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Oral History

- Joseph R. Grodin, Professor of Law and Supreme Court Justice** 1
Conducted by Leah McGarrigle

Articles

- Preventive Tax Policy: Chief Justice Roger J. Traynor's Tax Philosophy** 155
Mirit Eyal-Cohen
- "Shall Law Stand for Naught?": The Los Angeles Chinese Massacre of 1871 at Trial** 185
Paul R. Spitzerri

Book Reviews

- The Development of Los Angeles City Government: An Institutional History** 225
edited by Hynda L. Rudd et al.
Reviewed by Volker Janssen
- The Enigma Woman: The Death Sentence of Nellie May Madison** 231
by Kathleen A. Cairns
Reviewed by Richard McFarlane

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Oral History: Joseph R. Grodin, Professor of Law and Supreme Court Justice

Conducted by Leah McGarrigle

With this issue of California Legal History, the California Supreme Court Historical Society invites the bench and bar to explore the oral history of a distinguished jurist and scholar, Justice Joseph R. Grodin.

Justice Grodin was born in Oakland, California, in 1930, and was educated in public schools there and in nearby Piedmont. His early interests included football, poetry, Democratic Party politics, and Jewish leadership youth organizations. He studied labor economics and majored in political science at the University of California, Berkeley, graduating with honors in 1951. He went on to Yale Law School, completing his law degree cum laude in 1954. His summers were spent at the San Francisco law firm of Tobriner & Lazarus, where he began a long and influential association with Mathew O. Tobriner.

After pursuing a Ph.D. in labor law and labor relations at the London School of Economics, Justice Grodin continued his practice at Tobriner & Lazarus until 1971. He was a visiting professor of law

for a year at the University of Oregon before joining the faculty at Hastings College of the Law full time from 1972 to 1979. During this period Governor Jerry Brown appointed him to the Agricultural Labor Relations Board.

In 1979 Governor Brown appointed Justice Grodin to the First District of the California Court of Appeal (Division One), elevating him in 1981 to presiding justice. In 1982 Governor Brown named him associate justice of the California Supreme Court, where he served until 1987. He and two other Brown-appointed colleagues, Chief Justice Rose Bird and Associate Justice Cruz Reynoso, lost their statewide retention elections in November 1986 amid a controversial campaign to unseat them, largely over the issue of the death penalty.

Justice Grodin returned to the faculty of Hastings, where he taught labor law, employment discrimination, arbitration, and contracts. He continues to serve as Distinguished Emeritus Professor of Law. His memoir, *In Pursuit of Justice: Reflections of a State Supreme Court Justice*, is just one of his many publications.

The interviews on which this piece is based were conducted in 2004 by Leah McGarrigle, an oral historian and a former student of Justice Grodin's at Hastings. The oral history transcript presented here has been edited for readability and typographical correctness. Those wishing to read the full text or to quote from the official oral history may consult the original transcript online via http://bancroft.berkeley.edu/ROHO/collections/subjectarea/law/ca_supremecourt.html or in the hardbound manuscript in UC Berkeley's Bancroft Library.

— Laura McCreery, 2008
Program Director, Regional Oral History Office
University of California, Berkeley

TOPICAL SUMMARY

SESSION 1: September 14, 2004 5

Father's family and immigration from Lithuania—Mother's Russian roots and West Coast upbringing—Father's clothing business in Oakland, California—Temple Sinai—Piedmont Junior and Senior High Schools—Early interest in Democratic Party politics—Summers at Boy Scout camp and formative European trip of 1947—Love of hiking and the outdoors—Study of political science and key influences at UC Berkeley—Meeting wife Janet—Brandeis Camp and Jewish leadership—Deciding on Yale Law School.

SESSION 2: October 26, 2004 31

Study of labor and economics at UC Berkeley—Courses and faculty at Yale Law School and emphasis on “legal realism”—Summer jobs with Tobriner & Lazarus—Influence of Morris Cohen at Yale—Mentorship of Mathew O. Tobriner—Pursuing a Ph.D. with Otto Kahn-Freund at the London School of Economics—Returning to Tobriner & Lazarus—Working with Americans for Democratic Action during the Vietnam War—Eugene McCarthy's presidential campaign, 1968—Teaching at University of Oregon's law school—Joining the faculty at Hastings College of the Law—Writing book on Sierra Nevada trails—Involvement in American Jewish Congress and ACLU—Running for Berkeley City Council—Appointment to California's Agricultural Labor Relations Board by Governor Edmund G. “Jerry” Brown, Jr.—California's Agricultural Labor Relations Act in relation to National Labor Relations Act—ALRB's meeting with growers and Teamsters Union in Salinas and Cesar Chavez's speech—Resignation from ALRB.

SESSION 3: November 9, 2004 65

Appointment by Governor Jerry Brown to California Court of Appeal—Consideration by Commission on Judicial Nominees Evaluation—Associate justice in Division One of District One of the court of appeal, 1979—John T. Racanelli, presiding justice, and other colleagues—Workload, process, and collegiality of various divisions of the court of appeal—Friday lunches at the Embassy Restaurant—Judicial views of oral argument—Working with law clerks and ex-

terns—Elevation to presiding justice in Division Two of District One, 1981—Procedural reforms and colleagues at Division Two—Key cases—Appointment by Governor Brown to California Supreme Court, 1982—Confirmation hearing and taking seat on supreme court—Work and friendship with Justice Otto Kaus—Reflections on friendship, weekly lunches, and collaborations with Mathew O. Tobriner.

SESSION 4: November 23, 2004

97

Influences of philosophical thought and political science on judging—Public perception of judging at U.S. and California Supreme Court levels—Adequate and Independent State Grounds Doctrine and influence of Hans Linde—More on importance of independent state constitutional rights—State of California differences from federal law and precedent in areas such as privacy and abortion rights—California court system’s loss of leadership among states in the development of state law—Recollections of Stanford University’s Gerald Gunther—Contributions of supreme court colleague Justice Stanley Mosk.

SESSION 5: December 10, 2004

124

Close association with Justice Otto Kaus on the California Supreme Court—Recalling Justice Allen Broussard, Chief Justice Rose Bird, and other justices—Retention election of 1986 and departure from the California Supreme Court—Writing *In Pursuit of Justice*—Getting to know U.S. Supreme Court Justice William Brennan—Semester at UCLA, followed by return to faculty of Hastings College of the Law—Opposition to the death penalty and how the issue fared on the California Supreme Court during the tenure of Governor George Deukmejian—Recalling former assembly speaker Willie Brown as a student—Evolution of teaching interests at Hastings—Urging students to pursue law careers in the public interest—Changes to the labor movement and labor law—Teaching employment discrimination law—Philosophical summary of career—Family matters.

Preventive Tax Policy: Chief Justice Roger J. Traynor's Tax Philosophy

*Mirit Eyal-Cohen**

Roger J. Traynor was appointed to the Supreme Court of California in 1940 and served as its Chief Justice from 1964 to 1970. He is best known today for his judicial innovations in the fields of conflict of laws, product liability, and civil procedure.¹ His decisions on miscegenation, divorce, police searches and product liability were ahead of his time, and led California's legal system into the future. His most significant opinions included rejecting the legal prohibition of inter-

* Mirit Eyal-Cohen is an S.J.D. Candidate at the University of California, Los Angeles. This article was the winning entry in the California Supreme Court Historical Society's 2007 Student Writing Competition.

¹ Adrian A. Kragen, *In Memoriam: Roger J. Traynor: Chief Justice Traynor and the Law of Taxation*, 5 HASTINGS L.J. 801, 802 (1984).

racial marriages, adopting no-fault divorce, restricting police searches and applying a strict standard of liability in product defect cases.²

However, few would trace Roger J. Traynor's roots to the field of tax law, where he developed, through academic, administrative, and judicial service, valuable principles that still prevail today. At the University of California, Berkeley, Traynor discovered his passion for tax law and inspired his students to take this path in their professional careers. As an administrator, Traynor served California's tax system tremendously by shaping some of today's most important local tax acts, which were adopted by other states and countries. Later, Traynor became an expert consultant to the Treasury Department and participated in drafting major federal tax legislation. As a Supreme Court judge, Traynor wrote decisions in the field of taxation that remain good law and provide guidance for complicated issues including, for example, computing estate tax marital deductions and the earnings and profits of corporations. What was most unlikely, however, was that Traynor would partner with Stanley Surrey, our nation's foremost authority on federal tax law and the leading proponent of tax reform during his life.³

As a Harvard law dean and tax professor once said, Stanley S. Surrey was a "*True Public Servant*."⁴ In 1933 he joined the New Deal administration and established himself as a highly ranked legal counsel at the Treasury Department.⁵ In 1951, he joined the Harvard Law School faculty, where he remained an active member for 30 years⁶ while continuing to serve as a consultant to the United States

² BEN FIELD, *ACTIVISM IN PURSUIT OF PUBLIC INTEREST: THE JURISPRUDENCE OF CHIEF JUSTICE ROGER J. TRAYNOR*, xiv (2003).

³ The Townsend Harris Medal at: http://www.cuny.cuny.edu/townsend_harris/awards/s_z.htm

⁴ Erwin N. Griswold, *In Memoriam: Stanley S. Surrey*, 98 HARV. L. REV. 329, 331 (1984).

⁵ Surrey worked in the National Recovery Administration in Washington from 1933 to 1935 and at the National Labor Relations Board from 1935 to 1937. In those positions, Surrey found a meaningful outlet to improving government policies. On the influence of the New Deal on Surrey from his brother, *see* Walter Sterling Surrey, *STANLEY S. SURREY 1910-1984*, HARVARD UNIVERSITY (1984), A MEMORIAL SERVICE HELD OCT. 3, 1984 AT MEMORIAL CHURCH, HARVARD UNIVERSITY.

⁶ At Harvard, even as professor emeritus, Surrey continued to participate in many projects, such as the Income Tax Project of the American Law Institute. He

“Shall Law Stand for Naught?”: The Los Angeles Chinese Massacre of 1871 at Trial

*Paul R. Spitzerri**

In the space of a few hours on an October night in 1871, the town of Los Angeles, with a population of under 10,000 persons, was the scene of a night of horror, which was unprecedented and one of the most sordid moments in the city’s history.

After a dispute internal to the Chinese community went awry and led to the death of an American bystander and the wounding of a city policeman, a frenzy of hatred and destruction centered on an older area of town along the short lane known as *Calle de Los Negros* led to the death of eighteen Chinese, all but one of them innocent in the affair that led to the tragedy. In the confusing aftermath of the incident, one hundred fifty persons were named in indictments secured after an exhaustive coroner’s inquest and the convening of a grand jury. Even-

* Paul J. Spitzerri is Collections Manager at the Homestead Museum and a Director of the Historical Society of Southern California. He is working on a book-length treatment of criminal justice in Los Angeles from 1850 to 1875.

tually, however, only seven men were tried at the Los Angeles District Court for their involvement in the murder of a single victim. While convictions on a lesser charge of manslaughter were secured and sentences ranging from two to nine years imposed by Judge Robert M. Widney, an appeal to the California Supreme Court led to a reversal of those convictions and the matter was remitted back to Widney's court. District Attorney Cameron M. Thom, however, decided not to retry the case and the seven men were freed in the late spring of 1873.

While there have been many references to the Massacre in the historical literature, few make use of surviving court records, haphazardly arranged and jumbled as they are, to fully flesh out the incident, which serves as one of the significant signposts of a tumultuous era in the frontier town.¹ This essay mines existing court materials and newspaper coverage of inquest and trial proceedings to provide a greater understanding of the role the criminal justice administration system played in the sad affair.

I. Summarizing the Chinese Massacre

The immediate proximate cause of the Massacre is generally recognized as the flaring up of fighting between members of two Chinese *tongs* over claims to a woman named Yit Ho. Rivals of the two companies exchanged gunfire on both Monday, the 23rd and Tuesday, the 24th, the latter of which brought at least one Los Angeles police officer, Jesus Bilderrain, and others, including bystander Robert Thompson to the scene.² Though the factual sequence of events varied in the reporting, the gist of it was that Bilderrain was wounded and Thompson killed in the resulting gunfire.

¹ The most comprehensive published treatments of anti-Chinese sentiment and of the Massacre by historians are William R. Locklear, "The Celestials and the Angels: A Study of the Anti-Chinese Movement in Los Angeles to 1882," *Historical Society of Southern California Quarterly*, 42:3 (1960): 240-41, 244 and Paul M. De Falla, "Lanterns in the Western Sky," *The Historical Society of Southern California Quarterly* 42:1-2 (March and June 1960): 57-88, 161-185. The topic is also extensively covered in Paul R. Spitzzeri, "The Retirement of Judge Lynch: Justice in 1870s Los Angeles," unpublished Master's thesis, California State University, Fullerton, 1999.

² All of the following descriptions of the Thompson and Chinese inquests,

**The Development of Los Angeles City Government.
An Institutional History**

edited by Hynda L. Rudd et al.

(Los Angeles City Historical Society, 2 vols., 2007)

*Reviewed by Volker Janssen**

A decade in the making, this massive collection of focused institutional histories and historical overviews seeks to fill a serious gap in the steadily growing literature on Los Angeles: the lack of a contemporary examination of both structure and development of the city's government. Following an introduction by senior editor Tom Sitton and a prologue by Doyce B. Nunis, Jr. on the history of Los Angeles government before its incorporation in 1850, the essays are grouped into five sections. The first three include contributions on

* Volker Janssen, Ph.D., is assistant professor of history at California State University, Fullerton, where he specializes in the social, economic, and institutional history of California. He is currently on assignment as a postdoctoral fellow at the USC-Huntington Institute for California and the West.

organization and core function, infrastructure and land use, and social welfare. The essays in the last two sections leave the departmental focus behind and put the city into spatial, demographic, economic, and local and global political context.

Readers may want to start with Tom Sitton's introduction and Raphael Sonenshein's epilogue, which offer a handy synopsis of the overarching themes in the city's governmental history: the perennial effort at reform and insulation from "special interests," but also the city's systemic conservatism; the weakness of political parties; the lack of grassroots pressures despite the popularity of direct democracy; the importance of departments over that of charismatic politicians; the importance of a business-driven growth policy; and last but not least: the long-time abhorrence of racial diversity. Between Sitton's and Sonenshein's bookend essays lies a plethora of detail: The first section on organization and core function includes James W. Ingram's description of the city's relentless efforts at perfecting its charter. In the process, he provides some fine examples for the persistent progressive quest of "structural" and "developmental" reformers for purifying city governance from undue political influences such as the Southern Pacific Railroad (pp. 8-9). Following a similar trajectory, Marc and Paul Girard tell a story of progress in the city's efforts at efficiency and economy in the public sector by modeling itself on the ideal of a private business. In contrast, Shauna Clark's essay on city finances is a history of the rise and fall of financial self-determination between the "Home Rule" charter of 1890 and Proposition 13 in 1978. Entrusted with the rather broad topic of "Justice in Los Angeles," Gordon Bakken dips into the city's experience with water rights, liability and tort, the power of the city attorney, the role of women in Los Angeles courts. While Todd Gaydowski's essay on the fire department, focuses on the importance of technological and personnel change, the history of the Los Angeles Police Department, as told by Sandra Bass and John T. Donovan, perfectly illustrates the pitfalls of the city's quest for protection from corruption and special interests. The political independence and professionalization of the police force also insulated them from the communities they patrolled, the consequences of which—Watts in 1965, South Central in 1992—we are all familiar with.

The contributions on infrastructure and land use in city

**The Enigma Woman: The Death Sentence of
Nellie May Madison**

By Kathleen A. Cairns

(University of Nebraska Press, May 2007, 295 pages)

*Reviewed by Richard McFarlane**

A few minutes before midnight on March 24, 1934, the residents of the Stirling Arms, an apartment house in Burbank, near Los Angeles, heard five gunshots. Most residents thought the shots came from the nearby Warner Brothers movie lot where a gangster picture was being filmed. However, the shots came from Apartment 123 where one of its residents, Eric Madison, was dead. His wife, Nellie May Madison, was missing. A few days later Nellie would be arrested at a remote mountain cabin and charged with the murder. Her trial would

* Richard A. McFarlane is an attorney in private practice in Orange, California. He is also a doctoral student in history at the University of California, Riverside.

excite public attention, especially in the *Examiner* and *Herald and Express*, two papers owned by William Randolph Hearst. *The Enigma Woman: The Death Sentence of Nellie May Madison* by Kathleen A. Cairns is the true crime account of Eric Madison's murder, and Nellie May Madison's trial, conviction and death sentence for the crime. Nellie was the first woman sentenced to death in California. After her conviction, Nellie would avoid the gallows by belatedly confessing to killing Eric and claiming to be the victim of spousal abuse. Governor Frank Merriam would commute her sentence to life imprisonment. She would be paroled in 1943, and die a free woman in 1953 of a stroke and with a new name.

The Enigma Woman, which takes its title from one of the nicknames pinned on Nellie by the press because of her stoic demeanor during her trial, is a good book, but not a great book. It is little more than a biography of a young woman who came to the big city of Los Angeles from rural Montana and got into trouble. Whenever Cairns gets close to addressing the wider issues that would make *The Enigma Woman* a great book, she turns away. For example, Cairns writes that of the two hundred women incarcerated in California in 1934 "one-third of the women had been convicted of murder—half of them of first-degree murder—although none had received the death penalty" (p. 163). Why Nellie was sentenced to death, and none of the others were, the author does not fully explain. In chapter eleven, Cairns suggests that Nellie's belated confession and accusations of spousal abuse were keys to her commutation and eventual parole. Did the thirty or so other women convicted of first-degree murder in California in the 1930s confess and accuse their victims of spousal abuse in order to avoid the noose? Cairns does not explore the issue of spousal abuse—which existed, of course, even if it was not recognized by the psychological community or known by that name until the late 1970s. Cairns mentions in passing that three women were sentenced to death in California before 1940, all for killing their partners. Cairns does not provide any details of the other two, nor does she provide any conclusions or analysis to assess the questions *The Enigma Woman* raises.

Cairns poses three "intriguing" questions in the introduction to *The Enigma Woman*, "What drove Nellie to make life choices so different from those of her female contemporaries, ones that brought her, and her family such pain and tragedy? What was it about her that