁹ His position was subsequently adopted by the entire court in *Robins v. Pruneyard Shopping Center*,¹⁰ which was then affirmed by the United States Supreme Court, recognizing "the authority of the State to exercise its police power or its sovereign right to adopt in its own Constitution individual liberties more expansive than those conferred by the Federal Constitution."¹¹ Many of Justice Mosk's opinions interpreting the California Constitution anticipated later rulings by the United States Supreme Court, which applied the same reasoning to interpretations of the Bill of Rights of the United States Constitution. In *People v. Ramey*,¹² for example, the California Supreme

⁵ See Gerald F. Uelmen, *The Lucas Court's Eighth Year: Coming Back to Life*, DAILY J. REP., June 14, 1995, at tbl.3.

⁶ See Gerald F. Uelmen, *Seizing the Center: The Emergence of the George Court*, CAL. LAW., July 1997, at 38.

⁷ 521 P.2d 460 (Cal. 1974) (Mosk, J., dissenting), *overruled by* *Robins v. Pruneyard Shopping Ctr.*, 592 P.2d 341 (Cal. 1979), *aff'd*, 447 U.S. 74 (1980).

⁸ See *Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972).

⁹ *Diamond*, 521 P.2d at 464 (Mosk, J., dissenting).

¹⁰ 592 P.2d at 341.

¹¹ *Pruneyard Shopping Ctr. v. Robins*, 447 U.S. at 81.

¹² 545 P.2d 1333 (Cal. 1976).

Court's insistence upon a warrant for felony arrests made in private residences became the position of the United States Supreme Court four years later in *Payton v. New York*.¹³ Justice Mosk's opinion in *People v. Wheeler*,¹⁴ holding that the use of peremptory challenges to remove jurors based on group bias violates the California constitutional right to trial by a jury drawn from a representative cross-section of the community, anticipated by eight years a similar ruling by the United States Supreme Court.¹⁵ Unfortunately, the growth of California constitutional law was stunted by the enactment of an initiative measure in 1982 which precludes the exclusion of relevant evidence unless the United States Constitution requires it.¹⁶ In dissenting to the California Supreme Court decision upholding this initiative, Justice Mosk wrote: "The Goddess of Justice is wearing a black arm-band today, as she weeps for the Constitution of California."¹⁷

The attempt in a subsequent initiative measure to limit virtually all constitutional protections in the California Constitution to the interpretations imposed by the United States Supreme Court upon parallel rights in the U.S. Constitution was struck down by the California Supreme Court, however, in *Raven v. Deukmejian*.¹⁸ Thus, with the exception of evidentiary exclusionary rules, the California constitution remains a vibrant source of independent protection of the rights of California citizens.¹⁹ Justice Stanley Mosk deserves much of the credit for preserving the protection of liberty in the California Constitution. In doing so, he has provided a model for other state supreme courts, and even the Supreme Court of the United States, to emulate. The Goddess of Justice is throwing a bouquet today, as she cheers the achievements of Justice Stanley Mosk.

¹³ 445 U.S. 573 (1980).

¹⁴ 583 P.2d 748 (Cal. 1978).

¹⁵ See *Batson v. Kentucky*, 476 U.S. 79 (1986).

¹⁶ See CAL. CONST. art. I, § 28(d) (added by Proposition Eight, June 8, 1982).

¹⁷ *Brosnahan v. Brown*, 651 P.2d 274, 313 (Cal. 1982) (Mosk, J., dissenting).

¹⁸ 801 P.2d 1077 (Cal. 1990).

¹⁹ See, e.g., *Hill v. NCAA*, 865 P.2d 633 (1994) (holding that privacy protection of the California Constitution governs the conduct of private entities).

