



## CSCHS Makes a Splash at the State Bar Meeting in Monterey

BY DONNA C. SCHUELE

Attending the State Bar Annual Meeting often means a chance to pick up on some needed MCLE units. Or it might mean networking with colleagues you see only once a year. It could mean participating in the governance and advancement of the profession. Or it might just mean a chance to take the kids to the Monterey Aquarium when it isn't overrun with tourists!

For the past few years, the California Supreme Court Historical Society has provided yet another reason to attend – to participate in an educational panel a bit different from the rest, and meet and mingle with the Justices of the California Supreme Court.

In 2004, the Society sponsored another in a series of programs designed to give a historical twist to issues in today's spotlight. Past topics have included forensic history, California's courthouses, and WWII reparations cases. But our program in Monterey, entitled "Civil Liberties During Wartime: Taking the Long View of the U.S. PATRIOT Act," was our most successful to date. The United States Supreme Court's decisions in a trio of detention cases just months before guaranteed the timeliness of the topic.

The response of the bar to the CSCHS's program was overwhelming. A predicted attendance of forty rose to over ninety actually preregistered. The State Bar's meeting planners scrambled twice to move us to larger quarters that would handle the increasing enrollment, while during the program extra chairs were brought in to accommodate the overflow crowd.

We assembled a stellar panel of experts to discuss how periods of wartime in the United States have repeatedly involved governmental restrictions on civilians' rights and liberties. While today's war on terrorism might be unprecedented, the story that our experts told of wartimes past suggested the value of a historical approach.

The program, held on Saturday, October 9th, was moderated by Los Angeles Superior Court Judge Michael Linfield. Over a decade prior to 9/11, Judge Linfield authored a prescient survey of the topic, entitled *Freedom Under Fire: U.S. Civil Liberties in Times of War*. After providing a brief overview of the history of civil liberties during wartime from the time of the early Republic to the present, Judge Linfield introduced the panelists.

Michal Belknap, Professor of Law at California Western School of Law and Adjunct Professor of History at UC San Diego, spoke on the history of military commissions, beginning with the Civil War.



Board of Directors President Jim Shekoyan is joined at the CSCHS state bar reception by Board member Fritz Ohlrich and CSCHS member Gerry Tahajian.

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He noted that the topic was considered relatively obscure until recent events raised issues regarding the appropriateness of military versus civilian trials for those accused of terrorist acts.

John S.W. Park, author of *Elusive Citizenship: Immigration, Asian Americans, and the Paradox of Civil Rights*, and a member of the Asian American Studies faculty at UC Santa Barbara, spoke next on the United States' most infamous denial of civil liberties during wartime, the internment of Japanese and Japanese Americans during World War II. In addition, Dr. Park detailed other instances of wartime denial of civil liberties to Asian Americans.

Our final speaker was Duke University School of Law Alston & Bird Professor Erwin Chemerinsky, who provided a view on the trio of detention cases that were decided by the Supreme Court in the previous term; explained the evolution, content, and effect of the PATRIOT Act; and highlighted current efforts to renew and extend that law. Professor Chemerinsky also spoke first-hand about his experiences in representing detainees at Guantanamo Bay.

The question-and-answer session following the scholars' presentations was very lively. It was clear that the audience appreciated the opportunity to place current concerns in a context spanning over a century and a half. They left with the sense that a knowledge of history was crucial to framing today's debates regarding civil liberties and the war on terrorism. In fact, one attendee enthused, "All speakers were phenomenal – best class at this Annual Meeting!"

We followed our educational program with a wonderful and well-attended reception, where members of the bar continued discussion with the panelists. In addition, the Society was joined by several members of the California Supreme Court and some of their spouses: Chief Justice Ronald George, Justice Marvin Baxter, Justice Ming Chin, and Justice Carlos Moreno. We extend our gratitude to

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the justices for taking time from their busy schedules at the Annual Meeting to attend our reception.

It is only with the support of our members, who donate to us via both the state bar fee statement and direct appeal, that the California Supreme Court Historical Society can sponsor these well-received continuing legal education programs and receptions at the State Bar convention each year, and for this we are extremely grateful.

We invite you to join us for our program at the 2005 Annual Meeting in San Diego, on Saturday, September 10th, at 2:15 p.m. Our program is entitled "Religion and the State: The Evolution of the First Amendment," and we hope that the topic proves to be as timely as last year's examination of civil liberties during wartime.

We plan to cover such topics as the changing position of the Baptist Church regarding separation of church and state, from the colonial period to the present; the instrumental role played by Jehovah's Witnesses in shaping modern religious freedom doctrine; and recent cases highlighting the nexus between the state and religion such as challenges to the text of the Pledge of Allegiance and government-sponsored displays of the Ten Commandments. As always, we hope that a greater historical understanding will shed light on today's controversies.

With meetings of the California Judges Association and California Judicial Council, along with the California Judicial Administration Conference, also taking place in San Diego, a significant number of our members will have the opportunity to join us immediately following the educational program for our reception, beginning at 4:30 p.m. We particularly encourage our Associate members who donate via the fee statement to stop by and learn more about the Society's mission, as well as its programs and publications.

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This issue of the *Newsletter* inaugurates two series of articles. In 2005, California celebrates the one-hundredth anniversary of the establishment of the Court of Appeal. Previous issues of the newsletter have highlighted the interesting path taken by the state that resulted in the formation of an intermediate appellate court. With this issue, we begin a series that focuses on the individual histories of each of the six districts of the Court of Appeal, and we thank Justice James J. Marchiano of the First District for kicking off the California Supreme Court Historical Society's contribution to the year-long statewide celebration. As well, we will keep you informed of the various commemora-

tive activities that will take place around the state during the year.

Another series focuses on the experiences of California women with the death penalty. We start with the twentieth-century Los Angeles case of Nellie Madison, which will be book-ended in the Fall/Winter 2005 *Newsletter* by the infamous nineteenth-century San Francisco trial of Laura Fair. Taken together, these articles reveal both the continuities and the changes in the ways the criminal justice system (including the California Supreme Court), the media, and the public viewed the crime of murder when the accused happened to be female and the conviction carried with it a sentence of death. These cases provide a fascinating window into the politics, mores, and law of two very different times and places in California history.

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anniversary celebration, the law school hosted a special gathering for the justices of the Supreme Court and Court of Appeal and its faculty and staff. The following evening, the San Diego County Bar Association hosted a reception and dinner for the Supreme Court. Among the guests were the justices of the Court of Appeal, Superior Court judges, and many prominent attorneys from San Diego and Imperial counties. The reception and dinner took place at the San Diego County Bar Association Building and the historic El Cortez Hotel, and allowed the San Diego legal community to meet and mingle with the justices of the state's highest court.

The Supreme Court Special Oral Argument Session was viewed as a tremendous success by the Court, the legal community, and the high schools. Students and teachers were surveyed regarding their experience. They came away with a clearer understanding of and respect for the judicial process. In addition, the special session piqued students' interest in pursuing legal careers. Who knows – maybe a student was even inspired to become a Supreme Court justice!

*For more information regarding this historic special oral argument session, please visit the website at [www.court-info.ca.gov/courts/courtsofappeal/4thDistrictDiv1/](http://www.court-info.ca.gov/courts/courtsofappeal/4thDistrictDiv1/) or contact Clerk/Administrator Stephen M. Kelly at (619) 645-2762.*

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