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A History of the Court of Appeal for the First Appellate District

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Adopting the motto "Striving for Justice Yesterday, Today, and Tomorrow: 1905 to 2005," the California Court of Appeal begins a celebration of its one-hundredth anniversary this year. This article, featuring the First Appellate District, inaugurates a series, continuing in future CSCHS Newsletter issues, that will include histories of each of the six districts of the Court of Appeal.

The California court system first gained an intermediate Court of Appeal in 1905. Twenty years earlier, due to a backlog of cases confronting the Supreme Court, the legislature authorized the Court to appoint three commissioners to assist the justices in resolving appeals. In 1889 the number was increased to five.

A commissioner authored an opinion, joined by two other commissioners. Three Supreme Court justices reviewed the opinion and then formally adopted it, affirming or reversing the judgment as indicated. The California Reports for this era reflect the name of the authoring commissioner and the names of the approving justices. But members of the Bar complained that shadow commissioners rather than elected justices were doing the Court's appellate work.

Finally, with the number of undecided cases continuing to increase, on March 14, 1903, the legislature approved a constitutional amendment creating three intermediate courts of appeal and abolishing the commission. The amendment provided for the appointment of justices and their subsequent election, and authorized the transfer of cases to the new tribunals and review of their decisions by the Supreme Court. Voters approved the amendment in the general election of November 1904. The legislature set the justices' annual pay at \$7,000, a good salary in 1905.

Governor George Pardee appointed a total of nine justices to serve in the First District in San Francisco, the Second District in Los Angeles, and the Third



Justice Harrison, early 1900s

District in Sacramento. The new justices included the five commissioners in office at the time. In the First Appellate District, the court consisted of Ralph C. Harrison and James Cooper, both former commissioners, along with Samuel Hall, who was elevated from the Superior Court of Alameda. On May 22, 1905, the First District became the first appellate court to

decide a case, *People v. Curtis*, 1 Cal.App. 1 (1905).

Ralph Harrison served as the District's first presiding justice. A prominent San Francisco lawyer, he had been elected in 1890 to a twelve-year term as an Associate Justice of the Supreme Court. Thereafter he was appointed as a Supreme Court commissioner until his appointment to the First District Court of Appeal. His opinions were noted for their "crystalline clearness," according to a contemporary commentator.

Under the constitutional amendment, the new appointees subsequently sat for election in 1906. This circumstance resulted in a personnel change for the First District. Presiding Justice Ralph Harrison deserved to be nominated, but the Republican convention, dominated by San Francisco "Boss" Abe Ruef, selected San Francisco Board of Supervisor James Gallagher to run instead. The voters elected James A. Cooper, the Democratic candidate, as Presiding Justice, along with Samuel P. Hall and Frank H. Kerrigan as Associate Justices.

Justice Harrison then retired to private law practice with his sons in San Francisco. He lost his elegant home in the 1906 San Francisco fire and later with his wife donated their considerable book collection to Carmel where the Ralph Harrison Public Library stands as a memorial to him.

The constitutional amendment also required each justice to select his term by lot so that the terms were

staggered. Justice Hall drew the twelve-year term, Justice Kerrigan the eight-year term, and Justice Cooper the four-year term.

Initially, the First District heard appeals from Alameda, Contra Costa, Fresno, Marin, Monterey, San Benito, San Francisco, San Mateo, Santa Clara, and Santa Cruz counties. In the early years the vast majority of appeals involved civil law issues. Few losing parties petitioned the Supreme Court for a hearing. The constitutional amendment of 1904 allowed the Supreme Court to determine which cases it would review from the Court of Appeal, and few petitions for hearing were granted. The Supreme Court continued to have exclusive jurisdiction over a number of classes of cases and assigned cases pending before it to the Court of Appeal.

The Court of Appeal fulfilled the expectations of its proponents, relieving the Supreme Court's arrearage and providing an orderly system for review. But by 1917 another backlog had built up in the Supreme Court. The California Bar Association persuaded the legislature to submit another constitutional amendment creating an additional division in the First and Second Districts. Upon ratification, Division Two began hearing cases in 1918 under Presiding Justice William Langdon, elevated from Stanislaus County Superior Court.

Reflecting the growing population in California, Division Three was added in 1961 and Division Four in 1966. In 1975 the number of justices in each division was increased from three to four, with cases assigned to each division on an equal, random basis. In 1981, Division Five was created, while Santa Clara, Santa Cruz, San Benito, and Monterey counties were assigned to the newly created Sixth Appellate District in San Jose.

The First District has been home to many notable jurists, including "the Iron Man of Judging," Justice John Nourse. Nourse's thirty-eight years of service in Division Two, from 1919 to 1957, stands as a record for the district. The first female justice was Betty Barry-Deal, who served in Division Three from 1980 to 1990. The first African-American justice was Clinton White, who served as Presiding Justice in Division Three from 1978 to 1994. The first Asian-American justice was Harry Low, who served as Presiding Justice in Division Five from 1982 to 1992. The longest continuous group of jurists serving together was comprised of Justices John Tyler, Benjamin Knight, and D.A. Cashin from 1925 to 1938 in Division One. Justice Anthony Kline, the current Presiding Justice of Division Two, holds the second-longest record of service, at over twenty-two years. In all, ninety-three justices have served in the First District since its inception.



Justice Clinton White

The First District has been the source of significant changes in California law. Justice Raymond Peters' Division One dissent in *Escola v. Coca-Cola Bottling Co.*, 140 P.2d 107, 110-112 (1943), led to the Supreme Court's expansion of res ipsa loquitur to products liability. Other notable doctrinal developments include Justice Frank Bray's

protection of patient rights in his informed consent decision in *Salgo v. Leland Stanford Bd. of Trustees*, 154 Cal.App.2d 560 (1957), Justice Joseph Grodin's development of employee rights in *Pugh v. See's Candies, Inc.*, 116 Cal.App.3d 311 (1981), and Justice Gary Strankman's clarification of causation in asbestos litigation in *Lineaweaver v. Plant Insulation Co.*, 31 Cal.App.4th 1409 (1995).

Today the twenty justices of the First Appellate District, including seven women, serve the residents of twelve Northern California counties from Del Norte to San Mateo and from San Francisco to Lake and Solano. Each division hears oral argument on ten scheduled days every month in the historic courtroom on the fourth floor of the Earl Warren Building in San Francisco. The court sessions are open to the public.

More information about the First District Court of Appeal and its current justices can be found on the court's web site at www.courtinfo.ca.gov/courts/courtsofappeal/1stDistrict.

The California Court of Appeal, First Appellate District, has prepared an exhibit of notable persons, cases, and events to commemorate its first century of service. Included in the display are engaging items such as Justice Nourse's pipe; Division Five's extern t-shirts from 1985 depicting the hairlines of Justices Low, King, and Haning; and copies of the original court minutes from 1905.

The exhibit brochure, "Striving For Justice: Yesterday, Today, and Tomorrow," provides a brief history of the First Appellate District, including a complete listing of all of the justices who have served the court.

The exhibit is located in the Archives Room, First Floor, Earl Warren State Building, 350 McAllister Street, San Francisco, and can be viewed Monday through Friday, 8:00 a.m. to 5:00 p.m. (except State holidays) through October 31, 2005.

Hon. James J. Marchiano serves as Presiding Justice for Division One of the First District Court of Appeal.

CORRECTION

Hon. James J. Marchiano, author of “A History of the Court of Appeal for the First Appellate District,” *CSCHS Newsletter* Spring/Summer 2005, offers the following correction: After justices were appointed to fill the first seats on the Court of Appeal, they were required to face the electorate in 1905, but could do so only if nominated by a political party. Justice Harrison sought but did not gain the Republican nomination, as “Boss” Abe Ruef prevailed on that party’s convention to nominate his ally, San Francisco Superior Court Judge Carroll Cook, instead. The article incorrectly stated that San Francisco Supervisor James Gallagher received the nomination. Once Harrison did not

receive the nomination (which he deserved), Associate Justice James Cooper, Harrison’s friend and colleague, agreed to run on the Democratic slate for the Presiding Justice position. He narrowly defeated Judge Cook by 2,500 out of over 100,000 votes cast from the ten counties then comprising the First District Court of Appeal. Ironically, after Ruef was convicted of bribery in 1908 in one of the famous San Francisco corruption trials, the First District unanimously affirmed his conviction with Justice Cooper authoring a carefully written opinion in *People v. Abraham Ruef*, 14 Cal.App. 576 (1910).
