SAVED FROM THE GALLOWS

Nellie Madison, Stanley Mosk, and the Death Penalty in Mid-Twentieth Century California

BY KATHLEEN CAIRNS

In September 1935, forty-year-old Nellie May Madison, convicted by a Los Angeles jury of shooting her husband to death with a 32.20-caliber revolver, came within eighteen days of being the first woman executed by the State of California.

Her case, which a reporter of the time dubbed "one of the strangest in the annals of local history," illustrates the connection between social mores and politics and how that link affected the lives of ordinary people. Members of the state Supreme Court played a pivotal role in the case, as did a future justice. Their participation provides a window into accepted legal practices of the time and hints at a not-too-distant future with different attitudes and rules.

The Court's initial involvement came in May 1935, when it upheld Madison's death sentence. To the uninitiated or disinterested, the decision might have elicited yawns and shoulder shrugs, just another example of the vigilant, tough-on-crime ambience of the 1930s. Executions in general did not occasion much hand-wringing in this Depression decade. Between 1930 and Spring 1935, more than forty people were hanged under the watch of two governors: James "Sunny Jim" Rolph, known for sending champagne to those awaiting the gallows, and Frank Merriam.

Nellie Madison's case was different, however. For the first time, members of the state's top court refused to halt the execution of a woman. California juries had sentenced two others, Laura Fair and Emma LeDoux, to die on the gallows, but each time the Court intervened to stop the hanging.

Fair shot her married lover to death aboard an Oakland to San Francisco ferry in 1870. Thirty-six years later, LeDoux poisoned her ex-husband, stuffed his body in a trunk and shipped it via train to the mining town of Jackson. In Stockton, the baggage master smelled the rotting corpse, opened the trunk, and called police. In each case, the Court found that sufficient procedural problems had arisen during trial to warrant overturning the death sentence. Fair received a new trial and LeDoux was resentenced. The Court reached a different conclusion for Nellie Madison.

Madison was an unlikely candidate for the unfortunate designation of "first woman" to be executed. True,

she had a checkered marital history that captivated and repulsed readers of all of the daily newspapers in Los Angeles in the months following the murder. But she had no prior run-ins with the law and had led a largely quiet life with many accomplishments.

A Montana rancher's daughter, she spent her youth participating in local rodeos. She left home at seventeen for Idaho and a business college. During World War I she worked as a quartermaster clerk at a military post in Boise. In 1920, at the age of twenty-five, she relocated to Los Angeles, where she worked as a cashier in a movie theater and managed an apartment building. At the end of the decade she moved again, this time to Palm Springs. There she took a job managing the Desert Inn, owned by pioneer hotelier Nellie Coffman, whose brother Harry Broughton was active in California Republican politics.

Madison also had many friends and acquaintances, including celebrities such as Gary Cooper, whom she had known since childhood. Friends described her as kind, gentle, sympathetic, and non-judgmental, a person who could be relied upon to do favors and keep secrets.

But she also had an impulsive side. Tall and strikingly attractive, with dark hair and large brown eyes, she married and cast off husbands with a nonchalance that put her at odds with the prescribed gender roles and values of her time. Her first, teenaged, marriage was annulled by her parents. Three others ended in divorce, including her fourth marriage, to William J. Brown, a prominent Los Angeles attorney. And finally

there was Eric Madison, a musician, businessman, and son of a Danish politician.

His demise riveted Los Angeles virtually from the moment that police and reporters arrived at his apartment the afternoon of March 25, 1934, to find him dead on the floor, clad only in his underwear. Police arrested Nellie Madison the next day as she hid behind some coats in the closet of a remote mountain cabin in Frazier Park, eighty miles north of Los Angeles.

Brought back to Los Angeles, she faced a gantlet of reporters and photographers who quickly gave her a nickname, a common journalistic practice in the 1930s designed to fuel reader excitement and identification with the story. They called her the "Enigma Woman," reflecting both the air of mystery around her and her stubborn refusal to talk, traits that resonated with the wildly popular literary genre known as "noir fiction," with its deadly and seductive femme fatales.

From her arrest until her trial less than three months later, reporters fanned the flames with almost daily front-page stories. They homed in on her Montana childhood and proficiency with guns (rumor had it that she could hit a bird on the wing with a .22-caliber rifle), on her many marriages and divorces, and on her "enigmatic" persona, as evidenced by her continuing refusal to talk or exhibit any emotion.

Silence and stoicism were considered unnatural traits in female murder defendants of the time. Women were expected to break down, weep, and plead for mercy. For example, Rhoda Cobler, arrested just two weeks after Madison for the poisoning death of her policeman husband George, sobbed as she explained that she had not meant to kill him; she had put strychnine in his breakfast cereal simply to stop his drinking. Jurors convicted her of second-degree murder.

Nellie Madison was not so fortunate. The intense public interest, her "unnatural" calm, and her unconventional lifestyle led members of the Los Angeles legal establishment to view her case as a useful tool in their ongoing campaign to garner publicity, burnish their crime-fighting credentials, and remind citizens of the perils of flaunting authority at a time of economic instability.

Without knowing what her defense would be, just before the start of the trial in June 1934 District Attorney Buron Fitts announced that his office would seek the death penalty. "Mrs. Madison shot her husband in the back, any motive is of no concern to the prosecution," declared deputy district attorney George Stahlman.

When it came time to assign the case to a judge, Charles Fricke – the extraordinarily media-savvy presiding jurist of the Los Angeles Superior Court, known to defense attorneys as a "hanging judge" – chose Department 43 in the Hall of Justice, his own courtroom.

The trial attracted hundreds of spectators. They jammed the corridors and broke down a wooden barrier installed for crowd control. Inside the courtroom, Madison dressed in black and sat stone-faced beside her attorney, Joseph Ryan, who seemed distinctly out of his element as the prosecution presented a strong circumstantial case. In fact, it became clear as the trial progressed that he held the same disdainful attitude toward his client as his prosecutorial opponents did.

Neighbors called as witnesses testified about hearing several loud cracks just before midnight on March 24, 1934, and described how Madison had joined them in the hallway to discuss the sounds. The apartment building stood just over the back fence from Warner Brothers First National Studio, and Madison suggested the shots had come from the set of a gangster film. Then she quietly returned to her apartment where, courtroom observers were led to understand, she spent the night with a dead man.

The next morning she left early, looking pale and wan and carrying a shoebox-sized parcel under her arm. She nodded grimly to a neighbor as she passed his door. Sheriff's detectives detailed the murder scene – bullet-scarred headboard and walls; blood-stained blankets; the corpse on the floor, already stiffened with rigor mortis. They told of driving to Frazier Park on a tip from Madison's former brother-in-law and finding her in the closet. "Come on out Nell," deputy Willard Killion ordered her.

"Why, what's the matter?" she asked, explaining that she had gone into the closet to change her shoes.

"Where's the gun?" Killion asked in return.

"There's one out there in my car," Madison responded. The police found a gun, but it was not the murder weapon, which they never recovered.

In a development that stunned even the most jaded news reporters, Judge Fricke agreed to a prosecution request to bring the "death bed," including the bloody bedclothes, into the courtroom where it sat directly in front of jurors for most of the two-week trial. As the coup de grace, the prosecution called the judge himself to the stand. During testimony about the interval between two sets of shots, he had silently timed the witnesses' estimations with a stop watch and prosecutors sought his conclusions.

When his turn came, Joseph Ryan mounted a bizarre defense: Eric Madison was not dead but mysteriously missing. The body on the floor was that of a stranger who somehow had gained entrance to the apartment after Nellie Madison's departure and had met an untimely end. How this could have occurred and Eric's whereabouts were questions that neither

Nellie Madison nor her line-up of supporting witnesses could answer. She testified that on the day of the murder Eric had gone to Bakersfield in search of a job. She kissed him goodbye and never saw him again.

On cross-examination, prosecutors asked Madison if she knew how to shoot a gun. "Not very well" was her answer. Then they called her former husband, attorney William Brown, to the stand. In his 1930 divorce petition, he had claimed that she shot at him as the couple sat in their car. He now conceded that this act had never occurred, that the assertion had merely been part of a bitter divorce proceeding. The admission stunned prosecutors, but did not enhance Madison's credibility.

On June 23, 1934, jurors announced their verdict: guilty of first-degree murder with no recommendation on penalty, an automatic death sentence at that time. Reporters rushed into the streets seeking public reaction, which proved generally unsympathetic. If women wanted gender equality, most interview subjects noted, they had to expect equality in punishment as well.

At Madison's July 5th sentencing, Fricke set September 24, 1934, as her date with the hangman in San Quentin. Madison was taken to the Women's Institution at Tehachapi, at the time the state's only facility for imprisoned female felons, and placed in solitary confinement to await execution.

The Supreme Court received Madison's petition for hearing later that month. To the justices, the case must have seemed strange, but relatively straightforward; if they chose to hear it, that is. At that time, high court review of death sentences was not automatic.

Nonetheless, they must have pondered the consequences of putting the first woman to death in California. In mid-September, less than two weeks before the scheduled execution, the Court announced that it would hear the appeal.

Joseph Ryan filed his appellate brief on November 3, 1934. It relied on a strategy that, in hindsight, seems about as risky as his mistaken identity defense: He contended that the judge had been biased against his client.

His complaints spanned the entire trial. He charged the judge with unprofessional conduct in having testified for the prosecution. "Any layman who observes a judge leave his judicial capacity and descend to the witness stand and testify for the state can only be affected by the fact that the judge was taking the affirmative part in the presentation of the state's case," he wrote. (In fact, Fricke frequently testified in proceedings before him.)

Ryan also accused Fricke – a former deputy district attorney – of demonstrating favoritism towards the prosecution and of overstepping his judicial role by questioning some witnesses himself. Essentially, "whatever the state endeavored to do, the trial court put its stamp of approval on it," Ryan charged.

He further criticized Fricke's decision to allow the death bed to be brought into the courtroom, and he cited the judge's failure to instruct the jury that it could consider lesser charges than first-degree murder – second-degree murder or manslaughter.

Two months later, District Attorney Fitts and California Attorney General U.S. Webb filed their response. Not surprising, they met Ryan on every point: The bed was necessary to show the brutality of the crime; Fricke's testimony was only procedural and did not sway the jury; and Fricke was entirely impartial in his rulings. Most important, "if any errors had occurred, they would not have affected the outcome of the trial."

It took four months for the Supreme Court to issue its ruling in *People v. Madison*, 3 Cal.2d 671 (1935). The decision says as much about judicial attitudes and generally approved courtroom procedures in the 1930s as it says about the Madison case specifically. The justices sided with the State on every point.

It was appropriate for a presiding judge to testify for the prosecution, they held. "The judge's testimony related to the time which elapsed between taps made by a witness to indicate the interval between the two groups of shots.... The interval did not appear in the record.... The trial judge was a competent witness to testify what that interval was."

It was also appropriate for Fricke to question witnesses. "Nor was there any merit in the contention that the trial court exceeded its proper function in taking a part in the examination of some of the witnesses."

As for the bed, the justices did note their concern about the presence of such "physical evidences of the crime which are likely to inflame the jury's deliberations." But they added: "We cannot say that the exhibition during the trial of the bed and bedding from the Madison apartment necessarily was beyond propriety or had that effect." In fact, it "was needed to substantiate and illustrate the expert and other testimony as to the shots fired."

Finally, as to whether Fricke should have instructed jurors on lesser charges, "there was no evidence offered upon which the jury, if it believed the defendant committed the homicide, could base a verdict of guilty of a lesser crime than murder of the first degree. In this case the defendant cast her all on the chance of obtaining a verdict of acquittal."

In conclusion, the Court held that Nellie Madison "had a fair and impartial trial, singularly free from anything upon which to predicate a charge of prejudicial error. The judgment and order are affirmed." It sent the

case back to Fricke for re-imposition of sentence and, within a few weeks, he set October 4, 1935, as the date for her execution.

The only person now standing between Nellie Madison and the executioner was Governor Frank Merriam, dour, taciturn, and recently elected on a strong law-and-order platform. He seemed unlikely to intercede.

If the Madison case had proceeded along the normal path for the time, Nellie would have had just slightly more than four months to live. But it did not. In a desperate bid to save her own life, if not her self-respect, she fired Joseph Ryan and hired Lloyd Nix, former Los Angeles City Attorney. Then she wrote out a confession. Bannered across the front pages of the city's daily newspapers on June 21, 1935, it related a story of abuse, infidelity, and betrayal.

Until a week before the murder, Madison believed herself to be married. But she was not. Eric Madison had deceived her in order to gain access to her inheritance from her parents. The couple's June 1933 Salt Lake City marriage ceremony had been a fake, staged by Eric Madison. Nellie discovered this deceit when she unexpectedly came home and found her "husband" in bed with a teenaged girl. He brutally beat her and then threatened to expose her as a fornicator.

Over the next six days, he continued to terrorize her while she stayed in her apartment in a state of dazed confusion. Finally, she set out to buy a gun for protection and ended up purchasing two. She killed Eric Madison because she could not take any more abuse and feared public disgrace, she wrote. She intended to take her own life as well, she added, but was arrested before she could carry out this action.

She had told the true story to Joseph Ryan, she added, and sought a self-defense strategy at her trial. But Ryan "said he had a tip from the jury that they would convict me" and he insisted on claiming mistaken identity.

Members of the Los Angeles establishment, including District Attorney Buron Fitts and Judge Charles Fricke, discounted the confession as a desperate bid to avoid the gallows. Ryan denied he had led Madison to perjure herself and declared that "her mind has cracked under the strain."

With the confession, it became harder to characterize Nellie Madison as an enigmatic, seductive femme fatale. Though skeptics continued to deride her story, for many she now became the "wronged" woman, a much more acceptable female stereotype and one that could be used to elicit public sympathy.

Within days, a grassroots effort to save Madison's life began to sweep across California. It was led by Lloyd Nix and his attorney wife Beatrice; Nellie Madison's former boss Nellie Coffman; and Ernest Whitehouse Cortis, the head of a shoestring anti-death penalty organization called Men's League of Mercy of the United States.

Supporters wrote letters, gathered signatures on petitions and affidavits, and sought out interested reporters, like Agness Underwood of the *Herald-Express* who specialized in empathetic coverage of female criminals. Among the petition signers were the twelve jurors who had convicted Nellie and now said they believed the killing had been justifiable homicide. Eric Madison's ex-wife Georgia joined the chorus, writing out a fifteen-page affidavit detailing virtually the same abuse, infidelity, and violence Nellie Madison had claimed.

All through the summer of 1935, voluminous stacks of mail supporting a reprieve for Nellie Madison landed daily on Merriam's desk. An aide methodically catalogued the letters and anonymously acknowledged their receipt. But no word came from the governor.

By early September, Madison and her supporters feared the worst. Her bobbed black hair now was shoulder-length and turning gray, and she spent most of her time on her knees, praying. During the second week of September, she fasted and prayed for forty-eight hours straight. She could not sleep, she told reporter Underwood, because she kept seeing nooses dancing on the walls of her cell. Underwood dutifully reported Madison's emotional disintegration in front-page stories.

In a last-ditch gamble, ex-husband William Brown filed a writ of coram nobis with the same Supreme Court that had affirmed Madison's conviction and death sentence. He blamed Joseph Ryan's egregious conduct for her conviction, noting that Ryan had crafted the mistaken identity defense without her approval. "At the time of her trial and sometime afterward the mind of Nellie Madison bordered on a state of hysteria, she being unable to comprehend the significance of her counsel changing from the proper to the ridiculous." He demanded a new trial, but the Court turned him down.

As summer turned the corner toward autumn, Merriam remained silent. All of Southern California, it seemed, was waiting for him to act. An editorial cartoon in the San Diego *Sun* for Tuesday, September 10th, reflected the mood. It depicted Nellie Madison sitting on a cot in her cell, reaching out toward the sun just outside her window. On September 16th, Merriam left Sacramento for a brief vacation in San Diego. On a stopover in his hometown of Long Beach, he gave a quick press conference and made a surprise announcement. Reading from a written statement, Merriam said he had decided "to spare Mrs. Madison's life." He warned members of the audience not to read too much into his decision,

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which did not represent a weakening of his support for capital punishment. The flood of petitions – particularly the one from the jurors – swayed him, he said. He left without taking questions.

The following day, Nellie Madison met with reporters. She sobbed out her gratitude and expressed a deep longing simply to walk in the sun and talk to her fellow inmates. She would ask for nothing else, she declared.

But her relief passed quickly. Madison soon grew to dislike the other women, whom she viewed as beneath her socially and intellectually, and she despised the patronizing, condescending attitudes of prison authorities, who sought to turn inmates into models of domesticity.

She thus began an intense campaign to win her release from prison. No longer the wronged woman, or the enigmatic woman, she was now simply determined, straightforward, and persistent. She peppered Merriam incessantly with letters requesting that he review her file and issue her a pardon.

Tehachapi, California
April 12, 1940

Mr. M. Stanley Mosk
Executive Secretary
Sacramento, California.

Dear Mr. Mosk:

Will you not kindly inform me as to the present status of my Clemency application.

I do not wish to be troublesome but I do not know how else to become cognizant of the situation.

After the denial of my application for a pardon by the Advisory Pardon Board in August 1939, the Board of Trustees of the California Institution for Women, at their meeting February 10, 1940, after going over the matter thoroughly, made a recommendation to the Governor and to the Advisory Pardon Board , that my Life sentence be commuted to 15 years.

In view of the favorable recommendation made by the Tehachapi Baard of Trustees, would it mean that my case has been, or will be, re-referred to the Advisory Board for consideration and recommendation, or is it incumbent upon me to request the same, before that can be done?

I am sorry if I appear stupid and trust you will overlook any failure to conform to the requirements in such matters.

I shall greatly appreciate it, Mr. Mosk, if you will call this matter to the attention of His Excellency, Governor Culbert L. Olson, and assure him of my heart felt thanks for whatever action he sees fit to take.

Believe me, I shall be most grateful to you for your trouble, and trust that I may hear from you regarding this matter.

Respectfully,

Nellie Madison

Nellie Madison
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Nellie Madison began a direct correspondence with Governor Olsen's aide, Stanley Mosk, in 1940, seeking to have her life sentence reduced in order to be eligible for parole.

When Merriam lost his reelection bid in 1938, Madison turned her sights on his successor, Culbert Olson, and began a new campaign for freedom. Olson had his own top aide who handled such business, a young lawyer named Stanley Mosk who was not yet in his thirties. Unlike his predecessor, Mosk did his sign responses to letters addressed to the governor. At first Madison formally wrote to Olson, but by 1940, she was communicating directly with Mosk, who was always courteous and responsive.

Her letters were written in perfect penmanship, were articulate, and demonstrated an assertive self-confidence in dealing with authority figures that was unusual in a woman, particularly an incarcerated one.

After the Advisory Pardon Board turned down her initial plea for a pardon in August 1939, she wrote to Olson, asking him to override the decision. "I have been advised that you are not bound by the actions of this board.... I realize that an appeal based on purely personal reasons would not and should not be effective," she began. "But I also know that if you will study the salient points of my case, the injustice that has been done me is too apparent to be overlooked."

Mosk replied, telling her she needed to go through proper channels – to seek a sentence reduction from the Tehachapi Board of Trustees first, before returning to the Advisory Pardon Board.

In February 1940 the Board of Trustees recommended that Madison's life sentence be reduced to fifteen years, making her eligible for parole the next year, with credit for good behavior. She wrote directly to Mosk: "In view of the favorable recommendation ... would it mean that my case has been, or will be, re-referred to the Advisory Board? I am sorry if I appear stupid and trust you will overlook any failure to conform to the requirements in such matters."

Madison's determination paid off in January 1941 when the Pardon Board agreed to the Tehachapi recommendation. But the governor had to approve the recommendation before she could gain parole. Her joy

knew no bounds and she wrote letters of gratitude to everyone involved, including Mosk.

For the next two years, Madison continued to write to Mosk, demanding to know what was taking so long. "The governor has fallen behind because of the war," Mosk wrote back apologetically at one point.

In March 1943 Nellie Madison finally won parole. She abandoned the last name that she carried through all her years in prison and took back the name of fourth husband William Brown. As Nellie Brown, she then married for a sixth time in October 1944 in San Bernardino. She died in July 1953 of a massive stroke at the age of fifty-eight, her ill health undoubtedly attributable to the years of stress and her near-execution.

Her death attracted no notice. Not from the media that voraciously covered her trial, not from the public that waited impatiently for the each day's installment in the sensational case of the "enigma woman," and not from the men who had played a role in her conviction.

At the time of her passing, however, the system that had cavalierly sentenced her to death was undergoing changes. In 1936, the legislature amended the law to provide for automatic appeal of death penalty cases to the Supreme Court, although the process was limited at first by rather perfunctory defense representation.

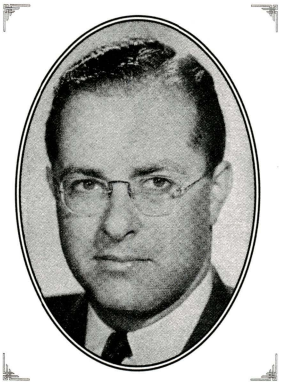
The death penalty itself had become the subject of heated debate. The gas chamber had replaced the gallows and the state would never again in the twentieth century see the number of executions – one hundred seven – it saw in the 1930s.

Attitudes toward the kinds of cases warranting the death penalty were also evolving, along with changing ideas about women's roles. By the time that Madison died in 1953, two women, Eithel Juanita Spinelli and Louise Peete, had been executed, and two more, Barbara Graham and Elizabeth Duncan, would be put to death in the next few years. All four were convicted murderers, but none had killed her mate.

Courtroom procedures also had been revamped by the 1950s. Charles Fricke, who held a virtual free pass in 1934, found himself under intense scrutiny in the 1940s over two high-profile trials in which he presided: The Sleepy Lagoon case and the case of "red light rapist" Caryl Chessman.

On the cutting edge of the changes stood the man who had been Nellie Madison's faithful correspondent – Stanley Mosk. By 1953 he was a superior court judge and Fricke's colleague, though the two men were on opposite ends of the spectrum when it came to most legal and political issues.

When Fricke died of throat cancer in early 1958, Mosk was on his way to an illustrious career as attorney general and associate justice of the California Supreme Court. During his thirty-seven years on the high court he remained an ardent and unabashed liberal, particularly in decisions related to peoples' lives and in matters of life and death.



Stanley Mosk

Researchers seeking primary sources on women incarcerated in California before the 1960s should prepare for frustration and brick walls. The information is limited, scattered, and, in many cases, missing. The Women's Institution at Tehachapi, where all female felons – including communists and labor organizers – were imprisoned in the 1930s and 1940s, was virtually destroyed in a 1952 earthquake and many records were buried in the rubble. No concerted effort appears to have ever been made to unearth or reconstruct the records. A limited number of documents concerning women prisoners and prisons are scattered among various official repositories – the state Department of Corrections, the State Archives, and the State Library.

However, because Nellie Madison's was a death penalty case and was appealed to the California Supreme Court, a complete record exists at the California State Archives in Sacramento. The case file contains the trial transcript, appellate briefs, and the Supreme Court decision; letters and petitions regarding the pending execution; Governor Frank Merriam's official reprieve; and correspondence between Madison and various individuals – including Stanley Mosk – during the years she labored to gain her release from prison. The file also contains the fifteen-page confession Madison wrote in a desperate bid for commutation of sentence and an affidavit from the ex-wife of her victim, buttressing Madison's story of abuse and betrayal.

A separate file at the Archives details Madison's two appearances before the state Advisory Pardon Board, and newspaper clippings on the case can be found in the California State Library.

Selected secondary sources that have proven helpful include: Frank Parker, Caryl Chessman, The Red Light Bandit *(1973), which gives an account of Judge Charles Fricke; Craig Rice, ed.,* Los Angeles Murders *(1947); Jules Tygiel,* The Great Los Angeles Swindle: Oil Stocks and Scandal During the Roaring Twenties *(1994), which discusses Los Angeles District Attorney Buron Fitts; and Richard Morales,* "History of the California Institution for Women, 1927-1960: A Woman's Regime," *unpublished Ph.D. dissertation, 1980.*

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