THE CALIFORNIA SUPREME COURT
Historical Society
NEWSLETTER · SPRING/SUMMER 2005

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

BY HON. JAMES J. MARCHIANO

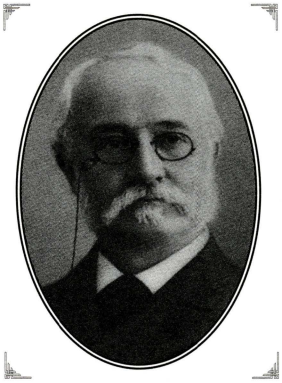
Adopting the motto "Striving for Justice Yesterday, Today, and Tomorrow: 1905 to 2005," the California Court of Appeal begins a celebration of its one-hundredth anniversary this year. This article, featuring the First Appellate District, inaugurates a series, continuing in future CSCHS Newsletter *issues,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



Justice Harrison, early 1900s

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

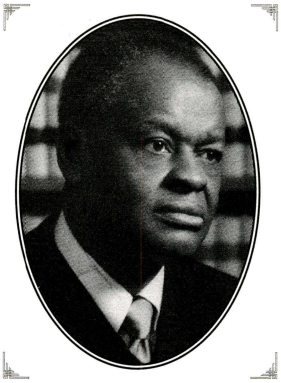
staggered. Justice Hall drew the twelve-year term, Justice Kerrigan the eight-year term, and Justice Cooper the four-year term.

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 Fransisco. 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.

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. PHOTO COURTESY OF HOWARD WATKINS

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 *Continued on page 11*

San Diego Law School Celebrates Anniversary With Supreme Court Special Session

BY KEVIN J. LANE

As part of its mission, the judicial branch reaches out to the community to encourage discussion, educate the public, and create a better understanding of the role of courts throughout California. Leading by example, the California Supreme Court held a special oral argument session in December 2004 at the University of San Diego School of Law that offered a learning opportunity for teachers, students, attorneys, judges, court staff, and the public.

The University of San Diego invited the Supreme Court to hold this session to coincide with the celebration of the law school's fiftieth anniversary. Upon the Supreme Court accepting the invitation, the Fourth District Court of Appeal immediately began planning for this historic event. In past years, the Supreme Court has held special sessions in Santa Ana, Fresno, and San Jose. Administrative Presiding Justice Judith McConnell wanted this special session to be the most extensive community outreach to date. She brought together school administrators, teachers, attorneys, judges, and many others throughout the community to plan and participate in the event.

The Court of Appeal formed a special community outreach working group that was chaired by Associate Justice Joan Irion. The group included representatives from the Court of Appeal, the San Diego Superior Court, the San Diego County Bar Association, the Imperial County Bar Association, and the Offices of Education for San Diego and Imperial counties. Teachers from more than ninety high schools throughout San Diego and Imperial counties were invited to attend the special session with their students. To maximize participation, the Center for Judicial Education and Research worked with the University of San Diego to broadcast the event both on the California Channel and via a cable feed to all schools in San Diego County.

Once the Supreme Court announced in November the cases to be heard, the work began in earnest. For each case, a summary was written which outlined the issues on appeal. Additionally, study guides were prepared that included points of discussion for the classroom. The San Diego County Bar Association recruited its members to visit high schools during the week before oral argument so that students could better understand this event. These volunteer attorneys explained the legal process and answered questions about the cases to be argued before the Court.

Extensive web pages were developed specifically with internet-savvy high school students in mind.

A student participates in a question-and-answer session with the Justices of the Supreme Court.

These web pages included the case study guides as well as general information about the Supreme Court, the judicial system, and law-related careers. Additional web pages were targeted towards teachers, attorneys, the media, and members of the public. These web pages can be viewed at *http://www.courtinfo.ca.gov/courts/courtsofappeal/4thDistrictDiv1/*.

The Special Oral Argument Session took place on December 7 and 8, 2004, at the Joan B. Kroc Institute for Peace and Justice on the campus of the University of San Diego. Prior to the opening of the special session, students were shown two informative videos explaining the history of the Supreme Court and providing brief biographical information about its justices. The session then began with remarks by Chief Justice Ronald George, Administrative Presiding Justice Judith McConnell, and USD School of Law Dean Daniel Rodriguez. As part of the outreach program, ten students were given the opportunity to ask questions of the Supreme Court, including "How difficult is it to set aside your moral beliefs, standards and personal experiences in applying the law to make judicial decisions?" and "Is it more democratic to interpret the Constitution based on contemporary views or on its original intent?"

For students watching the session via a broadcast to their schools, Superior Court judges and attorneys served as moderators, so that the students could understand just what was occurring in the courtroom.

With the reading of the calendar, oral argument began. The cases involved issues such as how to determine whether a murderer is "mentally retarded" for purposes of imposing the death penalty, whether a defendant's statement made to police clearly invoked his right to counsel, and whether an employee must exhaust all internal administrative procedures prior to filing a whistle-blower lawsuit. With twelve cases being heard during those two days, twelve hundred students were able to attend this special oral argument session.

As part of its fiftieth *Continued on page 11*

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,

Continued on page 13

A Demon Named "Indian Joe"

BY PAUL BRYAN GRAY

Clare V. McKanna's latest work, *The Trial of "Indian Joe": Race and Justice in the Nineteenth-Century West* (University of Nebraska Press, 2003), is a superb book that examines the influence of American racist attitudes on the outcome of an 1892 murder trial in San Diego County. People of color were seldom treated fairly by the nineteenth-century judicial system, a phenomenon McKanna has already described in two of his previous works, *Homicide, Race, and Justice in the American West, 1880-1920* (1997) and *Race and Homicide in Nineteenth-Century California* (2002).

In *The Trial of "Indian Joe,"* McKanna narrows his study of racial bias against non-white criminal defendants to a single trial which he presents so meticulously that it is virtually seen under a microscope. McKanna persuasively argues that the defendant was found guilty and put to death because he was falsely demonized as an evil Indian. Racial assumptions about the defendant's character unfairly tainted both the investigation and trial of the case. Despite conflicting evidence raising doubt about his guilt, the Indian was doomed the moment he entered the courtroom.

In nineteenth-century California, no group of non-whites was regarded with more contempt than Indians, who were relegated to the absolute bottom of the social structure. Their condition evoked sympathy from Francisco P. Ramirez, the brilliant young Mexican editor of *El Clamor Público*, Los Angeles's Spanish language newspaper. The June 4, 1859, edition observed: "In California, Indians are killed by whites as if they were birds or wild animals. The Indian race is not seen as part of the human family."

Ten years later the April 1, 1869, Los Angeles *Republican* published an article that approved the approaching extinction of local Tongva people: "The number of Indians is diminishing so rapidly that they will soon cease to be a source of much annoyance." By 1892, the time described in McKanna's book, prejudice against Indians had not abated.

The case described by McKanna, based on admirable research, involves the murder of an elderly married couple named John and Anna Wilhelmina Geyser, who lived in a small farming settlement on Otay Mesa, east of San Diego. Two neighbors, father and son, went to the darkened Geyser home during the early evening of October 16, 1892, to investigate reports of a disturbance.

They found an Indian named José Gabriel inside the house and violently subdued him. The younger man grabbed a heavy metal pin used to stake out animals and beat the Indian about the head so severely that he nearly killed him. The men soon discovered the bodies of Mr. and Mrs. Geyser outside the house near a door on the south side leading to a kitchen. Both had been killed by blows to the skull, the murder weapons being a pair of clubs discarded close to the victims. Apparently the woman was killed inside the house, since the kitchen floor was covered with blood.

The captured Indian, José Gabriel, claimed that he had arrived and entered the house just before the neighbors set upon him. He had known the Geysers for over a year and was living on their property while digging a cistern for them, a fact that was later verified. Gabriel said he approached the house from the north, where a barn in which he slept was located, and went through a door on the east to ask the Geysers for something to eat. He did not know they were dead on the south side of the house until he was dragged through the kitchen door by his captors. Gabriel blamed the killing on two other Indians, but his reasons for accusing them were not developed in the court record.

After nearly being lynched at his preliminary hearing in Otay, Gabriel was bound over for trial in San Diego. Melville and Frank Rawson, two brothers practicing law together near the downtown courthouse, were appointed to act as defense counsel. They were less than successful civil attorneys whom McKanna describes as "not well versed in criminal law."

Experienced criminal attorneys would have known that a scenario of how the crime probably occurred might be inferred from the angle, depth, and size of the injuries left by the fatal blows. These details could also have led to deductions about the assailant(s) such as height, weight, and whether the wounds were inflicted by a right- or left-handed person. However, at the trial, the Rawsons neglected to cross-examine a medical doctor properly concerning the victims' wounds. In addition, they never saw fit to visit the crime scene.

Nevertheless, testimony and other evidence that did come out at trial pointed away from Gabriel's guilt. Without prompting by defense counsel at trial, a medical doctor stated on his own that the male victim's injuries showed he was struck with two clubs of different sizes, shapes, and weights. This fact, of course, supported José Gabriel's claim that the crime was committed by two other Indians.

Although half an hour passed between the neighbors hearing yells of the male victim and their arrival

at the Geyser home, it was never explained why José Gabriel would have dallied so long around the bloody bodies before his capture. If he was guilty, he easily could have fled down one of the canyons back of the mesa and escaped before the neighbors arrived. The Mexican border was only two miles away.

One of the most compelling features of the case was the bloody tracks of one or more bare-footed persons found on the kitchen floor. Although he had no shoes, it is unlikely that they were made by José Gabriel. Every witness agreed that there was no trace of blood on the soles of his bare feet, a near impossibility if he had been in the kitchen. This and many other anomalies left enough reasonable doubt for a possible acquittal.

The real problem in the case, and I think the point of McKanna's book, was the creation of a demonic persona for José Gabriel after he was charged with murder. The San Diego *Sun* gave Gabriel the fictitious name "Indian Joe" in a headline on October 17, 1892, that read: "'Indian Joe' Does the Deed." The San Diego *Union* not only adopted the fiction of "Indian Joe," but it portrayed Gabriel as a "fiend" and an "Indian devil." The paper claimed he had "snake-like eyes" and "a swarthy face filled with savage cunning." The stories in the press made "Indian Joe" into a kind of satanic monster. The actual person known as José Gabriel was lost in the racist myth of "Indian Joe."

José Gabriel was born in El Rosario, Baja California. He probably spoke Borjeño (a sub-Yuman dialect) in his youth as well as Spanish. Eventually he wandered into San Diego County where he learned some English and worked as a casual laborer for about fifty cents a day. At the time of his arrest, he was sixty years old and had lived in the area for over twenty-five years. While he liked to drink a little wine, Gabriel had a good reputation and was considered a reliable worker. No one called him "Indian Joe" until he was charged with murder. Several people who had employed him over the years testified that he was always simply known as "Gabriel."

The false characterization of Gabriel as the evil "Indian Joe" was permitted by the court during trial. Several witnesses who did not know him took a cue from the press by referring to Gabriel as "Indian Joe." The court made no effort to maintain the defendant's proper identity although the prejudice it engendered must have been obvious. Gabriel's appearance likely encouraged his being cast in the role of the malignant "Indian Joe." He had an ugly face lined with deep scars. Under the involuntary guise of the monstrous "Indian Joe," he was found guilty and sentenced to be executed. José Gabriel went stoically to his death by hanging in San Quentin on March 3, 1893.

José Gabriel

McKanna's book is not only well researched, but beautifully written. It is a cautionary tale from the nineteenth century that is relevant today. In the last decade numerous wrongfully imprisoned people have been ordered released from death rows across the country as a result of DNA testing conducted through The Innocence Project headed by Barry Scheck and Peter Neufeld. The repeated conviction of innocent people, many of them racial minorities, remains a major concern today long after the death of the innocuous José Gabriel, demonized under the name of "Indian Joe." The little book by McKanna remained on my mind long after I read it.

Clare V. ("Bud") McKanna holds a Ph.D. in history from the University of Nebraska. He is a lecturer in the Department of American Indian Studies at San Diego State University. The Trial of "Indian Joe" *can be ordered directly from the University Nebraska Press at* www.nebraskapress.unl.edu *or (800) 755-1105, or from retail booksellers.*

Attorney Paul Bryan Gray is the author of the award-winning book, Forster v. Pico: The Struggle for the Rancho Santa Margarita. *Gray's law practice is located in Claremont, California.*

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SATURDAY, SEPTEMBER 10TH

We look forward to seeing you in San Diego at the 2005 State Bar Annual Meeting!

CSCHS Makes a Splash

Continued from page 3

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.

. . . . . .

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 commemorative 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.

Supreme Court in San Diego

Continued from page 4

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.courtinfo.ca.gov/courts/courtsofappeal/4thDistrictDiv1/ *or contact Clerk/Administrator Stephen M. Kelly at (619) 645-2762.*

Kevin J. Lane is the Assistant Clerk/Administrator for the Fourth Appellate District, Division One. He holds an M.A. from California State University, Long Beach.

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Continued from page 8

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
56387

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.

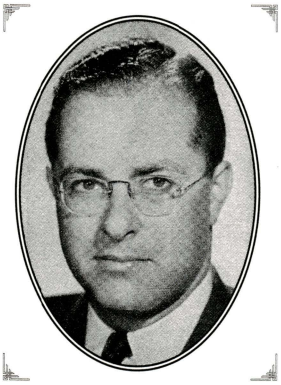
The death penalty itself had become the subject of heated debate. The gas chamber had replaced the gallows and the state would never again in the twentieth century see the number of executions – one hundred seven – it saw in the 1930s.

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.*

Kathleen Cairns teaches history and humanities at California State University, Sacramento. She is currently writing a book on the Nellie Madison case.

MEMBER NEWS MEMBER NEWS

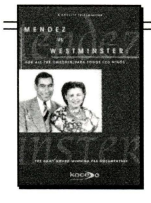
In June 2004, Public Counsel presented its William O. Douglas Award to Chief Justice Ronald M. George. The William O. Douglas Award is presented annually to a distinguished person of national or international prominence who has exemplified the principles of equal access to justice, freedom of expression, and equal rights. Public Counsel, based in Los Angeles, is the largest pro bono law office in the nation.

Akin Gump Strauss Hauer & Feld LLP announces that its Partner Rex S. Heinke has assumed the role of Litigation Section Manager for the firm's Los Angeles office. Mr. Heinke will also retain his role as head of Akin Gump's National Appellate and Litigation Strategy Group. As Section Manager, Mr. Heinke will oversee the strategic direction of the Los Angeles Litigation practice, which focuses on areas including intellectual property, securities, antitrust, complex business litigation, toxic torts, white collar, entertainment, class actions, and appellate matters.

Peter Reich reports that he moderated the Legal History Section panel "Forensic History and Historians as Experts" at the January 2005 annual meeting of the Association of American Law Schools. Professor Reich served as a panelist on a similar program sponsored by the California Supreme Court Historical Society at the 2001 State Bar of California Annual Meeting. The AALS panel explored historians' increasingly active role in litigation, and the conflicts this role can create for conscientious scholars.

The California Supreme Court Historical Society extends its condolences to the family of long-time member Justice William Reppy, who passed away on January 1, 2005, at the age of 92. Justice Reppy was appointed to the Ventura County Superior Court in 1955 by Governor Goodwin J. Knight. He served in this position until 1968, including three years as Presiding Judge. Governor Ronald Reagan then appointed him as a justice of the Court of Appeal in Division Five of the Second District, where Justice Reppy served until his retirement in 1972.

Scott Wylie, Associate Dean of External Affairs and the John FitzRandolph Director of Clinics at Whittier Law School, has been selected as a Southern California Super Lawyer. The designation, which is voted on by 65,000 area attorneys and judged by a Blue Ribbon Panel, is presented to only the top five percent of attorneys in their field of practice. Dean Wylie was one of only four legal services attorneys so honored. In addition to this honor, Dean Wylie was elected as a vice-president of the Foundation of the State Bar of California in February 2005. He has served on the Board of the State Bar of California's philanthropic foundation for the past five years.



As a benefit of membership for 2005, members at the Judicial level* and higher will receive a DVD of the award-winning documentary, *Mendez v. Westminster: For All the Children / Para Todos los Niños,* produced by KOCE. Those at Granter level*** and above will also receive the book *Once Upon a Time in Los Angeles: The Trials of Earl Rogers,* by Michael Lance Trope.

2005 MEMBERSHIP FORM

Please denote your membership level and make checks payable to *CSCHS* and include your contact information below.

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**** Recommended minimum level for firms with fifty or more attorneys.
*** Recommended minimum level for firms with ten or fewer attorneys.
** Recommended minimum level for attorneys in private practice.
* Recommended minimum level for public sector professionals, judiciary, educators and libraries.
† Associate level benefits limited to electronic mail version of *CSCHS Newsletter*

Please return this form along with your membership contribution to:

The California Supreme Court Historical Society
6946 Van Nuys Blvd. Ste. 202
Van Nuys, CA 91405

Phone (818)781-6008 Fax (818)781-6009
director@cschs.org

THE CALIFORNIA SUPREME COURT

Historical Society

TABLE OF CONTENTS

CSCHS
6946 Van Nuys Blvd. Ste. 202
Van Nuys, CA 91405

Phone (818)781-6008
Fax (818)781-6009
director@cschs.org