

ALUMNI & FRIENDS

Alumni Board. In recognition of these and many other achievements, she was given the 1989 Award for Distinguished Achievement in Private Practice by the Law School.



Koncilja now works for herself. Her current practice involves primarily trial work, arbitration and mediation. She says she has been "very blessed" in her career in that she has had the opportunity to try cases that have shaped policy. Koncilja started her own practice in part for the freedom of setting her own policies and procedures. "I can reduce fees to take on a case I care about," she explains, and "I can make sure that the women who work for me get treated well and paid well." She identifies courage and stamina as her most important professional strengths, noting that trial work remains a "tough business" for women. Her professional goal is to be known as someone with "the courage to put her neck on the line when it counted—the person who will stand up for the underdog, even if the underdog is a corporate client with lots of money."

Moses Lasky ('28) Some alumni become legendary. Moses Lasky is a case in point. In the 66 years that he has practiced law, Lasky has handled many uncharted and complex legal issues. He has also participated in nearly 50 matters before the U.S. Supreme Court, personally argued 10 of them, and he has won cases against famous advocates such as Archibald Cox. Lasky has seen significant change in the legal profession, but what endures, he believes, is the power of speech and the necessity of verbal skill. In that arena, Lasky is the con-

summate master. Indeed, his skills as an oral advocate have been recognized by many, including the *Washington Post*, which commented favorably in 1971 upon his argument in *James v. Valierra*. Many consider him a "lawyer's lawyer" for his professional accomplishments and a "lawyer's teacher" for his ability to communicate the fundamentals of his approach to oral argument.

Lasky was born in Kremmling, Colorado, in 1907. He was a precocious child; after attending grade school in rural Colorado, he entered Denver East High School at the age of 10. At age 14, he matriculated at the University of Colorado on a full-tuition scholarship. He received a B.A. *magna cum laude* in 1926 and his J.D. in 1928. Because he was too young to take the bar exam, he attended Harvard Law School, where he received a master of laws in 1929. He is now a senior partner with Lasky, Haas & Cohler in San Francisco, where he has lived and practiced since 1929.

Accolades have been many during his illustrious career. He has been elected a fellow of the American College Trial Lawyers and has been the recipient of the American Bar Foundation's Fifty-Year Award. CU recog-

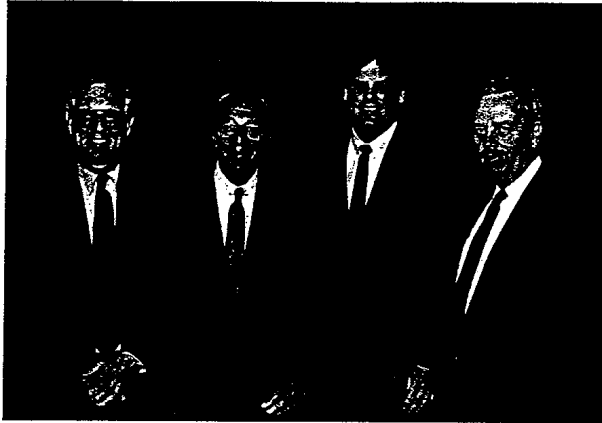


Moses Lasky

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nized Lasky as a Distinguished Alumnus in 1977 and awarded him the University of Colorado Medal in 1983. Most recently, at the December 1996 commencement, the CU Board of Regents awarded him the doctor of humane letters, *honoris causa*, in recognition of his loyalty to the School of Law, his service to students, and his achievements in the law. Upon hearing that he had received this award, distinguished members of the judiciary who had listened to him argue cases, including Supreme Court Justice Byron White and members of the California Supreme Court and California Court of Appeals, wrote to congratulate him. From the Ninth Circuit Court of Appeals, the Honorable J. Clifford Wallace noted that Lasky had performed "at the highest professional level" and had been "the most effective lawyer" appearing before him; the Honorable James R. Browning noted that Lasky "makes all of us proud to be a member of our profession."

Lasky has never forgotten his alma mater. Indeed, his loyalty and generosity have been ceaseless. He established the Lasky Scholarships in honor of his mother, the Lasky Faculty Library, and the Moses Lasky Professorship. And in 1995, in memory of his good friend, Ira Rothgerber, Jr. ('35), Lasky purchased the Law Library's 300,000th volume, the 1615 edition of John Manwood's *A Treatise of the Law of the Forests*. The first book written on natural resources law, the treatise was written for the Earle of Nottingham in order to lay out the "wayes and meanes how to preserve and maintaine Forests, together with the due punishment of such as shall be found offenders herein." The volume has helped to strengthen the school's collection of natural resources material.



At the 1991 celebration of the remodeling of the Lindsley Memorial Courtroom: Jim Corbridge, former Chief Justice of the Colorado Supreme Court and executor of the Lindsley estate, Leonard Von B. Sutton, Gene Nichol, and Court Peterson.

Lasky has also graced the school and its students with the benefit of his lifetime of experience in the law. In the fall semester of 1995, Lasky was a Practitioner-in-Residence at the Law School. He spent two months at CU, delivering lectures and sharing his wisdom with the Rothgerber Moot Court participants. He returned to serve in 1996 as Distinguished Practitioner-in-Residence. Moses Lasky will always be welcome at his "second home," CU Law School.

Professorship Endowed

Moses Lasky ('28), one of the Law School's most illustrious alumni, has endowed a fund to establish the Moses Lasky Professorship of Law. The Lasky Professor will be a legal scholar of outstanding ability and reputation. The first Lasky Professor will be designated in the fall of 1983.

Moses Lasky was born and raised in Denver. He attended the University of Colorado and graduated with high honors in 1926 at the age of eighteen. Two years later, he graduated from the Law School. He then enrolled at Harvard and earned an LL.M. in 1929. Armed with his fine education, he headed westward. He was admitted to the California bar in 1930 and joined the San Francisco firm of Brobeck, Phleger and Harrison. For almost fifty years, he was in general practice with the firm, specializing in complex business litigation, which included antitrust and trade regulation, trademark, securities and patent law. In 1979, he left the firm and became the senior and

founding partner of Lasky, Haas, Cohler and Munter, also in San Francisco.

During his professional life, Moses Lasky has come to be regarded as one of the leading figures of the San Francisco Bar. His stature, however, is only partly the result of his participation in many notable cases and his careful and able representation of hundreds of clients. Much of his life has also been devoted to public service, which has ranged in scope from promotion of music and art to the study of criminal justice. Clearly, throughout his career Moses Lasky has made numerous and varied contributions to his profession and to society in general.

The Law School has also been a beneficiary of Moses Lasky throughout the years. He has established a tradition of giving, not only of his money, but of his time and energy, as well. In 1959, he endowed a scholarship fund in honor of his mother for the benefit of CU law students. Years later, he provided funds to furnish the faculty law library. As recently as February, 1981, Moses Lasky returned to the Law School as its first practitioner-in-residence. During his visit, he shared valuable experiences and insights with students, faculty and alumni.

In recognition of Mr. Lasky's many achievements in and contributions to the legal profession, he was presented the prestigious William Lee Knous Award in 1977. Once again, the Law School community expresses its gratitude for his dedication and generosity made evident through the endowment of the Moses Lasky Professorship.



(L-R) Alfred A. Arraj ('28) and
Moses Lasky ('28)

Alfred A. Arraj practiced law in Denver and Springfield, Colorado from 1928 through 1948 with the exception of his military service during World War II. He served as County Attorney of Baca County and as City Attorney of Springfield and Walsh, Colorado for over ten years. He was elected District Judge of the Fifteenth Judicial District in 1948 and was reelected without opposition in 1954. In 1957 he was appointed U.S. District Judge and became Chief Judge of the District of Colorado in 1959. He was President of the Southeast Colorado Bar in 1940 and was the Senior Vice President of the Colorado Bar Association in 1950. In 1954 he was elected President of the Colorado State District Judges'

Association, and in 1964 he was elected by the Judges of the Tenth Circuit as the District Judge representative on the Judicial Conference of the United States.

Following his graduation, Moses Lasky, who was then too young to be admitted to the bar, went to Harvard Law School where he received his LL.M. He then practiced with the firm of Brobeck, Phleger & Harrison in San Francisco for fifty years, at which time he left to form his own law firm, Lasky, Haas, Cohler & Hunter, where he still has an active practice in complex business litigation, primarily in securities and antitrust. In 1980, the *San Francisco Examiner* listed him among the city's top ten lawyers. He has also given countless hours to his community, serving as a member of the Board of Trustees of the San Francisco War Memorial, as President and trustee of the San Francisco Museum of Art, and as Vice President of the Board of Directors of the San Francisco Art Institute. He has been a member of the Board of Directors of the San Francisco Legal Aid Society, and served as co-chair of the San Francisco Crime Committee. In 1977 he received the Law School's Knous Award.

A Tribute to Moses Lasky

The following is a tribute to alumnus Moses Lasky ('28) delivered by Dean Gene R. Nichol at the October presentation of the Moses Lasky Professorship to Professor Charles F. Wilkinson.

Let me welcome so many of you tonight to this ceremony marking the installation of Professor Charles F. Wilkinson as the Moses Lasky Professor at the CU Law School.



Moses Lasky ('28)

Actually tonight we celebrate two things—the generosity of one of the Law School's strongest supporters and the excellence of one of our best faculty members. Both Moses Lasky and Charles Wilkinson have worked to change the quality of our programs and the benefits of their efforts are realized here more strongly as each month passes. We stop tonight in a small way to say thanks to each of them, to express our admiration, and to recognize their contributions.

It is a particular delight and honor to introduce Moses Lasky. As all of you know, Moses has been a great friend to this Law School. He not only has endowed the Professorship we celebrate tonight, but his contributions for over thirty years have supported the Lasky Scholarships established in his mother's honor, and he has created a Faculty

Library at the Law School. He graduated magna cum laude from this institution in 1928—by my calculation when Calvin Coolidge was President and Babe Ruth had, a few months earlier, hit sixty home runs. I could perhaps mention that he also received an LLM degree from a lesser known law school in Cambridge, Massachusetts. He has, deservedly, often been recognized by both this Law School and University. He received the Distinguished Alumnus Award in 1977 and the University of Colorado Medal in 1983.

Actually though, Moses Lasky has served the Law School far more significantly in another manner. For over sixty years, he has been one of the United States' most accomplished lawyers. He has specialized primarily in complex business litigation, with a focus on antitrust, securities and trade regulation and he has dabbled significantly in constitutional law. He has written articles published by the most prestigious law reviews in the country: including, and this is particularly fitting tonight since Charles Wilkinson is one of the country's leading experts in water law, a 1928 article on the Prior Appropriation Doctrine published in Volume One of the *Rocky Mountain Law Review*, now known, of course, as the *University of Colorado Law Review*. That essay is one of the most influential ever written in the field, and it is introduced with a footnote that describes it simply as a "study in Administrative Law submitted to Professor Felix Frankfurter of the Harvard Law School."

Most importantly though, Moses Lasky has tried cases—cases like none of the rest of us have handled; cases often in the United States Supreme Court; cases which are cornerstones of American Law. I could mention the many stages of the Dollar Steamship litigation; the Western Pacific litigation; Simpson v. Union Oil; James v. Valtierra; cases involving Howard Hughes and Joe Kapp; and, of course, enough cases involving Al Davis and the Oakland Raiders to keep any other lawyer busy for a lifetime.

I wish, of course, that I could capture some of the Lasky fire for you here tonight. I cannot do that, but I know he will in just a second. I do know of a story or two. For example, that he started the argument before the United States Supreme Court in James v. Valtierra with the statement that, "this case involves two of the fundamental bastions of American democracy: the right of the people to vote and the Equal Protection Clause and, believe it or not, the court below used the one to destroy the other." Not bad. And, of course, it worked.

I also happened to read a speech Moses Lasky gave to the *University of Colorado Law Review* here nine years ago on the "Malaise of American Law." In it, he compared one particular type of litigation to "an army of black Mormon crickets marching across western Colorado leaving the soil bare behind them." He questioned the use of juries in cases involving extremely sophisticated commercial transactions when the jurors' "financial experience may not extend beyond dropping two bits in a laundromat." And he characterized the weapon of discovery as "awful"—using awful "in its original sense as indicating something inspiring awe, like lightning, an earthquake, the Black Death or punk rock music."

Moses Lasky obviously has more in common with Charles Wilkinson than just water law. The last time I was in San Francisco, Moses and I had an enthusiastic discussion—perhaps disagreement—on the flag desecration case. Moses then indicated that he would come out for this ceremony if I would agree to take the witness stand so that he could cross examine me on my view that burning a flag is expression protected by the First Amendment. I am glad to say that Moses let me off the hook. And I am honored to present him to you tonight. □

June 1

Wisdom from a Seasoned Lawyer

Lasky Serves as Practitioner in Residence

yn Ayers

Moses Lasky ('28) learned the art of salesmanship during his college "vacation." As a 17-year-old junior, Lasky walked from town to farm across the desert of south Texas selling veterinary books. His position was not fruitful. Unbeknownst to Lasky, that territory had already been traversed the year before by students selling the same book. However, Lasky trudged onward and made a substantial profit that summer. The next summer, he returned to Texas to sell the same books. It was then that he learned his most valuable lesson in salesmanship: perseverance.

"I saw him out in the field walking behind his plow," Lasky wrote in a 1927 McClure's article. "His house was a tumble-down shack; no prospect there. But not a man would I miss, whether a sharecropper or hired man. I talked to him. I gave him a canvas; he took it away. I followed after him as he continued up and down the road; he would not listen. I threw a few jokes at him. I pointed out reasons for buying; he growled. I used all the arguments I usually used; he grunted. I made up more; my blood was up.

"At the end of two and a half hours, he began to ask questions. At the end of three hours, he 'guessed as how' he would not buy. I

Three hours was more time than I had ever given to any man before, and ten times as long as it took to sell most men. I started walking the road and had covered half a mile when I heard a shout. I turned around and saw the farmer running after me. He wanted the book, and he wanted it within a week. He got it."

This man turned out to be the richest and stingiest man in the county, and just the mention of his name could induce a sale. Whenever I mentioned that [he] had ordered a book," Lasky wrote, "the prospect would exclaim: 'That codger; if he bought one, it must be good; put me down for one!'"

For the past 66 years, Lasky has utilized the sales skills he developed during his college vacations to become one of the most respected oral advocates in the country. Heralded as one of the finest speakers of our time, Lasky has triumphed over great advocates, including Harvard Law Professor and former U.S. Solicitor General Charles E. Hughes. Lasky, a remarkable and skillful lawyer according to a 1928 article in the *Washington Post*, has been involved in over 50 Supreme Court cases and has personally argued ten of those cases.

During the 1995 fall semester, the 87-year-old Lasky spent two months at the CU Law School as Practitioner in Residence, delivering lectures as a "free-roving intellectual spirit." Lasky had been



Moses Lasky

invited to teach a course, but declined the position. "I don't want to have to give tests or grade papers. I'm too old for that," he said.

Lasky is originally from Kremmling, Colorado. This "cow town" in northern Colorado had fewer than 100 inhabitants while Lasky was growing up. He breezed through Kremmling's two-room school in eight years, graduating from high school at the age of 14, and then went on to college and law school at the University of Colorado. Lasky received his law degree from the University of Colorado in 1928, but he was still too young to take the Colorado bar exam. Because of this, he went on to Harvard Law School, where he received his Master of Laws degree. Lasky began to practice law in California in 1929. A resident of San Francisco, Lasky has now been a member of the California State Bar for over 65 years.

As Practitioner in Residence, Lasky shared his experiences as an oral advocate with University of Colorado Rothgerber Moot Court participants. In order to be a good lawyer and oral advocate, one must be a salesman, he said. The National Cash Register Company Approach is the best overview of the art of salesmanship according to Lasky. The first step is to approach the prospective customer (or judge), the second is to get his attention (this is not hard, as the judge is a captive audience), the third is to create

interest and a willingness to listen further, the fourth is to convince the prospective buyer that he can use the product (in the lawyer's case, his argument), the fifth is to make the prospective buyer want the product, the sixth is to make him decide to have the product, and the last is to get his name on the order.

All of this requires verbal skill. "Just as a carpenter's tools are his hammer and saw, the lawyer's tools are his words," he said. "Those words have to sing." However, Lasky does not mean that oral arguments should be sensational or ornate. Simplicity is important, he stressed. "I have always believed in the necessity of making the point in the fewest number of words possible." Flashy oration might impress a jury, but judges will probably not be taken in by it. "Dramatic is what a lot of attorneys do, and it's a lot of flub-fubbery," he said.

The power of speech is immense: Mere words can win a case. In one of his Supreme Court victories, Lasky began by saying, "This case involves two of the bastions of American Democracy: the First Amendment right to free speech and the Equal Protection Clause. Believe it or not, the court below has used the one to destroy the other." These words, Lasky said, caught the Court's attention and won the case. Lasky's opponent believed so, too. The U.S. Solicitor General wrote to Lasky, "I want to send you my congratulations on our victory. . . . I have a feeling that your argument may have been instrumental in bringing about the result."

Another important aspect of oral argument is spontaneity. An oral argument shouldn't be a speech, and it shouldn't be an oration," Lasky said. Instead, it should be a well-prepared question-and-answer session. The first step to formulating an argument is to address the issues. "A person has to sit down, relax, put his feet up on the desk and ask, 'What is this case really about?'" Lasky said. Then, he advised, "Write out your argument, study it, and throw it away." And when a judge asks a question, answer it immediately. "You're lucky when you're asked a question, because the judge has his own way of thinking," he said.

Remaining impersonal is another important persuasive technique, Lasky said. Too many lawyers are verbally insulting and abusive to their opponents. Instead, let the facts speak for themselves. In the alternative, if a lawyer really feels angry at his opponents, he should put all his retorts and epithets into his first draft. These insults should then be cut during the rewrite.

Honesty is yet another technique of persuasion. "Persuasion works on the emotions," Lasky said. "Level with the court. Be honest about what you say." Lasky once took over the oral arguments in a case where a British liquor cartel accused the Black & White Beer Company of violating the cartel's rights. The cartel's first lawyer had swayed the cartel's own witness to admit that "no one could possibly confuse Black & White with our whiskey." But Lasky took over on appeal.

"I got the Court's attention by leveling with the judge. I said, 'We were not down here now and were instead up there where you would ask, 'How on earth can you escape your own client's money that there's no confusion?' The judge replied, 'That's exactly what I'm thinking.'" Lasky then went on to persuade the court that the question was not one of fact, but one of law. He won the argument.

Lasky has spent 66 years as a "lawyer's lawyer." But Lasky is a "lawyer's teacher," according to Professor Richard Wydick of J.C. Davis School of Law.

"Lasky is one of the most accomplished lawyers in the country's history," Law School Dean Gene Nichol said. "He is one of our most distinguished graduates, and we are grateful for the opportunity to benefit from his great expertise."

For more on appellate advocacy techniques, Lasky recommends reading Chapter Seven of Witkin's *Manual on Appellate Court Opinions*. However, he warned with a smile, "Pay no attention to the fact that I happen to be frequently quoted."

Lasky returned to San Francisco in late October to complete a case pending in the California Supreme Court. ■

Supreme Court Bar, cont.

was his first time in front of the Supreme Court. I was very impressed," said Loeb.

The case is an original proceeding in the Supreme Court involving an interstate dispute over the waters of the Platte River system. Nebraska is claiming that upstream development in Wyoming and Colorado has caused a shortage of water to Nebraska and that the water shortage has affected both agricultural development and the whooping crane's habitat, a species protected by the Endangered Species Act.

The oral arguments before the Court were part of a final pretrial hearing of *Nebraska*, during which Colorado and Wyoming argued to narrow the range of issues. The Court has appointed a special master to hear the merits of the case sometime in 1996 or 1997.

The *Nebraska* argument took place during spring break, and busloads of high school students filed into the courtroom. Tymkovich related. "After I finished my argument, I overheard one kid say, 'We didn't pick the most interesting case to come hear today.'" But Tymkovich was very understanding. "Interstate water is probably not the sexiest issue the Court hears," he admitted.

Those high school students might have been more entertained had they instead heard Tymkovich's second argument before the Court. In *Evans v. Romer*, a Colorado resident challenged a citizen's initiative adopting a constitutional amendment restricting special legislation regarding homosexuals within Colorado.

"This is a tough case because of all the attention," Tymkovich said. A month before the *Evans* argument, Tymkovich and Norton were fending off reporters from all over the country. The topic was featured on Nightline and Court TV. The first *Evans* argument, held before the trial court, was broadcast on a local Denver television channel. However, the October Supreme Court argument was not televised. "The federal courts don't allow television cameras in the courtroom," Tymkovich said with relief.

"It is helpful and useful to have had the experience of appearing before the Court in the past," Tymkovich said prior to the *Evans* argument. "I'll have a better sense of what it's like and therefore fewer distractions." However, Tymkovich didn't think his experience gave him any edge on his opposing counsel, Jean Dubofsky. Dubofsky, he said, is a very experienced and talented advocate.

Tymkovich continued to research constitutional theory and precedent in order to prepare for the argument. "It is a remarkable experience to be involved in a case of this constitutional magnitude," Tymkovich said. ■