Early Visions of Justice

By RICHARD M. MOSK*

By the time of his appointment to the California Supreme Court in 1964, Stanley Mosk had been in public service for twenty-five years. Most notably, he had served as a trial judge from 1942 to 1958 and as California's Attorney General from 1959 to 1964.[1] His established reputation was such that during a United States Senate debate over the validity of the certificate of appointment of Senator Salinger of California,[2] United States Senator Sam Ervin referred to Mosk as "one of the finest constitutional lawyers in the United States."[3] Senator Ervin's statement was not mere hyperbole. Stanley Mosk began to have an impact on constitutional law long before his appointment to the California Supreme Court.

As the son of Justice Mosk, my objectivity in writing this piece could be questioned. Throughout the years, when discussing his work with him, I have often subjected him, in private, to suggestions and criticism. Thus, I have no reservations, partially to balance the scales, in according him some well-deserved public praise. In this brief tribute, I will discuss some of Stanley Mosk's contributions to constitutional law made prior to his tenure as a California Supreme Court Justice.

It is important to keep in mind the restraints imposed upon a trial judge and upon an attorney general. A trial judge is required to follow holdings of California appellate courts.[4] An attorney general, in his capacity as legal advisor to various state agencies, officers, and legislators,[5] is seldom called upon to express his own views on what the law should

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1. From 1939 to 1942 Stanley Mosk served as a top assistant to the Governor of California. Bell, *Stanley Mosk: The Politician Who Dares*, PAGEANT, Oct. 1964, at 86, 89.

2. 110 CONG. REC. 18,107-19 (1964). An opinion by Attorney General Mosk answered the legal objections to the appointment of Pierre Salinger as U. S. Senator from California. 44 Op. Cal. Att'y Gen. 30 (1964). *See infra* notes 57-61 and accompanying text.

3. 110 CONG. REC. 18,115 (1964); *see also Elevation of Attorney General Stanley Mosk to the California Supreme Court*, 110 CONG. REC. 22,079 (1964) (remarks of Sen. Thomas Dodd).

4. Auto Equity Sales, Inc. v. Superior Court, 57 Cal. 2d 450, 454-55, 369 P.2d 937, 939, 20 Cal. Rptr. 321, 323 (1962).

5. *See* CAL. GOV'T CODE §§ 11157, 12519 (West 1976).

be; rather, his advice is based on what he perceives the courts will determine the law to be.

Yet as Stanley Mosk demonstrated, a trial judge and an attorney general have opportunities to have an impact on the law. A trial judge often faces issues not directly covered by a controlling appellate decision; an attorney general may be called upon to advise on matters not yet determined by the courts. The California Supreme Court has noted that "[a]lthough not of controlling authority, the opinions of the Attorney General have been accorded great respect by the courts."[6] In addition, the attorney general can influence the law through administrative actions. As I shall discuss, Stanley Mosk took full advantage of these powers to further the course of justice.[7]

The Justice has long been an ardent supporter of civil rights. In 1947, then Superior Court Judge Mosk ruled that a covenant restricting the ownership of real property to caucasians was not enforceable.[8] In the case, which attracted attention in the popular media, the pastor of a Presbyterian church and others had sought enforcement of racially restrictive covenants in an attempt to force several black defendants from their homes in a previously all white neighborhood. One of the black defendants—Major Frank Drye—was a veteran of World Wars I and II and had been awarded the Purple Heart and the Silver Star.[9]

Judge Mosk sustained the defendants' demurrer without leave to amend, stating:

> There is no allegation, and no suggestion, that any of these defendants would not be law-abiding neighbors and citizens of the community. The only objection to them is their color and race.
>
> We read in columns in the press each day about un-American activities. This court feels there is no more reprehensible un-American activity than to attempt to deprive persons of their own homes on a master race theory.
>
> Our nation just fought against the Nazi race superiority doctrines. One of these defendants was in that war and is a Purple

6. Wenke v. Hitchcock, 6 Cal. 3d 746, 751-52, 493 P.2d 1154, 1158, 100 Cal. Rptr. 290, 294 (1972); *see also* Smith v. Anderson, 67 Cal. 2d 635, 646, 433 P.2d 183, 191, 63 Cal. Rptr. 391, 399 (1967) (Mosk, J., concurring), in which Justice Mosk contradicted one of his own opinions as Attorney General. He employs various quotations from others who have changed their minds on legal questions, including one from Justice Rutledge: "Wisdom too often never comes, and so one ought not to reject it merely because it comes late." *Id.* (quoting Wolf v. Colorado, 338 U.S. 25, 47 (1949)).

7. *See infra* notes 27-33 and accompanying text.

8. Simons, *Judge Stanley Mosk Race Covenants Illegal, 'Un-American'*, L.A. Sentinel, Oct. 30, 1947, at 1, col. 6 (quoting from *Wright v. Drye*, an unpublished L.A. Super. Ct. opinion).

9. *Id.* at 3, col. 3.

> Heart veteran. This court would indeed be callous to his constitutional rights if it were now to permit him to be ousted from his own home by using 'race' as the measure of his worth as a citizen and a neighbor.
>
> The alleged cause of action here is . . . inconsistent with the guarantees of the Fourteenth Amendment to the Constitution.[10]

Judge Mosk's decision preceded by a year the decision in *Shelley v. Kraemer*,[11] in which the United States Supreme Court held that judicial enforcement of private racial restrictions constitutes state action and violates the Fourteenth Amendment of the United States Constitution.[12]

In a later opinion he rendered as Attorney General, Stanley Mosk stated that "while the courts have not declared the offensive [racial restrictive] covenants void, but only unenforceable, . . . such restrictions are contrary to the public policy of the State of California and no state agency may constitutionally be party to their creation or perpetuation."[13] The question presented to the Attorney General was whether the Department of Veterans' Affairs should purchase property subject to racial restrictions for the purpose of transferring the property to qualified veterans. The Department faced a dilemma—either deal with real estate documents containing the repugnant restrictive convenants or limit the property available for needy veterans. The Attorney General advised the Department that although it would not be liable for damages for transferring property subject to the restrictive covenants, it should recommend that the Legislature take action to render the covenants void.[14]

In 1962, Attorney General Mosk opined that a local realty board could not exclude an otherwise qualified applicant on the basis of race.[15] Under state law, only a member of the National Association of Real Estate Boards could represent himself or herself to be a "realtor." Members enjoyed other privileges as well, such as access to multiple listing

10. *Id.* (quoting from *Wright v. Drye.*) It was reported that the case was one of only two in the United States since 1892 holding racial restrictive convenants unconstitutional. *Id.* The 1892 case was Gandolfo v. Hartman, 49 F. 181 (S.D. Cal. 1892).

11. 334 U.S. 1 (1948); *see also* Hurd v. Hodge, 334 U.S. 24 (1948).

12. 334 U.S. at 19-20. The California Supreme Court reached the same conclusion in two cases it decided that same year. *See* Cumings v. Hokr, 31 Cal. 2d 844, 846, 193 P.2d 742, 743 (1948); *In re* Laws, 31 Cal. 2d 846, 847, 193 P.2d 744, 745 (1948).

13. 37 Op. Cal. Att'y Gen. 23, 28 (1961).

14. Attorney General Mosk stated, "justice would indicate that such restrictive covenants would be declared void and legislation enacted prohibiting reference to such restrictions in future deeds, title reports or other documents affecting title to property." *Id.*

15. 40 Op. Cal. Att'y Gen. 174 (1962). It has been said that a primary contributor to the maintenance of racially segregated neighborhoods was the real estate broker. Marcus, *Civil Rights and the Antitrust Laws*, 18 U. CHI. L. REV. 171, 213 (1951); Comment, *Race Discrimination in Housing*, 57 YALE L.J. 426, 430-31 (1948).

services. To become or remain a member, a real estate broker first had to be a member of a local affiliated board. Apparently, some local boards discriminated against blacks in admitting members. The Attorney General found such discrimination constituted state action. He emphasized that the state, by protecting the use of the word "realtor," had in effect sanctioned discrimination by the local realty boards. In language relevant to current controversies surrounding private clubs, he declared, "As a general rule there is no legal remedy for the exclusion of an individual from membership in a voluntary association [citations omitted]. But the courts have recognized certain exceptions, especially where rights of membership in associations have become important economically and professionally to the individual."[16]

Attorney General Mosk also addressed the issue of school desegregation. In ruling that a school board may consider race in adopting a school attendance plan in order to desegregate schools,[17] he stated, "It seems clear that the Constitution does not require the states to ignore the social and psychological problems that may result from *de facto* as well as *de jure* segregation in the public schools."[18] He also precluded a public school district from segregating blacks and whites on school swimming teams, even though the teams had no place to train other than a swimming pool at a private club that barred blacks.[19]

As a California Supreme Court Justice, Stanley Mosk has attracted some attention for his provocative opinions on racial quotas.[20] His approach, which approves what he considers affirmative action but rejects quotas, has not changed from his early days as Attorney General. In 1963, he observed that one fallacy of quota systems is that once the quota is filled, others from the group that comprised that quota may thereafter be excluded arbitrarily.[21]

In 1964, he ruled that a housing authority could adopt and implement a policy of integration and designate an employee for this purpose, so long as the policy did not deny public housing accommodations to anyone solely on the basis of race.[22] He sanctioned a "positive policy of

16. 40 Op. Cal. Att'y Gen. at 177.

17. 42 Op. Cal. Att'y Gen. 33 (1963).

18. *Id.* at 36. *See also California Aide Sanctions Shift of Pupils to Integrate Schools*, N.Y. Times, Aug. 16, 1963, at 10, col. 1 (reporting the Attorney General's opinion).

19. Information concerning this unpublished opinion was made available from the private papers of Justice Mosk.

20. *See, e.g.*, Bakke v. Regents of the Univ. of Cal., 18 Cal. 3d 34, 553 P.2d 1152, 132 Cal. Rptr. 680 (1976), *aff'd in part*, 438 U.S. 265 (1978); *see also* Price v. Civil Serv. Comm'n., 26 Cal. 3d 257, 286, 604 P.2d 1365, 1383, 161 Cal. Rptr. 475, 493 (1980) (Mosk, J., dissenting).

21. 42 Op. Cal. Att'y Gen. 33, 36 (1963).

22. 43 Op. Cal. Att'y Gen. 82 (1964).

integration" in housing, but stated that "the setting of quotas, even those that are flexible, ultimately results in the *denial* of housing to one solely because of race, when the quota for the race is filled or there is deemed to be an 'overbalance' of his race in the project."[23]

Shortly thereafter, Attorney General Mosk ruled that a racial employment quota violated the State Fair Employment Practices Act.[24] He noted that discriminatory hiring practices may be met by demands to hire members of the offended class.

> Such a request or demand so long as it is aimed at ending an existing discriminatory practice would be a lawful objective but if such a request or demand is aimed at securing proportional or quota hiring in any work force then it would be the seeking of an unlawful objective within section 1420 . . . .[25]

The Attorney General concluded by commenting on an issue that has become significant some fifteen years later:

> [W]hile we find a 'quota' to be invidious we do not necessarily find a 'reasonable racial balance' to be unlawful. Or, while a demand to hire a specific number of a specified race solely on the basis of race is illegal, a demand that 'some' of a race be hired would not necessarily be improper.[26]

In addition to his written opinions, Stanley Mosk took many administrative steps as Attorney General that have had a lasting impact in the area of race relations. Among the most notable was his successful effort to desegregate the Professional Golfers' Association ("PGA"). He did this by threatening that the PGA would not be permitted to hold its national tournament on any public golf course in California if it continued to exclude from its events qualified black golfers.[27] One such rejected golfer was Charles Sifford. The PGA moved its tournament, but soon thereafter eliminated the "caucasion-only" clause from its by-laws. Thus, one of the last vestiges of official discrimination in sports became history.[28]

Attorney General Mosk expended much of his effort working with state and federal agencies and private organizations to end discrimination in housing, lending, and public accommodations.[29] In 1963, California

23. *Id.* at 85 (emphasis in original).

24. 43 Op. Cal. Att'y Gen. 200 (1964) (interpreting CAL. LAB. CODE § 1420).

25. 43 Op. Cal. Att'y Gen. at 204.

26. *Id.*

27. *See P.G.A. Warned on Bias,* N.Y. Times, Nov. 23, 1960, at 18, col. 2.

28. *See* Bennett, *Critical Incidents and Courageous People in the Integration of Sports,* J. OF HEALTH, PHYSICAL EDUC. & RECREATION, April 1971, at 83, 84.

29. *See* N.Y. Times, Feb. 7, 1963, at 7, col. 1. Attorney General Mosk stated, "Racial discrimination in housing and business are our two main areas of concern. . . ." *Id.* at col. 3.

Governor Edmund G. Brown, Sr. named him to head a task force of executives to eliminate discrimination both in and out of state government.[30] His approach was captured by a statement he made in support of legislation extending the jurisdiction of the California Fair Employment Practices Commission: "We are searching for new methods of dealing with discrimination which will be effective without being repressive. New laws must not only strike directly at discrimination; they must also provide a framework within which prejudices are lessened."[31]

Recognizing the problem of possible police insensitivity in minority neighborhoods, Attorney General Mosk sponsored a series of lecture programs in which prominent black law enforcement officers spoke to fellow police officers throughout the state on minority issues. One of the lecturers he selected was Police Lieutenant Tom Bradley, who later became mayor of Los Angeles. Attorney General Mosk took aggressive action to thwart politically motivated efforts in certain areas of California, especially in the Imperial Valley, to disenfranchise, in effect, citizens of hispanic origin.

Within the California Justice Department, Attorney General Mosk actively recruited women and minorities to fill important positions at a time when it was not deemed fashionable or politically expedient to do so.[32] He has often expressed pride that many alumni of his office have become distinguished scholars, members of the judiciary and other public officeholders.

Attorney General Mosk established the first constitutional rights section within the Department of Justice.[33] Its mission was to oversee the enforcement of California's anti-discrimination laws, especially those relating to housing and business activities. The section also provided legal representation to the California Fair Employment Practices Commission.

Stanley Mosk's early achievements in the development of constitutional law extend beyond the civil rights area. In an opinion involving the separation of church and state, Attorney General Mosk ruled that the County of Los Angeles could not contribute tax funds to the Pilgrimage Play,[34] which allegedly promoted a particular religion,[35] despite the

30. N.Y. Times, July 7, 1963, at 43, col. 6.

31. N.Y. Times, Feb. 7, 1963, at 7, col. 3.

32. As Attorney General, Mosk appointed the first female Chief Deputy, the first blacks as department heads, and the first black career deputy to head a division.

33. *See* Bell, *supra* note 1, at 89.

34. The Pilgrimage Play, an annual production by the Pilgrimage Play Association, Ltd., dramatized the life of Christ and followed closely the King James version of the New Testament. 37 Op. Cal. Att'y Gen. 105, 108 (1961).

contention that the state support should escape constitutional scrutiny because of the play's widespread fame and benefit as a tourist attraction.[36]

Stanley Mosk issued several significant opinions as Attorney General involving religion and public schools that applied basic First Amendment concepts. In 1964, he ruled that a state law which permitted school districts to allow religious organizations the use of school grounds for sectarian purposes was a violation of the Establishment Clause.[37] He declared, however, that the law could be constitutionally applied to permit religious services in school buildings provided fair rental is charged, the time is limited, the school does not need the property at the time, and the religious use is not immediately before or after formal class instruction.[38]

Four years prior to this opinion, the Attorney General ruled constitutional a law that permitted a public school to acquire books of sectarian or denominational character for school libraries.[39] Although he stated that such works constituted appropriate literary or educational material, he concluded with the following caveat:

> Although the subject matter of books purchased for school libraries is not reviewable on the ground that the books are or are not sectarian or denominational in character, every caution should be exercised to make certain that books of sectarian or denominational character are not used as a basis for advocating or teaching the precepts of a specific religion or sect. Care is also indicated to prevent books of sectarian or denominational character from constituting an inordinate percent of the total library and thus altering the very character of the library itself.[40]

Although a person of strong, principled opinions, Stanley Mosk has been careful not to exceed his legal powers to promote his personal views. During the early 1960's, as Attorney General he ruled that schools had the discretion to pay for teachers attending sessions of the "Christian Anti-Communist Crusade," and could permit students to attend.[41] De-

35. The Attorney General observed that the play "may well be a production of cultural, artistic and educational value to the community," *id.* at 107, but this does not alter its essential religious character. *Id.* at 109. He also ruled that the Constitution prohibits the use of public funds to aid any specific religious purpose, not merely "aid of a single sect as differentiated from other beliefs of other sects within the same religion [citations omitted]." *Id.*

36. *Id.* at 107.

37. 43 Op. Cal. Att'y Gen. 62 (1964).

38. *Id.* at 69.

39. 35 Op. Cal. Att'y Gen. 68 (1960).

40. *Id.* at 70.

41. 39 Op. Cal. Att'y Gen. 45 (1962).

spite his personal critical opinion of the operation and its promoter,[42] he noted that there have "been no contentions made that the sessions of the 'Crusade' constitute religious exercises or religious instruction."[43]

In 1961, the Attorney General's office responded to inquiries about the John Birch Society from Governor Edmund G. Brown, Sr.[44] In his fifteen page response to the Governor, Attorney General Mosk described it as a "monolithic authoritarian organization with the policy dictated from above and no dissent permitted in its ranks."[45] In describing the Birch Society membership, he originated the expression "little old ladies in tennis shoes,"[46] an appellation that has become a part of the American lexicon.[47] But he refused to accede to demands from some quarters for a full-scale investigation of the group.[48] He instead offered this advice: look into the organization, listen to the ideas espoused, observe the people espousing them, and ask questions. Then decide "whether to join or oppose the organization or simply stay home and watch television. . . . In America, preposterousness prevents the acceptance but not the expression of ideas."[49]

Although a consistent adherent to freedom of speech principles, Attorney General Mosk recognized reasonable limitations on the practical exercise of First Amendment rights. For example, he held that those who litter may be prosecuted, even though they are distributing political material.[50] And he upheld the constitutionality of a provision requiring the disclosure of the identity and address of the printer and publisher of any printed electoral material.[51]

After ruling unconstitutional the State Board of Education's denial or revocation of a teacher's credentials on the sole ground that the

42. Attorney General Mosk viewed the crusade as "patriotism for profit." Bell, *supra* note 1, at 88.

43. 39 Op. Cal. Att'y Gen. at 48.

44. Bell, *supra* note 1, at 87.

45. N.Y. Times, Aug. 3, 1961, at 3, col. 2.

46. Bell, *supra* note 1, at 87.

47. *Id.*

48. N.Y. Times, *supra* note 45, at 3, col. 2; *see also* Bell, *supra* note 1, at 90.

49. N.Y. Times, *supra* note 45, at 3, col. 2.

50. 43 Op. Cal. Att'y Gen. 190, 192 (1964).

51. 36 Op. Cal. Att'y Gen. 65 (1960) (ruling constitutional CAL. ELEC. CODE § 4573). Just prior to Attorney General Mosk's opinion, the U.S. Supreme Court held unconstitutional a Los Angeles municipal ordinance that prohibited the distribution of any handbill which did not identify its printer and distributor. Talley v. California, 362 U.S. 60 (1960). Attorney General Mosk ruled that *Talley* did not require a finding that the election statute was an unconstitutional violation of freedom of speech and the press. He noted that unlike the blanket prohibition of anonymous circulars of the ordinance in *Talley*, the narrowly drafted election code protected the public's substantial interest in preserving inviolate the integrity and fairness of the electoral process. 36 Op. Cal. Att'y Gen. at 68.

teacher had invoked the Fifth Amendment privilege against self incrimination in a federal proceeding,[52] Attorney General Mosk acknowledged that to some extent his view had been superseded by United States Supreme Court opinions.[53] He then ruled that by virtue of Supreme Court decisions, the State Board of Education could deny or revoke a teaching credential upon proof that the teacher is knowingly a Communist Party member.[54]

As Attorney General, Stanley Mosk addressed many other far-reaching issues. He advised that certain "Buy American" provisions of California law could not constitutionally be applied when they conflicted with United States treaties.[55] He ruled constitutionally valid a California law which provided that an unlicensed contractor cannot recover compensation for work performed.[56] In a widely publicized ruling,[57] he concluded that California could not require more restrictive qualifications for appointment or election to the United States Senate than those provided in the United States Constitution.[58] Thus, the governor could appoint to the United States Senate one who was not an elector in California,[59] despite California law,[60] as there was no such requirement in Article I, Section 3, of the United States Constitution.[61]

As a trial judge, Stanley Mosk presided over many significant criminal trials. His decision to admit a confession in a widely publicized case leading to a death penalty sentence was upheld by the United States Supreme Court.[62] As Attorney General, Stanley Mosk was a vigorous

52. 37 Op. Cal. Att'y Gen. 112 (1961).

53. 37 Op. Cal. Att'y Gen. 201, 210-11 (1961). The U.S. Supreme Court decisions are Konigsberg v. State Bar, 366 U.S. 36 (1961) and *In re* Anastaplo, 366 U.S. 82 (1961).

54. 37 Op. Cal. Att'y Gen. at 202.

55. 34 Op. Cal. Att'y Gen. 302 (1959).

56. 33 Op. Cal. Att'y Gen. 83 (1959) (ruling valid CAL. BUS. & PROF. CODE § 7031).

57. *See, e.g.*, L.A. Times, Aug. 5, 1964, at 1, col. 1.

58. 44 Op. Cal. Att'y Gen. 30 (1964).

59. "Under Elections Code section 20, elector is a person who qualifies under section 1 of article II of the State Constitution which sets forth a residency requirement of one year." *Id.* at 31.

60. CAL. ELEC. CODE § 25001 (West 1977).

61. U.S. CONST. art. I, ¶ 3, cl. 3 provides: "No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen."

This opinion led to the appointment of Pierre Salinger to fill the vacancy created by the death of Senator Clair Engle. *See* L.A. Times, Aug. 5, 1964, at 1, col. 1. Interestingly, in Jan. 1964, Attorney General Mosk led in public opinion polls concerning the election for that United States Senate seat. N.Y. Times, Mar. 4, 1964, at 22, col. 2, 7. Attorney General Mosk opted for a judicial career rather than national politics.

62. Crooker v. California, 357 U.S. 433 (1958). *Crooker* no longer represents the law. Miranda v. Arizona, 384 U.S. 436, 479 n.48 (1966); *see also* Johnson v. New Jersey, 384 U.S.

prosecutor and crime fighter. As counsel for the People in countless criminal appeals, he carried out his legal duties by representing the People in efforts to uphold death penalty convictions,[63] despite his expressed personal opposition to capital punishment.[64] In this respect he remains consistent, for, although personally skeptical about the wisdom of the death penalty, under the compulsion of the law, he has voted to affirm capital punishment convictions on a number of occasions.[65]

Attorney General Mosk won respect and support from the law enforcement community not only for his record as a prosecutor. He also recognized that poor training of law enforcement personnel had been a contributing factor to constitutional rights violations and lack of public confidence and safety. His promotion of peace officers' standards and training[66] was acknowledged by a U.S. Senator who stated:

> [H]e has been one of the most effective leaders in the effort to give law enforcement the status and accord which it so richly deserves. Through his leadership, California has pioneered in providing a program of uniform standards and training and in-service education for the 400 local law enforcement agencies within the State.[67]

In my view, these and many other achievements place Stanley Mosk in the ranks of California's most valuable public servants. This cursory review of the area of constitutional law has left many accomplishments unmentioned; my purpose has been only to provide a broader perspective of his work and career in public service. I will leave it to others to chronicle more fully his many contributions to the law and to society. Any

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719, 731 (1966); Escobedo v. Illinois, 378 U.S. 478, 491-92 (1964); Massiah v. United States, 377 U.S. 201, 206-07 (1964).

63. *See, e.g.*, People v. Chessman, 52 Cal. 2d 467, 472, 341 P.2d 679, 682 (1959).

64. As Attorney General, Stanley Mosk testified before several California legislative committees in opposition to capital punishment. *See In re* Anderson, 69 Cal. 2d 613, 634 (1968) (Mosk, J., concurring).

65. *See, e.g.*, People v. Robertson, 33 Cal. 3d 21, 63, 655 P.2d 279, 305, 188 Cal. Rptr. 77, 103 (1982) (Mosk, J., dissenting); *In re* Anderson, 69 Cal. 2d 613, 634, 447 P.2d 117, 131, 73 Cal. Rptr. 21, 35 (1968) (Mosk, J., concurring); People v. Jacobson, 63 Cal. 2d 319, 405 P.2d 555, 46 Cal. Rptr. 515 (1965). In *In re* Anderson Mosk wrote:

> [Because of my] personal belief in the social invalidity of the death penalty . . . [para.]
>
> I am tempted by the invitation of petitioners to join in judicially terminating this anachronistic penalty. However, to yield to my predilections would be to act wilfully 'in the sense of enforcing individual views instead of speaking humbly as the voice of law by which society presumably consents to be ruled. . . .' (Frankfurter, *The Supreme Court in the Mirror of the Justices* (1957) 105 U. PA. L. REV. 781, 794.)
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> As a judge, I am bound to the law as I find it to be and not as I might fervently wish it to be. . . .

In re Anderson, 69 Cal. 2d at 634-35, 447 P.2d at 131-32, 73 Cal. Rptr. at 33-36.

66. *See, e.g.*, CAL. PENAL CODE §§ 13500, 13520 (West 1982).

67. *Elevation of Attorney General Stanley Mosk to the California Supreme Court*, *supra* note 3, at 22,079 (remarks of Sen. Thomas Dodd).

review of his work must, I think, take into account his many years of public service prior to becoming a member of California's highest court. Although his earlier achievements may not have the same profound impact as his Supreme Court opinions, they have had a lasting influence.