Western Legal History is published semi-annually, in spring and fall, by the Ninth Judicial Circuit Historical Society, P.O. Box 2558, Pasadena, California 91102-2558, (818) 405-7059. The journal explores, analyzes, and presents the history of law, the legal profession, and the courts — particularly the federal courts — in Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, and the Northern Mariana Islands.

Western Legal History is sent to members of the Society as well as members of affiliated legal historical societies in the Ninth Circuit. Membership is open to all. Membership dues (individuals and institutions): Patron, $1,000 or more; Steward, $750-$999; Sponsor, $500-$749; Grantor, $250-$499; Sustaining, $100-$249; Advocate, $50-$99; Subscribing [non-members of the bench and bar, attorneys in practice fewer than five years, libraries, and academic institutions], $25-$49. Membership dues (law firms and corporations): Founder, $3,000 or more; Patron, $1,000-$2,999; Steward, $750-$999; Sponsor, $500-$749; Grantor, $250-$499. For information regarding membership, back issues of Western Legal History, and other Society publications and programs, please write or telephone.

POSTMASTER:
Please send change of address to:
Western Legal History
P.O. Box 2558
Pasadena, California 91102-2558.

Western Legal History disclaims responsibility for statements made by authors and for accuracy of footnotes.

Copyright 1988 by the Ninth Judicial Circuit Historical Society.
ISSN 0896-2189.

The Editorial Board welcomes unsolicited manuscripts, books for review, reports on research in progress, and recommendations for the journal. Manuscripts [two copies] should be sent to Western Legal History, P.O. Box 2558, Pasadena, California 91102-2558. Texts, including quotations and footnotes, must be double-spaced. Footnotes must be numbered consecutively and should appear in a separate section at the end of the text. Authors are encouraged to follow the style for citations used in this journal. Manuscripts that are no more than thirty pages in length, not counting notes, charts and tables, and photographs, are preferred. Also preferred are manuscripts not concurrently under consideration by another journal.

Communication with the Editor, Western Legal History, is encouraged prior to the submission of any manuscript. At that time, other guidelines for the preparation and publication of an article may be discussed. Consultation upon punctuation, grammar, style, and the like is made with the author, although the Editor and Editorial Board are the final arbiters of the article's appearance.
WESTERN LEGAL HISTORY
EDITORIAL BOARD

CHET ORLOFF, Editor
REX ARMSTRONG, Esq.,
Portland
JUDITH AUSTIN
Idaho State Historical Society
GORDON M. BAKKEN
California State University,
Fullerton
MICHAL R. BELKNAP
California Western School of Law
EVELYN K. BRANDT, Esq.
Branch Librarian, U.S. Court of
Appeals, Pasadena
HON. JAMES R. BROWNING
Chief Judge, U.S. Court of
Appeals for the Ninth Circuit
ERIC A. CHIAPPINELLI
School of Law, University of
Puget Sound
LAWRENCE M. FRIEDMAN
Stanford Law School
CHRISTIAN G. FRITZ
University of New Mexico
School of Law
HON. ALFRED T. GOODWIN
Circuit Judge, U.S. Court of
Appeals for the Ninth Circuit
ROBERT W. GORDON
Stanford Law School
MICHAEL GRIFFITH
Archivist, U.S. District Court,
Northern District of California
JAMES W. HULSE
University of Nevada, Reno
LOUISE LaMOTHE, Esq.
Los Angeles
DAVID J. LANGUM
Cumberland School of Law,
Samford University

MARI J. MATSUDA
Richardson School of Law,
University of Hawaii
R. JAMES MOONEY
University of Oregon Law School
JAMES M. MURPHY, Esq.
Tucson
CLAUS-M. NASKE,
University of Alaska, Fairbanks
PETER NYCUM
Northwestern School of Law,
Lewis and Clark College
KENNETH O'REILLY,
University of Alaska, Anchorage
PAULA PETRIK
Montana State University
JOHN PHILLIP REID
School of Law, New York
University
RAY REYNOLDS
Editor, California Lawyer
HARRY SCHEIBER
Boalt Hall, University of
California
MOLLY SELVIN, Ph.D.
Santa Monica
CHARLES H. SHELDON
Washington State University
CAROLINE P. STOEL
Portland State University
STEPHEN L. WASBY
State University of New York,
Albany
SHARP WHITMORE, Esq.
San Diego
JOHN R. WUNDER
Clemson University
## CONTENTS

<table>
<thead>
<tr>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Some Lessons of Western Legal History</td>
<td>3</td>
</tr>
<tr>
<td>By John Phillip Reid</td>
<td></td>
</tr>
<tr>
<td>Judge Lorenzo Sawyer and the Chinese: Civil Rights Decisions in the Ninth Circuit</td>
<td>23</td>
</tr>
<tr>
<td>By Linda C. A. Przybyszewski</td>
<td></td>
</tr>
</tbody>
</table>
| "A Post Office That's a Palace:"
U.S. Court of Appeals and Post Office Building                      | 57   |
| By Stephen J. Farneth                                               |      |
| My Dear Judge
Excerpts from the Letters of Justice
Stephen J. Field to Judge Matthew P. Deady
Edited and annotated by Malcolm Clark, Jr.                          | 79   |
| Judge Ogden Hoffman and the Northern District of California         | 99   |
| By Christian G. Fritz                                               |      |
| Book Review                                                         | 111  |
| Articles of Related Interest                                        | 113  |
| Report on the Ninth Judicial Circuit Historical Society             | 117  |
| Membership                                                          | 121  |

Cover Photograph:
U.S. Court of Appeals and Post Office Building, San Francisco, 1902.
[National Archives, San Bruno]
FOREWORD

“One reason we need *Western Legal History* is because so little has been written.” So writes distinguished legal historian John Phillip Reid in his introductory essay in this first issue of this new journal. With the publication of issue number one of *Western Legal History*, the Ninth Judicial Circuit Historical Society is proud to establish and introduce a semi-annual forum for research and review, and the discussion and depiction of the legal history of western America.

Legal history is more than the study of courts. Although the Society's primary interest is the history of the federal courts in the vast Ninth Circuit,* *Western Legal History* will present articles on judicial administration, courthouse architectural history, law enforcement, territorial and early state law and courts, legal history resources, judges and lawyers, law firms and corporations, substantive cases, and such topical issues as natural resources and minorities, as well as oral histories and reprints of documents, and reviews and lists of books, articles, and public programs of related interest. The journal's interests will encompass the entire geographic scope of the circuit, the greater American West, and the Pacific Basin.

*Western Legal History* will encourage the work of historians, lawyers, judges, political scientists, biographers, and others who will illuminate for our readers the history of law in the American West. We expect — and are gratified by the early submissions of manuscripts — a combination of solid research, technical knowledge, and disciplined imagination, all essential to good history. We anticipate an audience ranging from students to the Chief Justice. With this first issue, we extend an invitation to writers to help us give voice to those who, through the law, have shaped and played a part in the history of the West and the Pacific.

The Ninth Judicial Circuit Historical Society will issue *Western Legal History* semi-annually until it has gathered enough support and manuscripts to begin publishing quarterly. Individual and institutional subscriptions include membership in the Society.

Members of affiliated legal historical societies in the Ninth Circuit will also receive a subscription.

With our introduction to Western Legal History, we extend a special note of appreciation to the Ninth Judicial Circuit Historical Society's members, to our board of directors, and to the journal's editorial board. The Society began its work just one year ago, yet we have accomplished so much because of the generous support, shared wisdom and experience, and the patiently given advice of these many friends. We thank them all and to each of them this first issue of Western Legal History is dedicated.

James R. Browning
Chairman
Chief Judge
U.S. Court of Appeals, Ninth Circuit

Chet Orloff
Executive Director
Editor
Why western legal history? it may be asked. Surprisingly, western lawyers have sometimes given the wrong answers. Max Radin, a California law professor of much repute, has been quoted reminding lawyers that they "are necessarily historians, but for some absurd reason they do not seem to like to admit it although they work with precedents which are 'pure history.'" Another Californian, sometime the state's attorney general and governor, said much the same when occupying the position of chief justice of the United States. "All lawyers are," he observed, "in some sense students of legal history. The knowledge of medieval law, which is essential to the most elementary understanding of our land law, is an obvious example."

Radin and Warren were wrong to confuse precedent and history. Precedent is valued by lawyers not as evidence of the past, but as authority for the present. Historians, by contrast, read judicial opinions for evidence and do not think of an overruled decision as "wrong law." They value it as an interpretation and an explanation.

John Phillip Reid is Professor of Law at New York University School of Law. Research for this article was supported by the Filomen D'Agostino Greenburg and Max E. Greenburg Faculty Research Fund at the School of Law.


2 Earl Warren, "Introduction," American Journal of Legal History 1 [1957] 1. Californians and lawyers are not the only ones who have written such nonsense. A distinguished historian once claimed: "There is, after all, a fairly close relationship between the day-to-day methodology of the judicial process and that of historical scholarship. When a court ascertains the nature of a law to be applied to a case through an examination of a stream of judicial precedent, after the time-honored Anglo-American technique, it plays the role of historian. A historian might well say that in this process the court goes to the 'primary sources.'" Alfred H. Kelly, 'Clio and the Court: An Illicit Love Affair,' 1965 Supreme Court Review 119, 121.
In this July 27, 1849 James G. Bruff scene, a wagon train crosses two steep hills between the north and south forks of the Platte River. The man on horseback in the lower right hand corner stops to read a tombstone with the word "Chol." visible on it. [Huntington Library]

of a formerly valid rule. A lawyer has a different perspective. Consider a lawyer dealing with a matter of water rights that refers him back to an Oregon statute of 1888. That lawyer is not interested in the meaning of that legislation as it was understood or intended by the legislators who enacted it. Nor is today's lawyer interested in the historical evolution of water rights vested by authority of that statute. He is, rather, interested in the latest interpretation of the law, the "new wine" that Oregon judges have poured into the "old bottle" of the 1888 statute, an interpretation that historians would [with too much haste] label as a "perversion" of the original meaning.  

We should not be deterred. The conclusion that legal history can teach pseudo lessons does not mean that there are no lessons. Indeed, the question that this journal should pose before it becomes set in its ways, is not what lessons can be learned from

---

3 Frederic William Maitland, the common law's leading historian, once explained: "A lawyer finds on his table a case about rights of common which sends him to the Statute of Merton. But is it really the law of 1236 that he wants to know? No, it is the ultimate result of the interpretation set on the statute by the judges of twenty generations. The more modern the decision, the more valuable for his purpose. That process by which old principles and old phrases are charged with a new content is, from the lawyer's point of view, an evolution of the true intent and meaning of the old law; from the historian's point of view it is almost of necessity a process of perversion and misunderstanding." Robert Livingston Schuyler, *Frederic William Maitland, Historian* (1960) 11.
western legal history, but, rather, what are the lessons that are worth learning. It is too easy to say that we should look at the origin of doctrine and ask why the rules of today have developed as they have. It does not do to ignore the risk inherent in lawyer's history, that we may make history the handmaiden to serve today's law by providing apparent answers to today's problems, or to ignore the risk in lawyer's legal history, that, by asking how our present-day institutions evolved, we may become merely antiquarian.

What this journal is labelling "western legal history" is a relatively new discipline. Despite what they might think, the generalists among western historians have ignored matters of law. The leading series of books dealing with general western history, *The Histories of the American Frontier*, do not have a law volume. Indeed, one reason we need *Western Legal History* is because so little has been written. What work we have can loosely be divided into three categories. The first — which includes the books of John D. Guice, John R. Wunder, and, most notably, Gordon Morris Bakken — asks questions about the law in the westward expansion that bear on general American legal history. That is, they cover developments in a western territory or state pertaining to such matters as torts, bar practice, court procedures, or judicial behavior, they extracted lessons that are related to and are not substantially different from mainstream American legal history.

The second category embraces subjects of law found only in the West — law of the Mexican borderlands, law of the Indian Territory, law on the California and Oregon trails, law of the

---


8 Glenn Shirley, *Law West of Fort Smith* (New York, 1957); the articles on the courts of the Quapaw, Creek, Cherokee, and Chickasaw nations that were published in *4 Indian Territory Bar Association Proceedings* (1903).

cattle drives, law in the gold mining camps,\textsuperscript{10} the suppression of Mormon polygamy,\textsuperscript{11} and (although not peculiar to the West it has for too long been misinterpreted by western historians) water law.\textsuperscript{12} These subjects, if we can find historians with the competence to handle them, could teach us lessons of law we may not be able to learn by studying eastern legal history alone.

There is yet a third category of exploration that deserves the particular attention of western legal historians. Like the first category, it concerns lessons that can be learned in the East as well as in the West, but, because before white settlers moved onto the Pacific slopes there had already been two centuries of the American legal experience, the western evidence may teach different, deeper lessons about the nature and strengths of American law and institutions. One topic belonging to this category has only recently been developed by historical scholarship: the existence of a legal culture shaping the behavior of ordinary people. It is the potential of that subject that provides the questions raised in this article.

\textbf{LESSONS OF GOEBEL}

Recent historians of the overland trails to the Pacific and of the Mexican borderlands seem to have been surprised when they stumbled upon the existence of a legal culture determining the behavior of ordinary nonlawyer Americans. The discovery should have been expected. Julius Goebel, Jr., of the Columbus Law School, anticipated it decades earlier when seeking the legal roots of New England’s first settlers: the origins of the law of the Plymouth Plantation.

Before Goebel, historians of sixteenth-century Massachusetts law had compared that law to contemporary English law and, finding it markedly different from the common law of the sixteenth-century King’s Bench and the assize courts, had concluded that the law of the Pilgrims and the Puritans was \textit{sui generis}, a new plant that first took root in American soil.\textsuperscript{13} Goebel exposed their error. It did not do, he knew, to equate sixteenth-century common law with sixteenth-century “English law.” During the early decades of North American settlement, the term


"common law" was not synonymous with English law. There were many English laws at that time, of which common law was but one among equals competing for survival. Why not, Goebel asked, go back and look at the other laws to see if they contained the origins of early colonial law? The most promising source, he thought, at least for the settlers of Plymouth Colony and Massachusetts Bay, was local law: the law of the boroughs and the manors of sixteenth and seventeenth-century England. It was when exploring this question that he tripped over (but does not seem to have noticed) the possibility that the behavior of average men and women might owe much to their legal culture.

It was inevitable that the local courts and the customary law would assume a position of transcendent importance in the life of the ordinary man. It was to these courts that the small farmer or artisan would turn if he wished to replevy his cows or to collect a bill, and that turned upon him if his hogs were unringed or if he put his garbage in the street. Except what these humble men may have known of the ecclesiastical courts, with their sompnours spying upon their amours, and the apparitors to take them to jail if they worshipped heretically, the workings of the county, manorial, or borough tribunals were the length and breadth of their knowledge of the administration of justice, the local customs the sum of their law. Since, it was men from these walks of life by which the Plymouth colony was established, we must seek the secular source from which their legislative inspiration flowed in the local institutions of their native land.

By the ordinary course of historical scholarship, the revelation of the Goebel thesis would have been the death knell of what, up until he wrote in 1931, had been the dominant explanation of the origins of American Law: the "frontier theory." If it was not the death knell of the frontier theory, one reason why may be that the Goebel thesis was not further tested against historical evidence.

14 See Mark De Wolfe Howe, "The Sources and Nature of Law in Colonial Massachusetts," in George Athan Billias, ed., Law and Authority in Colonial America (Barre, Mass., 1965) 1, 2-5.


until thirty-two years after Goebel wrote. There were monographs on related issues demonstrating that the hypothesis had great promise. For instance, there was much evidence showing that, on constitutional as opposed to legal questions, the early settlers carried with them and maintained in the New World a culture of English rights and practices remembered from Westminster Hall and the county assizes. In nonconstitutional and nonlegal history, there was much work, most notably by T.H. Breen, on the transfer of English local culture to North America.

Sumner Chilton Powell was the first to test the validity of Goebel's thesis, asking many of the questions about English legal institutions that Goebel said should be asked. In Puritan Village, his 1963 prize-winning book, Powell traced the governmental customs and legal practices of the town of Sudbury, Massachusetts, back to the villages and communities of seventeenth-century England from whence came its original settlers. Then, in 1981, David Grayson Allen gave the thesis about as wide a test as it is likely to receive. His research went beyond Powell's in at least three respects. First, he paid closer attention to rules of law and legal customs. Second, he studied the origins of five Massachusetts towns, not just one. And third, some of these towns had been settled almost exclusively by people from one small locality in England, rather than, as was Sudbury, by people from various, diverse regions, allowing Allen to trace specific customs and to demonstrate specific transferral of rules from the old to the new world. Allen's evidence led him to three further conclusions. First, that average people could understand seventeenth-century local English law. Second, that consciously or unconsciously the first settlers of Massachusetts Bay carried with them to the new world as part of their cultural values a remarkable amount of local law. And third, once settled on the shores of the Massachusetts Bay, they continued to behave according to the norms of English law ways.

Goebel, Powell, and Allen were primarily concerned with the

17 Mark De Wolfe Howe, "The Sources and Nature of Law in Colonial Massachusetts," supra note 14 at 15.


transferral of legal institutions and legal norms from an old to a new physical environment, the extension of English legal behavior to North America. They, therefore, only uncovered the existence, they did not explore the extent to which our earliest settlers were the products of a legal culture. Besides, their people came from a heritage of customary law, small-village communal life, in which daily activity was controlled by timeless practice, land and its uses were held by inherited standards, and personal rights were secured by the shared remembrance of past procedures. It was a quite different legal culture from that which we know. Our legal culture — of law by legislative command rather than custom, of rights secured by judicial direction rather than jury consensus, and of legal rules upheld by police enforcement rather than by community self-help — would be developed by their American descendants shortly after the Revolution against Great Britain. It thus has been the task for historians of the nineteenth century to seek lessons about the strengths of a legal culture in a law world of the type with which we are familiar.

It is on this matter, the legal culture contributing to the behavior of average Americans, that western legal history has made its first contribution to our knowledge of the history of American law. It was, after all, during the westward movement, the push onto the unoccupied frontier, that people were likely to find themselves beyond the reach of the formal institutions of law: of police, of courts, of the advice or direction of lawyers. It was then, during such nineteenth-century movements, that the nuances of an American legal culture can best be measured. One place that the measure has been taken is the overland trail to California and Oregon.

Studies of the emigrants who crossed the western half of the North American continent over the wagon trails to the Pacific Coast show that they were immersed in a legal culture. To a stunning extent, their behavior was determined by legal norms. The average emigrants said — and certainly believed — that they had tracked out onto a region where there was “no law,” yet they continued to behave as if controlled by law. Contracts provide one example. Hundreds of overland travellers, even while claiming to be far out in lawless territory, made agreements to bail animals, transferred property on the promise of future payment, and sold their personal services on the reliance of executory obligations. It is clear from the evidence that the conception of the overland emigrants of the elements creating binding contracts was not precisely the same as that of contemporary American law during the late 1840s and the 1850s. That, however, is a matter of legal education not legal culture, and it is legal culture that is our concern. Emigrants who said there was no law on the overland trail, yet negotiated agreements expecting they would be honored, were doing more than creating moral obligations. They were
relying on a tradition of shared legal notions: expecting that the other party shared the same values they did, that they understood a contract in the same sense they did, and believed that promises mutually exchanged created obligations for the same reason they did. In other words, supporting every exchange that was not barter, there were commonly shared values that surely owed as much to the emigrants' remembrance of legal principle enforced east of the Missouri River as to religious teachings or moral upbringing.21

The law of property furnishes a slightly different lesson. The emigrants understood the law of property much as it was practiced by lawyers in the eastern states. They not only understood but out on the trail they observed distinctions between personal property, mess property, partnership property, company property, and joint-stock property. Acting on these shared definitions, they avoided conflict and resolved quarrels. When concurrent ownership became too divisive, they converted it to personalty; when continued companionship became impossible, they divided provisions by the law of ownership, not the law of need.22 Indeed, to an incredible degree, the law of property shaped human behavior on the overland trail. As will be discussed below, actions were judged not as our western novels or movies would lead us to expect, by Christian values, but by ownership. There was displayed on the overland trail a "habit of property," a "morality of law," that had never been appreciated or utilized by our judges and our legislators.23

Evidence from the overland trail not only reveals a legal culture of shared definitions, but a legal culture of shared procedures. The remembrance was not only of things experienced, but of institutions that had only been observed, or perhaps only described. An example is the criminal trial.

What we know about trials on the California and Oregon trails comes largely from accounts of prosecutions against men accused of deliberate homicide. One basic generality can be gleaned from these cases — the emigrants did not attempt to create sui generis institutions. Instead, they duplicated or imitated the courts and judicial procedures remembered from back home. If two lawyers were present, one might be appointed to prosecute, the other to defend. Someone served as prosecutor for minor as well as major

23 John Phillip Reid, Law For the Elephant: Property and Social Behavior on the Overland Trail (San Marino, 1980).
offenses. A defendant might be permitted to hire a lawyer, even a stranger passing by in another train.24

Most telling of all was the emigrants' insistence that the triers of fact duplicate the function of the jury in American criminal law. To the untrained eye of the nonlawyer, it might on first glance appear that emigrants had a different model in mind. In noncapital cases the whole company sometimes decided guilt or innocence, and it was not unknown for a murder prosecution to be settled by vote of every emigrant present — whether witnesses, companions, or strangers. In a sense these trials depart from the Anglo-American norm, but not as much as they might have, and the departure is not basic. The overland emigrants did not do what logic might have dictated — i.e., they did not go back to the early English pattern and entrust the decision to those who knew the facts. With a small population, no regular tribunals, no police, no rules of evidence, and an uncertain supply of lawyers, it would have made sense to have asked the truth of those possessing the truth. Instead, the general rule — especially in homicide situations — was to select a jury of twelve men and, after

presenting evidence through witnesses, entrust the decision to

them. That overland juries were close copies of common-law juries

should be greeted with surprise, not dismissed as inevitable. Not

only were overland jurors not required to know the circumstances

of the alleged crimes, they did not have to come from the company

of the accused. Legal theory on the trail took for granted that

"stranger emigrants" could render a fair verdict, much as in an

established American court of law, by hearing evidence from

witnesses, weighing arguments, and reaching decisions. Thus one

caravan tried a homicide accusation with "a jury of men out of

another train and witnesses out of our train." Another manslayer

was tried by "[tribunal representatives of over 200 wagons in the

neighborhood," while a third panel was selected from fifty men

"collected from both front and rear trains." Of course, had the emigrants thought about the question, they

should have adopted the medieval English model of the jury, with

the triers of fact drawn from those with knowledge of the facts.

But they were not thinking so much as behaving. They followed

the nineteenth-century model of the uninformed, impartial jury

because that was what their shared experience told them was

"law." Behavior is the operative concept that teaches us our lesson

of a nineteenth-century legal culture carried from the civilization

of the eastern states to the wilderness of the Sierra Nevada. It is

the taught, remembered, respected, and shared legal behavior

that furnishes our lesson — not implementation of specific legal

concepts. On the long, dangerous overland trail to California and

Oregon, it was legal behavior that shaped conduct settling

disputes without acts of violence, allocated precious resources

according to shared notions of property rights rather than by force,

and, when crime occurred, dealt with offenses not by summary

drumhead procedures, but with the trappings of a remembered

judicial process.

LESSONS OF LANGUM

There is even more to be said about the culture of law than has

been thought. The overland trail is an obvious place to look for

legal behaviorism. It takes patience, not imagination, to find our

lessons there. A less likely place, one offering both a greater

historical and greater legal challenge, is the "borderland" of

Mexican California. David J. Langum, the premier legal historian


Ibid. at 340-41.

at Cumberland School of Law, opened up a new field of historical scholarship in 1987 with the publication of his first book, *Law and Community on the Mexican California Frontier*. As with the travellers on the overland trail, the story of Americans, English, Scots, and Irish in preconquest California, is a story revealing a strong nineteenth-century common-law culture. Expatriates, he writes, "peacefully invaded California, bringing with them their preconceptions of the proper legal order." Langum's evidence is even more revealing than the evidence of the overland emigrants, for rather than clinging to their law ways in vast, open expanses, without police, lawyers, or courts, his people brought their legal ideas into conflict with an established, sovereign judicial system. "These Americans, and their British cousins as well," Langum discovered, "spoke, wrote, and thought in legal terms. The [common] law was deeply revered and was an ingrained and inextricable part of their culture."28

Langum's theme is of a clash of legal cultures that could never had occurred had not ordinary nineteenth-century Americans, even those with little formal education and no legal education, possessed an innate, shared, cultured sense of "law" and of how they expected "law" to operate. "When an expatriate [in Mexican California] wrote a contract or settled a dispute," Langum notes, "he did so without any lawyer to guide him. The extent to which the foreigners correctly used law suggests the degree to which legal norms had become a part of their general culture."29

The expatriates' knowledge of American and English law did more than provide a guide for conducting their own business affairs. It explains the basis for their hostility against Spanish-Mexican law. "The expatriates drew on the local law only to the extent absolutely necessary. Instead, they did their best to order their present circumstances in a manner harmonious with the remembered law of the eastern and midwestern states from which they had come."30

The reasons why Americans and their fellow common-law expatriates disliked Mexican law are clear. What is surprising is that the reasons were not due to prejudice or feelings of Anglo-Saxon superiority, but followed from innate expectations of how a legal system should operate and from expectations about the definitiveness of judgments. Americans simply did not like the Mexican judicial process,31 which functioned largely without

29 Ibid. at 7.
30 Ibid. at 267.
31 Langum explains the law of Mexican California — one hundred pages on civil and criminal substantive and adjective law. Some sections read like a procedure hornbook. Ibid. at 30-130.
lawyers, and was presided over by lay judges often serving reluctantly. Although Mexican jurists were much more powerful than their common-law counterparts, it was an authority seldom exercised, as civil procedure was geared toward reconciliation, not adjudication.

"Mexican society believed that litigation was to be avoided — almost at all costs," Langum observes. It was a cost that put Americans ill at ease. As lawsuits "were regarded as disruptive of the community's functions," the primary function of the Mexican California courts was to prevent litigation, a startling reversal of our normal expectations of the judicial process. Americans turned to that process seeking judgment and enforcement of legal expectations. They were, instead, directed toward conciliation and told to depend not on lawyers but on hombres buenos. Even when judgments were rendered "[t]hey were subject to defendants coming back into court with a tale of woe that the crop was bad, the cattle were too thin to slaughter, or some other excuse, and asking that the installment payments be extended."

Substantive law reflected adjective law and it may be wondered whether, to Americans of the 1840s, it appeared to be "law" at all. "For the law that did exist, very little use was made of it, either by litigants or judges," Langum concludes. "Both relied instead on

---

32 "The lack of trained lawyers was chronic throughout Mexico. In the early Federalist period some Mexican states had as few as two or three attorneys within their entire jurisdiction." Langum, Law, supra note 28 at 46.

33 "[T]he judges were all lay personnel, thrust into their judgeships often against their will by threats of fines if they refused to accept the appointment." Ibid at 70. "Illiteracy was not a sufficient excuse" for not serving as a judge. Ibid. at 44.

34 "[T]he alcalde's word was literally the law itself, unfettered by substantive standards [legal rules] for the resolution of conflicts. He could decree as he thought fit, confined only by the cultural and religious mores of the local village in which he sat." Ibid at 30. Walter Colton, alcalde at Monterey, resolved questions with which American law would not have dealt. Ibid. at 134.

35 Ibid. at 133. "There was a Spanish tradition of compromise as early as the late Middle Ages. Although Castile was reasonably litigious, its communities emphasized the need for rapid and amicable resolution of disputes. Compromise was the ideal, and a settlement arbitrated within the community was the preferred method of dispute resolution." Ibid. at 132.

36 Ibid.

37 Ibid. at 131-32.

38 "As a condition to commencement of a lawsuit the plaintiff had to show by a certificate that an attempt at conciliation had first been attempted in an effort to resolve the dispute." Ibid. at 38.

39 Ibid. at 98-99.

40 Ibid. at 113. And what of the payments? "Very few conciliation judgments, whether accepted or not, called for an immediate payment of money. Almost all California judgments called for payments at least partly in goods, usually hides." Ibid. at 99.
vague appeals to 'rights' or the 'law' and seemed satisfied with assertions or denials of 'rights' and 'laws' that were uninformed by written substantive law that was available to them. Thus justice as actually administered was largely of the curbstone variety.  

Even when Spanish-Mexican law was "law" rather than "justice," it was, by common-law standards, remarkably imprecise. An example from the area of property rights was recently provided by Michael C. Meyer in his 1984 history of Mexican water law. "There were no riparian rights for agricultural or industrial uses in New Spain," Meyer pointed out. "The grant of a piece of land fronting on a river entitled the owner, without additional authorization, to use the water for domestic purposes, but for nothing else." Even so, "nobody was to use more water than was absolutely necessary." An official empowered by government authority "was to divide it in such a way that all the land subject to irrigation (that portion previously designated as subject to irrigation) would receive its benefits."

Spanish law made special effort to guard the interests of those landowners whose property did not have a direct outlet to the water source. Through practice, custom, and law (jus aquoeductus), an individual was allowed to construct an acequia on another man's land if there was no other way to conduct the water to his own. A landowner could drive his cattle through his neighbor's property to water them (jus aquoe hausius) if there were no watering holes on his own land. Even the foundations of houses and churches could be altered so that water could pass through them.

At first glance these seem valuable property rights to water, in many respects going beyond anything at common law (which allowed individuals to patent water holds and exclude neighbors, and — as it seldom compromised the tort of trespass except in the mining districts — did not recognize a claim by a nonriparian landowner to a share of the nearest source of water). But were these what a nineteenth-century American, intent on capitalizing property and on reaping profits from things in which he had

41 Langum, Law, supra note 28 at 126. "The lack of significant use of substantive law does not mean that the judges' decisions were capricious or that they lacked common sense in the resolution of disputes." Ibid. at 127. But for nineteenth-century Americans, legalism was a shield against arbitrariness.


43 Ibid. at 36.

44 Ibid. at 71.
invested his own time and resources, would have called property rights in water?

There is a second question to be asked. Why say that these different attitudes toward law and judicial process were due to cultural expectations rather than due to national antagonisms? One answer is that the Anglo-American complaint was not about Mexican law or that these were Mexican judges, but that they were law and judges functioning in the civilian rather than the common-law tradition. The articulated objections were directed against perceived institutional eccentricities and reflected the disappointment of unfulfilled expectations. The expatriates may not have wanted "clear winners and clear losers," as Langum suggests, but they did want the certainty and predictability of what they called "law" or what Langum describes as "the cultural expectations the expatriates brought with them." A fact to be especially marked is that these expectations involved both substance and enforcement.

"In this Anglo-American legal expectation," Langum observes of specific rules and doctrine, "there was every demand for settled substantive law firmly applied, and no room at all for a quixotic judge varying the rules to achieve justice in a particular case. The California practices of installment judgments and modification deeply offended that principle." Perhaps even more revealing of cultural expectations was expatriate dissatisfaction with mesne and final process.

Much of the expatriate criticism of the alcalde system was accurate. The courts were inefficient, at times unpredictable, and they lacked any semblance of effective enforcement techniques.... But the depth of the Anglo-American criticism reflected differing cultural norms of what was wanted and expected from a legal system. The expatriates wanted certainty, predictability, and efficiency in enforcement of judgments.

45 Significantly, Langum finds that Mexican criminal justice did not "victimize" expatriates; if anything, they were favored. Langum Law, supra note 28 at 89, 94, 96. Yet they distrusted the system because of some of its aspects that differed from common criminal law. Ibid. at 69. Among the most interesting complaints, one voiced not just by Americans but by British as well, was the joining of executive, legislative, and judicial functions in one official, the alcalde. Langum, Law, supra note 28 at 51, 52, 65, 7, 121.

46 Ibid. at 271.
47 Ibid. at 139.
48 Ibid. at 140.
49 Ibid. at 273. "What common law judge would dare change the due date of an obligation, or the medium of payment, or issue an installment judgment? The purpose behind this accommodation was not to favor improvident borrowers or credit purchasers nor to relieve them of just debts, as many expatriate creditors
In their shared legal culture, the Anglo-American expatriates equated law with enforcement. For them, a "law of contract" had no substance if the stipulated obligation could not be enforced. Fair dealing, reasonable price, adjustment, compromise, and accommodation were not enough.\(^50\)

---

**CONCLUSION**

David Langum's book must be read in full to be appreciated. The evidence is too rich and the findings too surprising to bear summary treatment. It is, of course, but one step in the writing of western legal history, uncovering the story of legal conflict in the Spanish borderlands, and, most important, taking the measure of legal culture in nineteenth-century North America.

There is much work yet to be done. Evidence of a nineteenth-century legal culture provided by the westward movement — by the behavior of emigrants on the overland trail and the conduct of expatriates in Mexican California — has raised issues about the nature of American law ways that require that more scholars begin to investigate western legal history. It is a neglected field awaiting its reapers and its gleaners.

It is not enough to agree that there was a legal culture directing, guiding, and even motivating nineteenth-century Americans. The next task is to evaluate and explain it. David Langum believes that he is describing a fundamental clash of legal values in Mexican-American California: a clash between the customary law ways and languid procedures of the preindustrial, pastoral Californios, and the atomistic, individualist energies of Yankees in the very throes of the Industrial Revolution.\(^51\) That explanation may be plausible but there is much more to be said than that the industrial age developed different values than the preindustrial. The preindustrial, pastoral New Englanders of late colonial times would have been no more at home in the California of the 1840s than were their descendants. They may have, as William E. Nelson has shown, confused "law" with community values by entrusting judgment to juries who decided law as well as fact, but they still wanted decisions rendered and verdicts executed.\(^52\) They may not have experienced the Industrial Revolution, but they had more in common with Langum’s expatriates than they would have had

sincerely believed, but to resolve an unsettled and antagonistic condition by fashioning a decree that could rest easily on all concerned and resolve the dispute without exalting a winner or crushing a loser.” Ibid.

\(^{50}\) Ibid. at 184-86.

\(^{51}\) Ibid. at 9.

with the preindustrial Californios. Of course, in the economics of small-town, subsistence agriculture and in much of their way of life, the colonial New Englanders had more in common with the Californios. What seems to have counted most, however, with the Anglo-American expatriates was a factor they shared with the New Englanders: they had come to age in a common-law jurisdiction.

A more convincing argument is procedural. Langum thinks the mandatory conciliation process through the use of *hombres buenos* was well suited to Mexican California where community harmony was a high social value, but despised by the Anglo-Americans who thought it a waste of time as it delayed the “more appropriate clash of trial.” But again, there must be more to the explanation. What was there about the legal culture of the common-law expatriates that made a “clash of trial” more appealing than social harmony? After all, as a distinct, alien minority, one might think they would have sought the procedure that avoided conflict and encouraged compromise.

Professor Langum attributes the contrasting attitudes to different cultural values. Mexican adjective law, with its emphasis upon reconciliation through adjustment of claims, taught the value of community interest over individual interest. Common-law procedure, he argues, taught people that “rights” were “absolute,” instilling respect for “adversarial combat” with the expectation of determining “a clearly defined winner.” As a result, the interest of the individual was a higher value than either communal interest or communal harmony.

Langum’s explanations are more evidence of effects than discussion of causes. Further work remains to be done and by the very nature of the problem we may expect that western legal history will be utilized for a good portion of the answer. Langum provides an important start [and on this point he may be on the right track for finding answers] with his speculation about the role of individualism in the common law. The Anglo-American emigrant to California, he argues, came out of a legal culture that fostered individualism, a “rugged” individualism of let the chips fall where they may, encouraged by a law that was fast ridding itself of restrictions upon individual initiative such as the medieval law of nuisance or the English rule of waste.

53 Langum, Law, supra note 28 at 272.
54 Ibid. at 271.
55 Ibid. at 29.
56 Ibid. at 271. See also 142. It is interesting but not persuasive evidence that a California Senate Committee in 1850 drew the same contrast: “[T]he Common Law allows parties to make their own bargains, and when they are made, hold them to a strict compliance; whilst the Civil Law looks upon man as incapable of judging for himself, assumes the guardianship over him, and interpolates into a
The execution on June, 11, 1851 of John Jenkins by the San Francisco Committee of Vigilance. Jenkins had stolen a safe and, when being chased across San Francisco Bay, had dropped it in the water. He was captured by the Committee's policemen and, after insulting and haranguing his captors, was quickly found guilty and hanged before a crowd of several thousand onlookers the same night as his trial. Drawing by James G. Bruff. [Huntington Library]

If we accept for the sake of argument that the Mexican legal system discouraged or suppressed individual assertiveness, we still need to seek more evidence about the individualism fostered by the common-law culture. After all, that same legal culture was a major factor contributing to social harmony and the peaceful resolution of disputes on the overland trail. There is an apparent contradiction here, a paradox of a legal culture encouraging accommodation in a situation without judicial tribunals, yet discouraging it when encountering tribunals that mandated not individual rights but reconciliation. We will have to encourage much more research in western legal history before we can resolve the puzzle. It may be that we already have an indication of how it will be resolved, that David Langum points out at least one solution when he observes that the Anglo-American expatriates in nineteenth-century California were deeply imbued with the rugged, highly individualistic concepts of this period of the common law. Rights were absolute entitlements and duties their stern correlatives, owed unconditionally. No matter how onesided or unfair, a contract should be enforced strictly according to its

contract that which the parties never agreed to." California Senate Committee on the Judiciary, Report on Civil and Common Law [1850], quoted in Ibid. at 140. The report, dated 27 February 1850, is printed in 1 California Reports 588-604.
terms. Courts should not rewrite agreements. If debts were owed or damages assessed, judgment should be rendered for immediate payment in cash, with no extensions and regardless of a defendant’s personal needs or ability to pay.57

Langum may be referring only to the legal perceptions of nineteenth-century Americans. What he says would be an overstatement of the absoluteness of rights at common law, the law, that is, of the eastern courts and the professional bar. He does not overstate the impression of absolute property rights that the average participant in the westward movement carried as part of his innate, inherent legal culture. This same absolutism that produced conflict when its cultural values clashed with the judicial process of mandatory reconciliation in Mexican California produced harmony when, on the "lawless" overland trail, perceived legal cultural values furnished emigrants with objective norms of behavior.

There is more to the overland trail evidence than is mentioned above. It was not just law and legal definitions that emigrants shared as part of their cultural baggage. They also shared attitudes about the role of law and important rights to society, and those attitudes helped shape specific behavior on the roads to California and Oregon. On this point — legal perceptions effecting conduct — a striking illustration is provided by the manner in which property rights were regarded on the overland trail: property rights were treated as absolute.

An emigrant with title to a wagon or a horse could do with “his property” whatever whim and fancy dictated. Just the bare, single fact that he “owned,” that the material items “belonged” to him, was determinative of the behavior of the overwhelming majority of his fellow overlanders. Ownership silenced all objections they might have raised about the manner in which he used, misused, or hoarded “his property.” There was no assertion of communal sharing on the overland trail. One emigrant's desperation created no demand right on another emigrant's surplus. When any surplus was granted as gifts or sold rather than destroyed, the receiver wrote of generosity and thankfulness, not of the fulfillment of just expectations. Had the “owner” destroyed rather than granted or sold, fellow emigrants might criticize his unchristian behavior, but always acknowledged his unquestioned right. In a cultural perception of absolute privilege, that would not have been countenanced in a nineteenth-century court of equity or common law, lay the roots of the social harmony prevailing during the westward movement.58

57 Langum, Law, supra note 28 at 270.
58 Reid, Law for the Elephant, supra note 23 at 289-304.
That there are questions to be resolved does not diminish the evidence that has been brought to light. David Langum pointed the way to one direction for western legal history to take when he uncovered some lessons from the experience of Anglo-American expatriates in preconquest California. A lesson for western historians to take to heart is the extent that nineteenth-century Americans "subconsciously adhered to common law legal concepts,"59 and "the great extent to which the common law norms and concepts had ingrained themselves into the American and British psyches."60 The lesson for judges and lawyers to puzzle over is why, "because of that successful acculturation to the common law," these expatriates were unable "to understand the procedures, purposes, and cultural assumptions of the Mexican legal system."61 Is it possible that a culture of behaviorism instilling obedience to one law can be so strong it will produce disobedience to another law?

Permission to quote from David J. Langum, Law and Community on the Mexican California Frontier: Anglo-American Expatriates and the Clash of Legal Traditions, 1821-1846 (Norman, Oklahoma, 1987) has been kindly granted by the University of Oklahoma Press, Norman, Oklahoma.

59 Langum, Law, supra note 28 at 268.
60 Ibid. at 269.
61 Ibid.
As was true of many of the men who would make their fortunes in California after the gold rush of 1849, Lorenzo Sawyer was born in the northeastern United States and came to the Pacific Coast as a second leg to a transcontinental journey, his first migration getting him only as far as the Midwest. Yet Sawyer differed from most former Yankees by failing to pack the cultural baggage of white racism for his climb over the Sierras. From his earliest letters back describing the gold camps, through his term on the California Supreme Court, to his lengthy and final position as circuit judge of the Circuit Court for the Ninth Circuit, Sawyer displayed a rare sympathy for Chinese immigrants. Less unusual but also uncommon was Sawyer's belief that the North's victory during the Civil War signaled the final triumph of nationalism over states' rights. As a judicial representative of the national government, Sawyer felt authorized to oversee the legislation of the now subordinated state governments.

Sawyer's distaste for the Sinophobia of white Californians fused with his conviction that traditional federalism had perished in the war. This combination of feeling and principle produced in his jurisprudence a wariness of state regulation and a willingness to look beyond the letter of the law to the racist impulses it concealed. Although in this Sawyer was following the lead of his eminent colleague Circuit Justice Stephen J. Field, the circuit judge's concern for the civil rights of the Chinese and Chinese-Americans went beyond that which Field and the Supreme Court would accept as doctrinally correct. Chastened by his brush with higher judicial authority and thwarted by the increasingly severe Exclusion Acts passed by a Congress hungry for the electoral votes

Linda C. A. Przybyszewski is a doctoral candidate in history at Stanford University. Her graduate studies during her work on this article were funded by a Mellon Foundation Fellowship in the Humanities.
of California, Sawyer had to accept a more restricted doctrine. He ended his life voicing the objections to immigration common to the Pacific Coast gentlemen who viewed the Chinese as a temporary but necessary addition to their region's labor force. The circuit judge had pushed against the limits of civil rights doctrine and found them immovable.

Lorenzo Sawyer was born May 23, 1820 in the farming village of Le Roy, New York to an English-American family that traced its immigration back to 1636 to a trio of families whose names Sawyer valued enough to pass on to his sons Prescott and Houghton. He started his law studies and apprenticeship in New
York, but finished both in Ohio under the tutelage of future Supreme Court Justice Noah H. Swayne. After entering the bar in Ohio, Sawyer moved to Chicago where the news of the discovery of gold in California found him in 1849.1

Among the thousands of other gold-seekers were many foreigners —from Europe, the Americas, Asia — whose presence the California legislature tried to discourage by passing in 1850 a prohibitively expensive foreign miners' license tax. Although the French joined the Mexicans in a successful protest of the law, non-Europeans, the Chinese especially after 1852, were the chief targets of white American attack.2 A new mining tax was aimed especially at the Chinese, who were condemned as "coolies," that is, contract, gang laborers whose low wages made white labor uncompetitive. Violence, both organized and sporadic, against the Chinese and other people of color continued throughout the mining era.3

Sawyer took the overland route through the mountains, arrived in California by July 1850, and wrote letters for the newspapers back home describing the practical aspects of journeying and mining. He marvelled at the different peoples and their customs, which he had seen "illustrated by cuts in our school books," and yet found it fascinating to observe them in the flesh.4 Rather than seeing the Chinese as unassimilable exotics, as un-republican supporters of despotism, as economic depressants willing and able to destroy the wage standards of free white labor, as amoral pagans, or as spreaders of Asiatic disease,5 Sawyer noted with approval "their industriousness," and their "grave and dignified" deportment, and how the Chinese took "a deeper interest in our institutions than any other people." Defying the usual wholesale condemnation by whites, Sawyer pronounced himself "the most favorably impressed with the Chinese" of all the peoples he had seen.6

---

1 Sawyer furnished a biographical sketch for inclusion in Alonzo Phelps, *Contemporary Biography of California's Representative Men*, 2 vols. (San Francisco, 1881) i:130.
6 Sawyer, *Way Sketches*, supra note 4 at 125.
Sawyer abandoned mining by October 1850 and set up a law office in Nevada City, but the arrival of formal law enforcement and lawyering in the mining towns did not end anti-Chinese violence. Once when Sawyer had a sheriff’s warrant issued for Chinese clients against claim jumpers, the mob remained unimpressed; the young lawyer could only advise the rightful owners to hire Americans for physical defense by surrendering some shares to pay for their protection. The state of California continued its statutary aggressions against the Chinese as well. The legislature passed other license taxes following the early unsuccessful one and tried to discourage immigration by making shipowners liable for a prohibitive head-tax on their Asian passengers. Especially destructive of the security of the Chinese in their persons and property was the California Supreme Court’s 1854 decision that a state statute, which prohibited black, mulattos, or Indians from testifying in any suit involving a white, applied to Chinese as well because, as the chief justice put it, the “use of these terms must, by every sound construction, exclude every one who is not of white blood.” Under such a ruling, the Chinese could not give evidence against white attackers. The passage of the Fourteenth Amendment after the Civil War would render void the 1863 successor to this statute by extending to all persons the equal protection of the laws, but before then Sawyer dealt it a slighting blow.

Sawyer’s move towards a judicial career began in 1854 as a candidate for city attorney of San Francisco, nominated by the dying Whig Party. He simultaneously gained the support of the Know-Nothings, whose Citizen’s Reform Ticket, combining Whig and Republican candidates, swept the municipal election. The Californian Know-Nothings, who, unlike their eastern counterparts, were more anti-corruptionist than anti-foreign or anti-Catholic, considered Sawyer again at their state convention in August 1855 for a supreme court justice nomination, but instead the San Francisco branch of the party made him the candidate for judge of the Fourth District Court. He was unsuccessful. The
Know-Nothings, unable to appear any more reformist than the Democrats against whom they had arisen, especially when two of their state officials were impeached, declined as rapidly as they had appeared, leaving Saywer and other former Whigs to the Republican party. A fellow Republican, Governor Leland Stanford, offered Sawyer the judgeship of the Twelfth Circuit Court of California in 1862. A year later the Republican state convention successfully nominated him for a supreme court justiceship.

Since widespread, organized "anti-coolie" clubs did not appear until after 1869, Sawyer as associate and then chief justice heard few cases concerning Chinese civil rights. He did, however, manage to restrict the impact of a statute that specifically disqualified the Chinese from giving "evidence in favor or against any white person." In People vs. Awa the jury had convicted a Chinese man of manslaughter after the testimony of a fellow Chinese had been excluded from consideration on account of the statute.\textsuperscript{12} Sawyer laid down the premise that "this restriction upon the competency of a witness must be strictly construed in favor of life, liberty and public justice," and then went on to consider whether "the plaintiff — the State" was a white person. He thought not, and ordered a new trial at which the testimony in the man's defense must be included.\textsuperscript{13} Chief Justice Silas W. Sanderson concurred in the conclusion but emphasized that Sawyer's ruling in no way weakened the prohibition on Chinese testimony when individual whites were the plaintiffs. The decision had the odd effect of leaving whites free to abuse Chinese as long as no other whites witnessed the event, yet it relieved the Chinese from the burden of producing white witnesses in their defense when prosecuted by the state. Without contorting the language of the statute, the justices put non-whites one step closer to civil equality. Sawyer's version here of "strict construction" — a disposition to favor individual rights tempered by close inspection of the wording of the statute — would carry him through his federal career as well.

Sawyer's next move up the judicial ladder, his nomination by President Grant for judge of the United States Circuit Court for the Ninth Circuit in 1869, coincided with the completion of the transcontinental railroad. The railroad did not bring the economic prosperity that both its directors and the public expected, for it opened the West Coast markets to a flood of cheaper goods from the eastern part of the country. The resulting slump of the early 1870s raised the general level of unemployment just as the Chinese railroad builders were moving into the cities, especially San Francisco. The combination of the closed nature of the Chinese community and the xenophobic predisposition of white

\textsuperscript{12} People v. Awa, 27 Cal. 638 (1865). Statutes of California, chap. 70, sect. 1 (1863).
\textsuperscript{13} Ibid. at 639.
laborers made any cooperation for their mutual benefit impossible. White workers and mechanics organized themselves into anti-coolie clubs aimed at Chinese exclusion, while the unemployed gathered on empty sand lots to voice their frustration, and soon became known as sandlotters.\textsuperscript{14} Whites who owned small businesses, frightened by the ability of the Chinese to gather enough capital to strike out on their own, joined in the general outcry. By 1876 both major parties had added anti-Chinese clauses to their national platforms at the request of their Pacific Coast delegations.\textsuperscript{15} Anti-coolieism had gained a respectable following.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{image.jpg}
\caption{President Ulysses S. Grant's nomination of Lorenzo Sawyer to the circuit judgeship of the Ninth Judicial Circuit, dated December 8, 1869. (National Archives, Washington, D.C.)}
\end{figure}

\textsuperscript{14} Saxton demonstrates that it was the presence of the Chinese that provoked a strong labor movement among whites.

\textsuperscript{15} Saxton, \textit{The Indispensable Enemy}, supra note 5 at 23; Sandmeyer, \textit{The Anti-Chinese Movement in California}, supra note 2 at 46, 49.
Several events following the Civil War made possible the protection of the Chinese by the Ninth Circuit. On July 28, 1868 the Senate ratified the Burlingame Treaty with the Empire of China, which promised that the Chinese would enjoy the same privileges, immunities, and exemptions in respect to travel and residence that subjects of the most favored nations enjoyed.\(^\text{16}\) They were not, however, to presume that this welcome in any way included an opportunity to become citizens. The 41st Congress, despite the efforts of Senator Charles Sumner, continued the bar against naturalization by the Chinese when it revised the laws during that same year.\(^\text{17}\) In the meantime, however, Congress, controlled by northern Republicans who rightly feared that the southern states would oppress newly freed blacks back into slavery unless stopped, had approved the Fourteenth Amendment. The clause granting citizenship to all those born in the United States would have limited effect on the Chinese because the skewed sex ratio in favor of males meant that very few families had formed, but the clauses which used the term “person” — and not “citizen” — were of infinite aid. States were denied the power to deprive any person of “life, liberty, or property, without due process of law,” and they were obliged to extend to all persons within their jurisdictions “the equal protection of the laws.” The restriction on Chinese testimony under the California statute was thus voided, for the state no longer had the power to deny to any race or color a right that the white race freely exercised. All the members of the U.S. Circuit Court of the late nineteenth century used the Burlingame Treaty and the Fourteenth Amendment as barriers against legal persecution of the Chinese by local governments.\(^\text{18}\) A political lesson on federalism, drawn by Sawyer from the Civil War, was the third source for his civil rights jurisprudence.

Historians set on explaining the failure of the federal judiciary to use the Civil War amendments to ensure civil rights to blacks have often pointed to their enduring devotion to federalism, a dedication that Sawyer in no way shared.

---

\(^\text{16}\) Burlingame Treaty, 16 Stat. 739.

\(^\text{17}\) Sandmeyer, *The Anti-Chinese Movement in California*, supra note 2 at 81, cites *Cong. Glob.*, 41st Cong., 2nd Sess., 4275-4279, 5121-5177 for the debate. In 1878, Sawyer, confronted with “the first application made by a native Chinaman for naturalization,” examined the congressional debates and ruled that the application could not be accepted, it being clear that the congressmen had used the word “white” precisely in order to exclude the Chinese, *In re Ah Yup*, 1 F. Cas. 223 (C.C.D. Cal. 1878) [No. 104].

\(^\text{18}\) The Senate approved a supplemental treaty in 1880, 22 Stat. 826, which allowed the U.S. to “regulate” but not “prohibit” Chinese immigration.
The Civil War is generally acknowledged to have killed off the notion of state sovereignty and its auxiliaries, nullification and secession, without diminishing white America's concern for states' rights. Of course, no one denies that part of the hesitation to change the federal system stemmed from the fact that the chief beneficiaries would have been black, but few writers have been willing to let racism alone explain all. Radical Republicans willing to truly reconstruct the Union were few, because the doctrine of states' rights stood for a set of still-cherished American values: local control of local affairs, small-scale social experimentation, and responsible and effective government. Phillips S. Paludan has demonstrated that certain Jacksonian thinkers, confronted with the threat to order and stability that secession represented, preferred to re-institute the political system they had known before the war. The Jacksonian tradition of limited government assumed a prejudice-free society where nothing prevented a man from prospering except his own limitations. Once freed, the theory ran, able blacks would easily take their rightful place in the socio-economic system. Continued complaints of discrimination only provoked exasperation in men like Justice Bradley who informed the nation that at some point the black "ceases to be the special favorite of the laws..." Thus, when the post-war justices made distinctions between federal and state spheres of action in civil rights cases, they pursued an honorable and nearly unavoidable course. So much of the responsibility for chillingly unjust decisions has been placed at the door of federalism that Mark A. DeWolfe Howe called it "the concept, which, above all others, has served to incapacitate the nation's conscience.”

For Sawyer, however, the Civil War had destroyed federalism. His early conversion to Republicanism helped produce this less usual view of the conflict. Sawyer, not as a delegate, but out of sheer enthusiasm, attended the 1860 Republican Convention in Chicago.

21 Benno C. Schmidt, Jr. explains that principles of federalism hampered men such as Justice John M. Harlan and Justice William Strong who otherwise could be counted upon to act on their concern for civil rights in “Juries, Jurisdiction, and Race Discrimination: The Lost Promise of Strauder v. West Virginia,” 61 Texas Law Review 1411 (1983). Michael Les Benedict in “Preserving Federalism: Reconstruction and the Waite Court,” Supreme Court Review (1978) 39-79, defends such decisions on the more novel grounds that most writers have underestimated the Waite Court's respect for national power.
as a Lincoln supporter. However quickly other men retreated to the familiar comforts of states' rights after the Civil War, Sawyer had "stricken the word 'Federal' from [his] vocabulary" for he believed it "the parent of many heresies." He told H.H. Bancroft in an interview late in his life that he "would not find the word ['federal'] as applicable to the U.S., in any of my opinions or writings within the last twenty-five years...I use the word 'National' in its place." Having discarded the concept that most hobbled other judges, Sawyer could unhesitatingly restrain the attacks of white Californians on their neighbors of color.

In invoking the treaty and the amendment, Sawyer and the other judges in the circuit willingly followed the lead of their circuit justice, Stephen J. Field. Two cases decided authoritatively by Field formed the foundation of legal protection of the Chinese on the Pacific Coast. In re Ah Fong was a petition for habeas corpus brought in 1874 by a Chinese woman detained by state officials as "a lewd woman," and thus ineligible to land in California according to a state statute that prohibited the entrance of any steamer passengers who "are lunatic, idiotic, deaf, dumb, blind, crippled, or infirm, and not accompanied by any relatives able to support them, or lewd or abandoned women." Field acknowledged that under the police power a state had a right to protect itself against dangerous persons. Nonetheless, he condemned the statute in question as a violation of the Fourteenth Amendment because it discriminated against the class of immigrants who arrived by steamer as opposed to other means of transportation.

Although on its face the statute did not discriminate against the Chinese, it necessarily did so in practice, a fact upon which the state legislature had counted. Of all the aliens who came to the West, only the Chinese regularly arrived by steamer. Europeans came over the plains, British subjects traveled down by rail or

24 Sawyer Dictations, C-D 321:2, tentatively dated July 1890. Other federal judges apparently shared Sawyer's view, at least prior to the Supreme Court's rejection of it; see Robert J. Kaczorowski, The Politics of Judicial Interpretation: The Federal Courts, Department of Justice, and Civil Rights [New York, 1985].
25 Sawyer Dictations, C-D 321:2.
26 We should note here that the Chinese actively pursued legal remedies against discrimination. Charles J. McClain, Jr. emphasizes this in "The Chinese Struggle for Civil Rights in Nineteenth Century America: The First Phase, 1850-1870," 72 California Law Review 529-68 [1984]. The diplomatic and financial power of the Chinese ambassadorial delegation and the Six Companies of San Francisco, a group that contracted almost all the immigrant laborers, stood behind the poorer litigants.
27 In re Ah Fong, also known as the Twenty-One Chinese Prostitutes Case, 1 F. Cas. 213 (C.C.D.Cal. 1874) [No. 102]; Political Code of California, tit. 7, chap. 1, section 2953 (1872, 1874).
wagon from Canada, and Mexican nationals came overland from the south without having to pass inspection with state officials. The circuit justice handed the state government some doubtless unwanted advice on more effective and more constitutional ways to fight vice, then scoffed at the state’s “discriminating virtue,” which spied out Chinese prostitutes on shipboard yet tolerated unflinchingly the daily parade of Caucasians. Obviously, California had ulterior motives for this selective exercise of its police power. Field recognized the law as a product of “the very general feeling prevailing in this state against the Chinese” and advised the state of California to direct any further efforts at Chinese exclusion towards Congress, which alone had the power to annul the treaty.  

Ah Lung and her twenty compatriots were freed. Sawyer privately questioned Field’s judgment here, since he could see “no reason for distinguishing ‘moral’ from ‘physical pestilence,'” but he and District Judges Ogden Hoffman (Northern District of California) and Matthew P. Deady (Oregon) would all cite Ah Fong to back their own rulings striking down state harassment of the Chinese disguised as legitimate policing measures.

The other standard point of reference, perhaps more striking in its respect for Chinese culture, was Field’s decision in the *Queue Case* in 1879. The Chinese wore their hair long and braided down their backs and believed that to cut this queue was to endanger their chances in the afterlife. Realizing the spiritual anguish that the loss of the queue meant and hoping to squeeze a fine out of Chinese convicts by making a jail sentence intolerable, the city of San Francisco passed an ordinance, ostensibly a health regulation, that required all prisoners to have their hair cut to within an inch of their scalp. In a suit for damages by a Chinese prisoner so sheared, Field noted that, although the law on its face treated all prisoners alike, “the ordinance was intended only for the Chinese of San Francisco,” and constituted a “cruel and unusual

28 In re Ah Fong, F.Cas. 213, 217-18 [C.C.D.Cal. 1874] [No. 102]; in Chy Lung v. Freeman et al., 92 U.S. 275 (1875), the U.S. Supreme Court declared the statute unconstitutional after one of the original women challenged it directly.

29 Sawyer to Matthew Deady, 16 October 1874, Deady Collection, Oregon Historical Society, Portland, hereafter referred to as Deady Collection. Ogden Hoffman (1822-1893) served as district court judge in California from 1851; Matthew Paul Deady (1824-1893), U.S. District Judge for Oregon from 1864 until his death, is the subject of Ralph James Mooney’s “Matthew Deady and the Federal Judicial Response to Racism in the Early West,” 63 Oregon Law Review 561-637 (1984), in which Deady's similarly unusual efforts on behalf of Chinese litigants are thoroughly chronicled. Unlike Sawyer, however, Deady evolved to a non-racist position over time. In 1857, at the time of the Oregon constitutional convention, Deady was urging an exclusion of both blacks and Chinese from the state, 584.

30 Ho Ah Kow v. Nunan, 12 F. Cas. 252 [C.C.C.D.Cal. 1879] [No. 6546].
punishment" for them.\textsuperscript{31} Having inspected the measure, the circuit justice refused to believe that it had a real relation to either sanitation or discipline. Field struck down the law and found for the plaintiff.

Field’s decision in the \textit{Queue Case} authorized the judges of the Ninth Circuit officially to recognize the racism of the law-making bodies of California. The circuit justice considered it permissible to read the Board of Supervisors’ debates for “ascertaining the general object of the legislation proposed.”\textsuperscript{32} Instead of assuming that local government would obey the treaty and amendment, the Ninth Circuit was put on alert for signs of discrimination, a position warranted by the “public notoriety” of the board’s racist intentions. Wrote Field,

When we take our seats on the bench we are not struck with blindness, and forbidden to know as judges what we see as men; and where an ordinance, though general in its terms, only operates upon a special race, sect, or class, we may conclude that it was the intention of the body adopting it that it should only have such operation and treat it accordingly.\textsuperscript{33}

\textsuperscript{31} \textit{Ho Ah Kow v. Nunan}, supra note 30 at 255.
\textsuperscript{32} Ibid.
\textsuperscript{33} Ibid.
Considering the era in which Field wrote, and how the near future would witness decisions by a supreme court bench blinded to the fatal injustices perpetrated upon southern black citizens, the Queue Case was a remarkable if not startling decision in its sensitive weighing of something as singular as the sociological implications of the haircuts of Chinese prisoners. But for the judges of the Ninth Circuit, it became a guidepost, and for Sawyer, it was an encouragement to this predilection for justice without regard to color. A year after Field's decisions, Sawyer would announce his own contempt for ill-disguised harassments of the Chinese. He scathingly wrote that the judges were perfectly capable of perceiving

the crudities, not to say the absurdities, into which constitutional conventions and legislative bodies are liable to be betrayed by their anxiety and efforts to accomplish, by indirection and circumlocution, an unconstitutional purpose which they cannot effect by direct means.

Less elegant and less restrained than Field's, Sawyer's words indicated that the circuit judge would be more enthusiastic in striking down local statutes having discriminatory results.

SAWYER'S CHINESE DECISIONS: MOVEMENT TOWARDS THE UNACCEPTABLE

Although the Queue Case cast a pall over any local ordinances that might have a disproportionate effect on the Chinese because of their particular religious customs, Sawyer's decision in 1880 involving a state burial regulation demonstrated that the legitimacy of the police regulation, as judged by the federal bench, was as much at issue as the injuries inflicted on the Chinese. The similarities of the two cases were several. As with the wearing of

34 Field's contempt for black citizens and Reconstruction was complete: he voted with the majority against black litigants in all the major civil rights cases. For expressions of his hostility towards blacks, see Field's dissents in the jury discrimination cases, Ex parte Virginia 100 U.S. 339, 349 (1880) and Neal v. Delaware 196 U.S. 370, 398 (1881). For a condemnation of Reconstruction, see Stephen J. Field, Personal Reminiscences of Early Days in California with Other Sketches (1877; 1893) 190-209.

35 In re Ah Chong, 2 F. 733 (C.C.D.Cal. 1880); this decision voided an ordinance outlawing Chinese fishers, thus threatening an important export and food supply for the community; for this and other Ninth Circuit Chinese fishing cases, see Arthur F. McEvoy, The Fisherman's Problem: Ecology and Law in the California Fisheries, 1850-1980 (Cambridge, 1986) 75-76, 89-90, 112-14.

36 In re Wong Yung Quy, 2 F. 624 (C.C.D.Cal. 1880).
the long braid, the Chinese considered the disinterment of the dead for their shipping back to China essential to spiritual well-being. And again the petitioner challenged the law as a violation of the Fourteenth Amendment’s equal protection clause. “The fact that the Chinese exhume and transport to their own country the remains of all or nearly all their dead [amounting to more than ninety per cent of all such removals], while other aliens and citizens comparatively but rarely perform these acts,”37 necessarily meant that the burden of providing a special container and of paying the ten dollar fee fell far more often on the Chinese than on whites. And we may suspect, although Sawyer did not, that this fact drew the legislature’s eye to burial regulation. Certainly, it caught Sawyer’s attention, but he refused to assign it critical importance: “if the provisions of the act affect a larger number of Chinese than of any other class, it is not on account of any discriminations made by the law, but only because under their customs there is a much larger number of disinterments and removals by them than by others.”38

Of course, Field might have made an analogous statement about the haircut regulation, but what distinguished the burial case from the Queue Case was Sawyer’s belief that he was dealing with a legitimate, public health regulation, aimed at a real problem, which happened to annoy the Chinese, whereas the earlier case involved a pointless, so-called sanitary measure that had no other purpose than of intentionally harassing them. In addition to being sanctioned by history,39 “the exhumation and removal of the dead is not a matter of public indifference, harmless in itself, like the style of wearing the hair, as in the Queue Case; but it affects the public health, and its regulation is, like the regulation of slaughterhouses and other noxious pursuits, strictly within the police powers of the state.”40 Sawyer had looked at “the language of the act,” “the surrounding circumstances,” and “the nature of the subject-matter upon which the state operates” and found nothing to indicate that the legislature was imposing a burden on commerce with the Chinese or on the right of the Chinese to practice their religion.41 That the defendant, Wong Yung Quy, lost

37 In re Wong Yung Quy, supra note 36 at 628.
38 Ibid. at 632.
39 Ibid. at 628: “The matter of the burial and exhumation of the dead, with a view to sanitary objects, has in all times and among all civilized nations been regarded as a proper subject of local regulation.”
40 Ibid. at 629. Here Sawyer cited the famous Slaughter-House Cases, 83 U.S. 36 (1873) in which the Supreme Court, with Field and others dissenting, declared itself unwilling to question a state legislature’s creation of a butchering monopoly in the name of public health. The majority balked at the kind of post-war nationalism espoused by Sawyer. See note 116 infra.
41 Ibid.
his case was of less significance than Sawyer's examination of the surrounding circumstances. The circuit judge in no way assumed that he should leave the state legislators to their business, and refrain from investigating the wisdom of their endeavors. According to Sawyer, local governments retained their traditional police power after the Civil War, but in cases where personal rights under the Fourteenth Amendment were at issue, federal judges could pass on the propriety of their regulations. History and sanitation policy had to vindicate local government actions, especially when the effect told against the racial minority. In the most important set of police power cases in the Ninth Circuit, the laundry cases, Sawyer exhibited this same wariness and grew confused when the Supreme Court's standards for judging regulation differed from his own.

The San Francisco Board of Supervisors often made laundries, an entrepreneurial specialty of the Chinese, a target of police regulations, thus provoking suits that called upon various members of the Ninth Circuit to pass judgment as to an ordinance's validity. In the first laundry case, In re Quong Woo, Justice Field, with Sawyer sitting in tacit agreement, struck down an ordinance requiring the owner of a laundry to obtain the signatures of twelve neighbors before petitioning the board for permission to operate. Condemning this delegation of authority as improper, Field also dismissed as "absurd" the likelihood of a laundry's falling under the police power. The Chinese had a right to labor under the Fourteenth Amendment, a right that the board could not infringe on through spurious police regulations. In two later cases decided at the Supreme Court level, however, Field found against the Chinese plaintiffs when the board prohibited laundries from operating at night. In Barbier v. Connolly, the plaintiff argued that the ordinance "discriminated between the class of laborers engaged in the laundry business" by unreasonably restricting that class's right to labor and acquire property, while the plaintiff in Soon Hing v. Crowley sketched San Francisco's history of racial hatred to demonstrate "that owing to that feeling, and not otherwise,...the supervisors passed the ordinance in question." Field brusquely dismissed the plaintiffs' complaints and deemed the ordinance "purely a police regulation," doubtless aimed at the threat that night fires posed to the city. While in this instance the circuit justice assumed the reasonableness of the law, he emphasized that such a judgment was not a prerogative of

42 In re Quong Woo, 13 F. 229 (C.C.D.Cal. 1882).
43 Ibid. at 231.
44 Barbier v. Connolly, 113 U.S. 27, 29 (1885).
45 Soon Hing v. Crowley, 113 U.S. 703, 706 (1885).
46 Barbier, supra note 44 at 30.
the federal judiciary in passing on the limits of a state's police power. In this, Field was quite unlike Sawyer, who, in light of the board's penchant for discriminatory legislation, felt bound to judge the necessity of city ordinances affecting the Chinese.

Although Field could separate mentally the two facts — the abundance of laundry regulation and the typicality of that business's being managed by Chinese — Sawyer could not. Recognizing that California's racist municipalities regularly resorted to legal subterfuge, Sawyer was unwilling to grant an ordinance validity unless it seemed necessary. Faced with yet another laundry ordinance in early 1886, but hesitant to rule because Field's decisions in *Barbier* and *Soon Hing* carried the authority of the Supreme Court, Sawyer grew exasperated. At issue in *In re Wo Lee* was the San Francisco board's power to decree that laundries in wooden buildings needed permission to operate, whereas those constructed of brick did not. In practice, Sawyer wrote, "all Chinese applications are in fact denied, and those of Caucasians granted," which was evidence enough for him that in its operation, if not on its face, the law discriminated. Sawyer easily deduced that

the necessary tendancy, if not the specific purpose, of this ordinance, and of enforcing it in the manner indicated in the record, is to drive out of business all the numerous small laundries, especially those owned by the Chinese, and give a monopoly of the business to the large institutions established and carried on by means of large associated Caucasian capital.

Ordinarily, Sawyer would not have hesitated to invalidate the ordinance and free the prisoner, since the board was obviously favoring the property rights of one race at the expense of the other. The Supreme Court of California, however, had ruled the ordinance constitutional in an identical case and had cited Field's decisions in *Barbier* and *Soon Hing* in support. Confessing himself rather at a loss for a proper decision, more so because

47 With references to these cases and others, both Carl Swisher, gently, and Robert Green McCloskey, with no holds barred, characterized Field's line of Chinese civil rights decisions as an erratic one due to Field's political ambitions; Swisher, Stephen F. Field: Craftsman of the Law (Washington, 1930), 226-39; McCloskey, American Conservatism in the Age of Enterprise, 1865-1910, (1951; reprint ed., New York, 1964) 121-23. Although Sawyer was well aware of Field's presidential ambitions, his surviving letters to Deady contain no such accusations.

48 *In re Wo Lee*, 26 F. 471 (C.C.D.Cal. 1886).

49 Ibid. at 473-74.

50 Ibid. at 475.

51 *In re Yick Wo*, 68 Cal. 294 (1886).
District Judge Ogden Hoffman, also sitting, had concurred in one of those earlier decisions, Sawyer discharged the writ and ordered Wo Lee remanded. He politely but earnestly voiced his hope that the United States Supreme Court would resolve the dilemma on appeal as soon as possible.

Sawyer wrote modestly in his opinion that he and Hoffman had "no reason to find fault with anything decided in" Field's Supreme Court laundry decisions, then allowed that "it does not appear to us that these cases go far enough to cover the points now raised." But Sawyer was confused and disgusted by the incoherence, as he viewed it, of the Court's line of decisions and complained in private to his colleague Matthew Deady of the quandary in which it placed him. The circuit judge apparently could no longer perceive a line as to what was an allowable regulation of laundries. For Sawyer, whether a delegation of authority, a night-labor regulation, or licensing were at issue, the most salient fact in each case was that local authorities were attempting to hinder the Chinese in their right to labor. Thus, any laundry regulations must pass the test of necessity. Wo Lee was obviously the victim of administrative discrimination by the San Francisco Board of Supervisors, but hadn't Soon Hing, too, suffered from the board's persistent interest in laundries? Yet Field had turned down his call for relief. To Sawyer's eyes, the line from Quong Woo to Soon Hing and Barbier to Wo Lee should have been a continuous one of favorable results for the Chinese. But Field's two middle decisions, which did not call upon the board to defend its actions as necessary, broke the chain. Sawyer "was disposed to think the ordinance [in Wo Lee] void," he wrote Deady, and wondered "whether I should have told our State Supreme Court to go to Sheol." But the circuit judge had no desire to fight with the state courts when he was "by no means certain" which of them the Supreme Court would choose to back. Sawyer explained the course that he felt "called upon to pursue," in bitter terms: "if the Supreme Court will dodge great questions, and not stand up to their own doctrines, I think the thing to do is to leave them to work out the final results for themselves."

The Court did just that in Yick Wo v. Hopkins with Justice Stanley Matthews delivering the opinion.

Matthews, unlike Sawyer, easily distinguished Yick Wo from the two cases validating the prohibition on night labor. In the earlier cases, all proprietors — white and Chinese — had to conform to the hours regulation, therefore it was not

---

52 In re Wo Lee, supra note 48 at 475.
53 Sawyer to Deady, February 6, 1886, Deady Collection.
54 Sawyer to Deady, February 11, 1886, Deady Collection.
55 Sawyer to Deady, February 6, 1886, Deady Collection.
discriminatory legislation. But in Yick Wo's case, the board had obviously distinguished in practice between Chinese occupying wooden buildings and Caucasians in wooden buildings; when it came time to issue permits only one of the Chinese received one, whereas all of the whites did. Unwilling to chalk up the statistical skew to any innate ineptitude that disqualified the Chinese from running a safe laundry, Matthews declared that the result could be nothing but proof of the board's racial bias. The justice echoed Sawyer's concerns when he declared that the Court would not tolerate a state wielding unaccountable power behind the face of a blandly worded ordinance:

> Though the law itself be fair on its face and impartial in its appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution.57

Here was the strong stand against substantive racial discrimination that Sawyer had hoped for, but in yet another laundry regulation decision he revealed a continuing preference for his blanket condemnation of laundry ordinances.

In a short and confident decision in 1887, Sawyer invalidated an ordinance that simply banned laundries as nuisances from Napa County by citing "the principles authoritatively established by the Supreme Court of the United States in Yick Wo v. Hopkins.\(^8\)" Although the petitioner was of Chinese origin, allegations of racial discrimination — the crux of the Yick Wo decision — played no part here. Sawyer instead condemned "the arbitrary declaration" of laundries to be nuisances as a confiscation of property and a denial of due process of law. The ordinance violated the Fourteenth Amendment's equal protection clause as well by depriving the laundry owner of his right to labor. Sawyer did not believe laundries to be nuisances and refused to let the county treat them as such. The circuit judge had again reverted to the notion, born earlier of the tendency of the Chinese to own laundries and of local government to regulate them, that an exercise of the police power must pass muster with the federal courts. Yet he tacked on an explanatory note acknowledging the correctness of Field's troublesome night-labor cases. Sawyer had to accept that California municipalities could hedge around a business commonly run by the Chinese with regulations, yet he

---

58 In re Sam Kee, 31 F. 680 [C.C.N.D.Cal. 1887].
would prevent them from destroying such a business outright. In dealing with questions of immigration, on the other hand, Sawyer had no control over the large question of whether it would be allowed at all [that was in the hands of Congress], but he could make some marginal accommodations to those petitioning for re-entry.

Coinciding with the various laundry cases were Ninth Circuit rulings as to the exact application of a series of congressional acts limiting Chinese immigration. Here again, Sawyer, ever scrupulous of the minority's civil rights, found himself at odds with his circuit justice. Unlike the laundry cases, however, the Ninth Circuit's immediate antagonists in immigration decisions were federal authorities. Although the lobbying effort of white Californians was responsible for the exclusionary legislation, it
was with "the jealous custom house officers," as Sawyer described
them, that the judges had to deal.59 The Exclusion Acts of 1882 and
1884 brought before the circuit court the cases of thousands of
Chinese detained by port and immigration authorities.60 The court
had a simple enough time applying the specific dictates of
Congress in denying entry to laborers and welcoming performers,
academics, and, merchants and their families to the United
States.61 Nor did the Ninth Circuit members argue over the
decisions which sorted out Chinese sailors according to the
nationality of the vessel that carried them.62 But other immigrants
fell between the cracks in the congressional language. In these
cases, Sawyer's "strict construction" — faithfulness to the statute
coupled with a strong concern for individual rights — clashed
with Field's more stringent rulings.

Cheen Heong (or Chew Heong) brought a habeas corpus petition
to gain re-entry despite lack of the proper credentials. In fact, he
argued for re-entry rights on the grounds that he had never had
the chance to get the necessary certificate.63 Cheen Heong had
lived in the United States but then departed for the kingdom of
Hawaii before the first Exclusion Act went into effect in 1882.
Thus, he could not have received the certificate that Chinese
aliens [upon penalty of deportation] were required to obtain under
both the 1882 and 1884 acts. To further complicate matters, under
the 1884 act, Congress forebade the courts to accept parol
evidence when no certificate could be produced. In 1885 the
immigration authorities refused to allow Cheen Heong back into
the country.

In finding against the petitioner, Field avowed that it was with
"much diffidence" that he overruled the opinions of Sawyer, Sabin,
and Hoffman, who were also sitting on the case.64 According to the

59 Sawyer complained to Deady that "the jealous custom house officers... reject
those people without rhyme or reason," Sawyer to Deady May 25, 1887, Deady
Collection.
60 Exclusion Act of 1882, 22 Stat. 58; Exclusion Act of 1884, 23 Stat. 115; in In re
Chow Goo Pooi, 25 F. 77, 78 [C.C.D.Cal. 1884] Hoffman follows up his decision
with a plea for Congress to put the responsibility of re-entry inquiries on
something besides the federal courts, as "it will be impossible for the courts to
fulfill their ordinary functions," because of the backlog of hundreds of Chinese
re-entry petitions.
61 In re Low Yam Chow, 13 F. 605 [C.C.D.Cal. 1882] [Field and Hoffman]; In re Ho
King, 14 F. 724 [D.C.D.Ore. 1883] [Deady];
62 In re Ah Sing or Case of the Chinese Cabin Waiter, 13 F. 286 [C.C.D.Cal. 1882]
[Field]; In re Ah Tie, 13 F. 291 [C.C.D.Cal. 1882] [Field and Sawyer]; In re George
Moncan, 14 F. 44 [C.C.D.Ore. 1882] [Deady].
63 In re Cheen Heong or Case of Former Residence by Chinese Laborer, 21 F. 791
[C.C.D.Cal. 1884].
64 Ibid. at 791. George M. Sabin [1833-1890] was U.S. District Judge, District of
Nevada from 1882 to 1890.
circuit justice, the act of 1882 "necessarily excludes in its operation those who left the country before the act took effect," and any hardship that the act might work was Congress's responsibility to correct. The 1884 act only confirmed this construction, he wrote, in making the certificate the only form of admissible evidence. Unlike Field, Sawyer and the others refused to believe that such a treatment of former-resident aliens could have been intended by Congress, or that it should now be countenanced by the judiciary. To Sawyer's mind, "the treaty and the act, must, if possible, be so construed that they can stand together." This meant paying special attention to that clause of the supplemental treaty of 1880, which stated that "the limitation or suspension [of Chinese immigration] shall be reasonable" [emphasis Sawyer's] and it was unreasonable to demand those aliens who had departed before the 1882 deadline to produce a certificate under either act. It was an impossible requirement, therefore it should be waived. Sawyer was not afraid that such a construction sacrificed congressional intent to judicial nicety: immigrant departures had exceeded arrivals over the last 28 months. The circuit judge noted with satisfaction that under his interpretation, unlike under Field's, "the plighted faith of the nation may be kept without impairing the effectiveness and satisfactory operation of the law." Another facet of Sawyer's nationalism glimmers here; a national government as powerful as he envisioned had to behave with commensurate responsibility.

To Field's dismay and to Sawyer's great personal satisfaction, the Supreme Court proved itself as concerned with Cheen Heong's claim to the country's favors as the subordinate members of the circuit court. Associate Justice Marshall Harlan's opinion supported Sawyer's interpretation, while Field now countered with a dissent. Field dismissed Sawyer's great concern for the nation's honor, then denied that the courts had any right to question the power of Congress to pass legislation in conflict with a treaty. Field ended by warning that the Court's decision would result in a

65 In re Cheen Heong, supra note 63 at 793.
66 Ibid. at 795.
67 Ibid; Sawyer, in In re Leong Yick Dew, 19 F. 490 (C.C.D.Cal. 1884), had made an analogous interpretation of the 1882 act.
68 In re Cheen Heong, supra note 63 at 808.
69 Chew Heong v. United States, 112 U.S. 537 [1884]; Sawyer took pleasure in his vindication: "...it is some consolation, after all the lying, abuse, threatening of impeachment as to our construction of the Chinese Restriction Act, and the grand glorification of Brother Field for coming out here, and so early, promptly, and thoroughly sitting down on us and setting us right on that subject, to find that we are not so widely out of our senses after all," Sawyer to Deady, 22 December 1884, Deady Collection.
70 Field admitted this to be a reversal of his previous position; he would stand by this change in the Chinese Exclusion Case, 130 U.S. 581 [1889].
renewal of "all the bitterness which has heretofore existed on the Pacific Coast on the subject of the immigration of Chinese laborers..." The justice had come to share the views of the anti-ciookie clubs: he condemned the Chinese laborers for "they interfered in many ways with the business and industries of the State." Sawyer never viewed the Chinese as an economic blight, but his concern for their fair treatment hung on more than their cheap labor. He clashed with the circuit justice over a second immigration case where nothing more was at stake than the comfort of those destined for deportation.

For *In re Ah Moy* or *Case of the Chinese Wife*, Sawyer agreed with Field that the wife of a resident alien laborer had no claim to free entry under the congressional statutes, but the two disagreed over what the Ninth Circuit might do for her while she waited for a steamer back to China. Field's short and adamant statement denied that he had the authority to free the women on bail; she would have to wait in jail for several weeks for a China-bound steamer. Sawyer protested, supported by the district judges, that "the petitioner is in the control of the court" and that they might commit her to bail as easily as they might commit her to the custody of marshal. Ever vigilant of the fate of Chinese litigants at the hands of the American legal system, Sawyer thought "it would be a great hardship, not to say a gross violation of her personal rights, to refuse [her bail] upon security satisfactory to the court." Sawyer yielded to Field's judgment, but indicated that he would wait upon the Supreme Court for a final resolution. He hoped that the highest bench would agree that although Ah Moy was shut out legally by statutory order, she deserved better than jail while awaiting deportation.

Sawyer informed Deady that he had "written in earnest protest" to the Supreme Court and had "intimated that we [the inferior judges of the circuit] had some rights and the Chinese people had some" too, but he feared the Court would dismiss the case on the grounds that the woman had been deported and no longer needed bail. Other Chinese denied entry would face the same plight if Field's ruling were allowed to stand; all of them would sit in jail long enough for a steamer to arrive but not long enough for their cases to make their way over Field's head to the Supreme Court.

71 *Chew Heong*, supra note 69 at 578.
72 Ibid. at 565.
73 The question of entry was decided in *In re Ah Moy*, 21 F. 785 [C.C.D. Cal. 1884] [Field, Sawyer concurring]; that of bail debated several days later in *In re Ah Moy*, 21 F. 808 [C.C.D. Cal. 1884] [Field; Sawyer, Hoffman and Sabin dissenting].
74 *In re Ah Moy*, 21 F. 808, 809 [C.C.D. Cal. 1884].
75 Ibid. at 811.
76 Sawyer to Deady, November 9, 1884, Deady Collection.
Indeed, Field, who had recommended the sending of affidavits testifying to the woman's deportation, prevailed when the Court declined to rule. Sawyer had predicted this outcome and had warned Deady that it would produce "some hugely disgruntled judges in this part of the Circuit." When Sawyer had the option of easing the burdens imposed upon the ever-suffering Chinese, he thought he should be allowed to take it. When news of the Court's inaction reached him, Sawyer bowed to their authority, but confided to Deady, "...I don't think it was the square thing to do."

Congress brought Sawyer's careful yet limited exertions on behalf of Chinese aliens to an end with the passage of the Exclusion Act of 1888. No judicial construction could authorize further re-entry when the new statute covered all possible situations:

That from and after the passage of this act, it shall be unlawful for any Chinese laborer who shall at any time heretofore have been, or who may now or hereafter be, as resident within the United States, and who shall have departed, or shall depart, therefrom, and shall not have returned before the passage of this act, to return to, or remain in, the United States.

Certificates issued under earlier statutes no longer carried a right to entry. From now on the flow of Chinese laborers could take only one direction: out. Sawyer, in a case decided late that year, acknowledged that "this language is clear and exact, and is susceptible of but one construction:" it banned all further re-entry. The judges of the Ninth Circuit may not have liked the measure (in fact, Deady condemned it publicly as "so hard and unjust" as could "only be accounted for by the fact that a presidential election is pending, in which each political party is trying to outbid the other for the 'sand lot' vote"), but they were bound by their oaths to apply it. In a sort of judicial adieu to a debate now definitively closed by congressional action, Sawyer defended his line of decisions on re-entry as both "right in law" and "right in fact."
He characterized the Ninth Circuit's history of decisions in heroic terms: "We have, heretofore, found it our duty, however unpleasant, at times, to maintain, fearlessly, and steadily, the rights of Chinese laborers...." He had never consciously distorted the statutary language and he would not do so now: "as we faithfully enforced the laws, as we found them, when they were in favor of the Chinese laborers, we deem it equally, our duty to enforce them in all their parts, now that they are unfavorable to them."\(^{85}\)

As Sawyer intimated in his defense of the Ninth Circuit's rulings in favor of Chinese civil rights, the judges had withstood the "unpleasant" attacks of the white public and press. Sawyer had at one point tried to sway the San Francisco "Chronical whelps" to a friendlier view, but gave up, lamenting that "decent men have no protection against such calumnies."\(^{86}\) He characterized the "usual result" following one re-entry decision as "unmitigated lying as to what we do, and a torrent of abuse founded on the lying."\(^{87}\) Although the circuit judge at one point counseled Deady that he was "disposed to think the best course is to pay no attention to it," he and the others sometimes felt called upon to defend themselves publicly.\(^{88}\) That Sawyer had to endure the fury of laboring whites and the newspapers that catered to them comes as no surprise, but that the *American Law Review*, perhaps the country's leading legal journal of the time, would attack him "savagely" (as Sawyer put it), seems strange until we appreciate how the Ninth Circuit's close inspection of local laws necessarily resulted in a controversial expansion of federal judicial power.\(^{89}\)

Although legal progressive Seymour D. Thompson, editor of the *American Law Review*, spent the 1890s battling the federal judiciary over what he saw as its undue concern for private property rights, during the 1880s Thompson tried to correct the Ninth Circuit's zealous supervision of state and municipal

\(^{85}\) *In re Chae Chan Ping*, supra note 84 at 436.

\(^{86}\) Sawyer to Deady, November 4, 1876, Deady Collection.

\(^{87}\) Sawyer to Deady, August 9, 1884, Deady Collection.

\(^{88}\) Sawyer to Deady, January 22, 1877, Deady Collection; see, for example, Hoffman's *In re Tung Yeong*, 19 F. 184 (D.C.D.Cal. 1884) in which he complains that "the various cases and the rulings of the court have been imperfectly reported by the press..." Hoffman ended this decision with a tally of arrivals and departures to show that the latter outnumber the former as Congress desired.

\(^{89}\) Sawyer to Deady, May 6, 1884, Deady Collection. The American Bar Association at its 1884 meeting apparently registered official disapproval of the Ninth Circuit's activities as well. See the *Laundry License Case* or *In re Wan Yin*, 22 F. 701, 705 (D.C.D. Ore. 1885), where Deady also makes the only reference I've found to the similarity between the Pacific Coast and the South; he argues that, without the actions of the lesser federal judges, the due process clause of the Fourteenth Amendment, "That was plainly intended as a bulwark against local oppression and tyranny, as well 'up north' as 'down south,' would be a dead letter."
ordinances.\textsuperscript{90} Indifferent to the racial background against which Sawyer and others had issued writs of habeas corpus, Thompson argued correctly that "these inferior Federal courts lift themselves out of the category of courts co-ordinate with those of the states, and take upon themselves the exercise of a superintending jurisdiction [emphasis his] over the State tribunals."\textsuperscript{91} While he cited decisions that knocked down California laws inspired by sheer race prejudice, Thompson accused the Ninth Circuit of having "unlocked the penitentiaries of the States,"\textsuperscript{92} exercised the power and authority of passing finally and conclusively upon the validity of State laws, and even of the ordinances of State constitutions...\textsuperscript{93} Aware that unconstitutional racial bias often inspired local legislation affecting the Chinese, Sawyer and the other members of the Ninth Circuit thought it proper to bring prisoners speedily out of the hands of local authorities and into the circuit court where both prisoner and local law could be inspected. They issued writs of habeas corpus to accomplish this. In so acting, Sawyer improved the legal position of the Chinese, but he also tilted the balance of state-national relations in a way that Thompson, and the Supreme Court, would not tolerate.

Moving outwards from their solicitude for a racial minority, the circuit and district judges spread their authority like circles disturbing the surface of a pool. If race hostility threatened federal promises of equal protection, Sawyer felt called upon to act boldly as a representative of the national government. When Deady passed on a letter from the governor of Oregon criticizing a

\textsuperscript{90} Seymour D. Thompson (1842-1904) was editor of the Central Law Journal from 1874 to 1878, chief editor of the American Law Review from 1883 until death, and a judge of the St. Louis court of appeals from 1880-1892. He is a hero of sorts in Arnold Paul's Conservative Crisis and the Rule of Law: Attitudes of Bar and Bench, 1887-1895 (Ithaca, 1960), which argues on page two that "the judiciary emerged in the mid-1890s as the principal bulwark of conservative defense" of private property. Justice Field, of course, was one of Thompson's opponents in this fight.

\textsuperscript{91} Seymour D. Thompson, "Abuses of the Writ of Habeas Corpus," 18 American Law Review 20 (1884). Thompson suspected that this forwardness on the part of the federal circuits was a leftover from the Civil War and Reconstruction, certainly true in Sawyer's case.

\textsuperscript{92} Thompson cited In re Wong Yung Quy, 2 F. 624 [C.C.D.Cal. 1880] [Sawyer], In re Ah Chong, 2 F. 733 [C.C.D.Cal. 1880] [Sawyer], and two other cases not from the Ninth Circuit.

\textsuperscript{93} Seymour D. Thompson, supra note 91 at 21-22. Thompson here cites Parrott's Chinese Case, 1 F. 481 [C.C.D.Cal. 1880] [Sawyer and Hoffman]. The sentence continues, "...and we have recently seen the extraordinary spectacle of a judgment of the Supreme Court of a State subjected, by means of the writ of habeas corpus, to re-examination before a Federal district judge, not indeed in respect of its merits, but in respect of the question whether the court which rendered it was a court at all." He also cites In re Ah Lee, 5 F. 899 [D.C.D.Ore. 1880] [Deady].
Chinese decision, Sawyer drew himself up to his full dignity and complained of the governor in turn:

He seems to think it presumptuous of a judge of the United States Courts to perform the duties imposed upon him by the Constitution and laws of the United States, and examine into the question... Whether this great state of Oregon...has in any way transcended its authority as a member of this Union and in any way in any particular violated the Constitution and laws of the United States to which it is subordinated.94

The governor's attitude rather reminded Sawyer of secession. Local officials and even federal executive authorities went down in the estimation of the Ninth Circuit and soon the judges were looking over legal matters where the race of those involved was not even at issue. Examinations of state police regulations and supervision of federal custom authorities led in turn to overseeing the state executive's extradition power in instances when the citizenship of the prisoner was not a factor.95 Sawyer and Deady, in their enthusiasm for national powers, even managed to commit some minor legal heresies involving bridges over navigable waters.96 Although Sawyer's small opinion of state authority went beyond instances of racially motivated legislation, we find the clearest example of the clash between Sawyer's version of federal judicial powers and the Supreme Court's in a civil rights case.

94 Sawyer to Deady, May 15, 1880, Deady Collection. The governor of Oregon in 1880 was Democrat William W. Thayer.

95 See Deady's decisions in In re Ah Lee, 5 F. 899 (D.C.D.Ore. 1880) and In re Doo Woon, 18 F. 898 (D.C.D.Ore. 1883). Both are complained of in "Federal Interference with State Process of Extradition" 18 American Law Review, 136 [1884]: "the Federal judges in the Ninth Circuit seem to be steadily moving forward in a policy which must ultimately result in reducing the States to... a relation to the Federal government... similar to that which a county bears to the State." The Review especially objected to In re Robb, 19 F. 26 (C.C.D.Cal. 1884) where Sawyer announced that federal courts had sole jurisdiction over the issuing of habeas corpus writs in instances of extradition because the U.S. Constitution recognized the responsibility of state executives in extradition matters. The Albany Law Journal similarly criticized Sawyer's decision. "Extradition In Re Robb," 29 Albany Law Journal 206-10 [1884]. The Supreme Court rebuked the circuit judge in Robb v. Connolly, 4 U.S. 544 (1884). Sawyer, in turn, was both appalled and mystified by the Supreme Court's decision, but recognized that "it is now settled that we judges on this coast have been 'elevating our horns' a little too high of late and we must take them down," Sawyer to Deady, May 21, 1884, Deady Collection.

96 In Wallamet Iron Bridge Co. v. Hatch, 19 F. 347 (C.C.D.Ore. 1884), Deady declared that an act admitting a state into the Union was tantamount to congressional action putting navigable rivers wholly within the state under federal control. This got around the longstanding constitutional principle that such rivers were under state control until Congress said otherwise by passing a specific statute in
When the *American Law Review* protested that "the law of the Ninth Circuit" resulted in "an unwarrantable enlargement of Federal jurisdiction," the anonymous writer was most worried that "the Federal constitution is being gradually changed by a force which is entirely irresponsible to the people..." Infused with sympathy for the Chinese, founded in the belief that the post-war constitutional amendments authorized federal courts to act freely in behalf of individual rights, Sawyer's jurisprudence had breached the constitutional limits of the late nineteenth century's dominant version of state-national relations. Supreme court review had sometimes arrested directly the circuit judge's effort to execute his vision of post-war nationalism; indirectly, its line of rulings disfavoring black litigants ran a course distinctly at odds with the Chinese circuit decisions. While Sawyer was keeping an eye out for ways to use the power of the federal government to protect a racial minority, the Supreme Court was gradually restricting or rejecting the post-war federal statutes that Republicans had intended to end white oppression and terrorism in the South. While Sawyer was rousing the indignation of the white public of the Pacific Coast with his ubiquitous writs of *habeas corpus*, the Supreme Court was mapping out all the legal areas in the South into which the federal government must not venture. The *American Law Review* writer was as correct in the notion that the Ninth Circuit had exceeded the dictates of precedent as in the prediction that "this process of sapping and mining... will be stopped." For once, in the case *Baldwin v. Franks*, Sawyer's reasoning on civil rights ran smack against that of the Supreme Court, when the superior court had to bar the circuit judge from doing for Chinese aliens what it had refused to do for black citizens.

In a move that caught the attention of "gubernatorial candidates, politicians, demagogues, Sandlotters, political and

---

reference to the river in question. Sawyer followed Deady's reading of law in *Cardwell v. American River Bridge Co.*, 19 F. 562 (C.C.D.Cal. 1884), in reference to the act admitting California into the Union. Field put an end to all this when Sawyer's decision came before him on a bill in equity, *Cardwell v. American Bridge Co.*, 113 U.S. 205 (1885). Field's decision provoked Sawyer into lamenting that "...we are rapidly lapsing into states' rights again." Sawyer to Deady, January 20, 1885, Deady Collection.


Ibid.

99 In *re Baldwin*, 27 F. 187 (C.C.D.Cal. 1886); for a minute detailing of the procedural history of this case, see Charles J. McClain Jr.'s "The Chinese struggle for Civil Rights in Nineteenth Century America: The Unusual Case of Baldwin v. Franks," *Law and History Review* 3 (1985) 349-73; McClain's recurring theme is that the organized Chinese community tried to protect itself through both legal and diplomatic channels, a fact that the abundance of litigation readily supports.
social tramps etc," Sawyer issued a warrant for the arrest of the leader of a mob that had burned the homes of Chinese and forced their inhabitants onto a steamer. Sawyer invoked section 5519 of the Revised Statutes, which made it a federal offense for "two or more persons in any State or Territory [to] conspire,...for the purpose of depriving...any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws...." Yet he worried that the previous decisions of the Supreme Court, reproving Congress "for casting too wide a net" in trying to protect civil rights, would jeopardize his own attempt at protecting the Chinese. The circuit judge was well aware that the Court had declared the statute unconstitutional several years before in U.S. v. Harris, "so far as it applies to citizens of the United States within a state," but he argued that it might still apply to aliens. The Supreme Court had specifically ruled Section 5519 inappropriate legislation for the enforcement of the Fourteenth Amendment because the statute punished the actions of private individuals whereas the amendment spoke in terms of "No State shall..." The postwar amendments authorized the federal government to punish state action that denied civil rights, but did not give it the power to punish individual action inspired by race hatred. Attacks on persons trying to exercise their rights could then only be prosecuted under state law, which meant that in the South there would be little prosecution at all. Sawyer must have expected as little protective action on the part of Pacific Coast state governments, for he tried to bypass the Fourteenth Amendment and Harris by making the legislation appropriate as an enforcement of the Treaty of 1880, which supplemented the earlier Burlingame Treaty. Since the Senate had the power to enact treaties and, in them, to grant aliens the protection of the federal government, it followed that Congress had the "power of protecting the rights granted...against hostile local prejudices..." What good was the grant, and how supreme was the federal government? Sawyer saw the absurdity of his position in the light of Harris, but could live with it: "if this puts the Chinaman...in a

100 Sawyer to Deady, April 2, 1886, Deady Collection.
102 Sawyer to Deady, April 2, 1886, Deady Collection; for Judge Deady's reasoning on the applicability of the various federal statutes and his condemnation of the violence, see In re Impaneling and Instructing the Grand Jury, 26 F. 749 [D.C.D.Ore. 1886] given just a day before Sawyer's ruling. The two judges debated which statutes would be best to use; Sawyer to Deady, telegram of March 31, 1886, letter April 2, 1886, Deady Collection.
103 U.S. v. Harris, 106 U.S. 629 [1883].
105 In re Baldwin, 27 F. 187, 189 [C.C.D.Cal. 1886].
better position than the citizen, so be it." District Judge George Sabin (Nevada) was a bit more worried at the paradox and dissented, leaving Sawyer alone to anxiously await the Supreme Court's ruling on his reading of national power.

In *Baldwin v. Franks* the majority of justices agreed that Congress theoretically possessed the power "to provide for the punishment of persons guilty of depriving Chinese subjects of any of the rights, privileges, immunities, or exemptions guaranteed them by the treaty," but they denied that any of the possible enforcement statutes were either applicable or constitutional.

Citing exactly those black civil rights cases that had so worried Sawyer, the Court rejected his view that Section 5519 could remain constitutional in reference to aliens, if not to citizens. It found grounds as well for rejecting the applicability of the statutes under which other charges had been brought; Section 5508 spoke of conspiracies to deny rights and privileges to "citizens" only, while Section 5336, which punished conspiracies to overthrow the United States government or hinder the execution of its laws, had nothing to do with Baldwin, who had harassed Chinese aliens and not U.S. marshals.

There were two dissents. One came from Justice Harlan, who had so often protested alone that the Court rendered the federal government powerless to protect its black citizens through its excessively narrow interpretations of the postwar amendments. Joining him in a separate dissent was Justice Field, who argued that Section 5336 was applicable because the Chinese had a right to residency guaranteed them by a treaty. When they drove the Chinese from their homes, Baldwin with others had conspired to hinder the execution of the laws of the United States as embodied in that treaty. To Field's eyes, this violence was directed at the federal government and punishable by it. Paradoxically, in 1875, when the Klan terrorized black voters in the southern states, Field had voted with the majority, placing the white supremacist organization, ably defended by his brother David Dudley Field, beyond the reach of the federal government.

When anti-Chinese

106 *In re Baldwin*, supra note 105 at 189.

107 Sawyer to Deady, May 18, 1886, 21 November 1886, 23 November 1886, 2 February 1887, Deady Collection.


109 In addition to citing *Harris* to invalidate Section 5519, the Court used *U.S. v. Reese*, 92 U.S. 214 (1875) a voting rights case to support their contention that when Congress tried to criminalize acts falling outside of the limits of its constitutional power, the statute was wholly void. *U.S. v. Cruikshank*, 92 U.S. 542 (1875) decided in the same term as *Reese* reaffirmed the distinction between state action which Congress could control and private action which it could not in the enforcement of the provisions of the Fourteenth Amendment.

clubs used similar tactics in California a decade later, Field could not convince his brethren that the wholesale kidnapping of Chinese and their forced departure from their homes was a matter of interest to the national government. If the Court had its way, the "only protection" that the Chinese had against such attacks was "to be found in the laws of the different states." It was a result, said Field, "to be deplored." Like Sawyer, he stressed to no avail the national government's power to enforce treaties. The "law of the Ninth Circuit," with its nationalistic emphasis and corresponding civil rights protections, was not to become the law of the land.

CONCLUSION

The anti-Chinese forces would finally prevail in Congress, but after Sawyer's death in September 1891. The Exclusion Act of 1892, known as the Geary Act, prohibited Chinese immigration for ten years; amendments after the turn of the century made it clear that Congress intended the prohibition to be permanent. Despite the white public's hostility, Sawyer and the district judges left behind a body of civil rights law that broke with the mainstream of late nineteenth century decisions. The hobbling doctrines of federalism, of individualism, of limited government all yielded before a circuit judge who thought the Civil War had dramatically altered the constitutional system.

Sawyer was not the only federal judge to attempt to extend national power over civil rights protections, but his persistence through the decade of the 1880s was unusual because of the Supreme Court's early opposition to such efforts. In the 1873 Slaughter-House Cases, the Supreme Court's first attempt at interpreting the Thirteenth and Fourteenth Amendments, the

111 Baldwin v. Franks, supra note 108 at 707. Swisher, who suggested that Field's hopes for the Democratic presidential nomination lead him to disfavor the Chinese after 1879, did not consider Field's dissent in Baldwin. Charles W. McCurdy has recently added an analysis of Field's civil rights decisions to work that previously focused on the justice's business jurisprudence. McCurdy argues that "Field perceived no material difference between the polity's duty to yellow people and its duties to black people," but that the greater success of the Chinese stemmed from the fact that they were demanding what Field considered "civil rights" whereas black litigants wanted what the justice characterized as "political rights" or "social rights." Charles W. McCurdy, "Stephen J. Field and the American Judicial Tradition," in The Fields and the Law (San Francisco & New York, 1986) 17. While appreciating the significance of these distinctions in nineteenth century jurisprudence, in considering Sawyer, who never articulated a detailed schema of rights, I prefer to concentrate on the notion of polity and the judge's view of a minority's place within it from which rights would flow. See note 125 infra.

majority balked at the idea that it was “the purpose of the 14th Amendment...to transfer the security and protection of all the civil rights we have mentioned, from the States to the Federal government.”\textsuperscript{113} Justice Samuel F. Miller argued that such an interpretation “would constitute this court a perpetual censor upon all legislation of the States, on the civil rights of their own citizens,” and practically dismantle federalism as it had theretofore been known.\textsuperscript{114} Although race was not an issue in Slaughter-House, the Court never lost sight of the fact that the post-war amendments’ “one prevailing purpose” was the establishment of civil rights protections for blacks.\textsuperscript{115} Most of the justices could not imagine that such a drastic change in state-national relations had been intended when everyone knew that the ostensible beneficiaries were black. Could Congress and the ratifying states really have meant to sacrifice so much of federalism upon the altar of black citizenship?\textsuperscript{116}

Although the sandlotters might have thought otherwise, the demands of the Chinese for protection were less revolutionary in their implications. Because of the congressional ban on their naturalization, the Chinese immigrants’ place in the polity was strictly limited. They could never pose, no matter what their numbers, a political threat to white domination. When the Chinese appealed to the federal judiciary, the rights they wanted vindicated tended to be those necessary for economic activity. Blacks, on the other hand wanted more than free entry and a chance to labor for low wages at long hours in the hopes of turning merchant and sailing home rich; what they wanted was a due measure of control over their state governments. Thus, we find the Chinese asking for the freedom to fish in California waters, to labor for California corporations, or to run a laundry, and black litigants demanding the right to exercise the franchise unmolested or to have a jury of their literal peers. The stakes in the struggle for

\textsuperscript{113} Slaughter-House Cases, 83 U.S. 36, 77 (1873).
\textsuperscript{114} Ibid. at 78.
\textsuperscript{115} Ibid. at 71.
\textsuperscript{116} Kaczorowski has demonstrated that before Slaughter-House, many lower court federal judges had indeed accepted such a break with “decentralized constitutionalism” in black civil rights cases, only to yield to Supreme Court opposition by the mid-1870s. Robert J. Kaczorowski, The Politics of Judicial Interpretation: The Federal Courts, Department of Justice, and Civil Rights (New York, 1985) 199. In the long run, the view of the dissenters, Field among them, that the Fourteenth Amendment did empower the federal judiciary to pass upon the constitutionality of state regulation affecting property rights, won out. What has come to be inelegantly called substantive due process, the Court’s prohibition on state legislation that “in substance and effect” deprived property holders of the lawful use of their property, triumphed in Chicago, Milwaukee & St. Paul Railway v. Minnesota, 134 U.S. 418 (1890). But in a jurisprudential scissors movement, it was property rights, especially those of the oft-regulated corporations, that gained protection, while blacks found little success at the bar of law.
black civil rights were higher, and the success rate of the new citizens correspondingly lower. While antebellum colonization schemes to send former slaves to Africa faded away with the post-war amendments, the Pacific Coast judges were ever aware that the flow of Chinese immigration could be cut off at any moment by Congress. As early as the Twenty-One Chinese Prostitutes Case, Field had admonished California officials to concentrate on Congress instead of stooping to petty harassment; the lower judges had followed his lead. Sawyer, who thought it "a great misfortune that we have the negro in this country," might have found it intellectually impossible to nurture the law of the Ninth Circuit if it had benefitted that race and not the Chinese.

To what degree Sawyer's favorable decisions were the product of his appreciation of the economic importance of Chinese laborers is difficult to calculate. The practical results of Sawyer's civil rights nationalism fitted in neatly with the aims of their white employers. The circuit judge owed his early judicial career to Leland Stanford, whose Central Pacific railroad company happened to be the first major employer of Chinese contract labor. As a justice of the Supreme Court of California, Sawyer had delivered a slightly questionable decision allowing the state to help subsidize the railroad, and "always felt a satisfaction in the fact that [he] was so important a factor in contributing to the success of this great enterprise." Yet, instances of economic even-handedness or simple indignation at injustice balance out the other side. Although the circuit judge would help deliver the ruling in Parrott's Chinese Case, which freed corporations to hire Chinese despite the stipulations of the California constitution, he stressed the right to labor, while his colleague Ogden Hoffman thumped on the notion of the inviolability of corporate property, indulged in warnings against the approach of "the teeming population of the Chinese Empire,... a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...a menace to our peace and even to our...
civilization," and suggested further reading for interested nativists.\textsuperscript{122} Then there are the early compliments Sawyer paid to the Chinese people when as a young miner he competed with them. Or consider the ruling in \textit{Wo Lee} where Sawyer condemned a licensing system aimed at giving whites a monopoly on the San Francisco laundry business. Similarly, the circuit judge was keenly aware that whites would gather property windfalls if he did not put an immediate stop to a San Francisco ordinance that attempted to segregate Chinese nationals and Chinese-Americans out of Chinatown and into an undesirable corner of the city.\textsuperscript{123} And neither Sawyer's care over the bail issue for those detained deportees, nor his anger at the denial of public education to young Chinese-Americans in San Francisco, can be readily chalked up to class interest.\textsuperscript{124}

So many times had Sawyer spoken sympathetically of the Asian

\textsuperscript{122} \textit{In re Tiburcio Parrott}, 1 F. 481, 498 (C.C.D.Cal. 1880) [Sawyer and Hoffman]; Hoffman cites John F. Miller's "Certain Phases of the Chinese Question," \textit{The Californian} 1 (1880) 237-42, only in the separately printed version of the decision, a copy of which, Sawyer's own, is available at Stanford University.

\textsuperscript{123} This was Sawyer's last decision on the Chinese, \textit{In re Lee Sing et al}, 43 F. 359 (C.C.N.D.Cal. 1890).

\textsuperscript{124} Having sent Deady a newspaper clipping in which the Superintendent of Public Instruction refused to allow either Chinese children or Chinese-Americans to attend the public schools, Sawyer demanded rhetorically, using the school official's
immigrants both in his public rulings and in his private correspondence, so often had he tried to act judicially in their behalf that one wonders what to make of his 1890 declaration to historian H. H. Bancroft, "I think we made a mistake when we opened our door of immigration to them." His callous appreciation of "the Chinaman who comes... [and] sooner or later dies like a worn-out steam engine," thus benefitting Californian industry and agriculture without threatening the polity by producing Asian-American citizens, reeks of the worst in white capitalist impulses. Partly, Sawyer simply regretted the decades-long conflict. More significantly, he objected especially to those Chinese immigrants who, instead of offering the country "mere labor," left "two, or three or a half a dozen children" behind them. How telling it is that this single instance of hostility occurred when after lamenting the "great misfortune" of the black presence, the specter of Chinese-American citizenship obliquely crossed Sawyer's imagination. The humane solicitude that permeated his life's work evaporated when the Chinese aliens threatened to ask the nation for more than an economic role.2s

Lorenzo Sawyer's history exposes the unsteadiness of the structural barriers usually blamed for federal inaction in the civil rights arena. For the circuit judge of the Ninth Circuit, the Civil War had dismantled federalism and the important consequences this had for civil rights jurisprudence were not surprising. Sawyer did not find it unimaginable that the changes wrought might benefit the useful Chinese immigrant. Sometimes in our eagerness to discover the path of doctrine in the late nineteenth century, legal historians acknowledge racism then seem to push on out of sight of how happily it meshed with the doctrine finally favored. These lapses become sins of omission only in the eyes of the humanist; before the 'logic of the law," they need no forgiveness. How different the Ninth Circuit looked because there was something to gain: simple justice, a cheap labor force, or both. If there had been nothing to be had by hindering the federal government from acting on behalf of an oppressed group, the record at the highest judicial level would have been different. In

own words: "Wonder what he thinks of the rights of the 'State of California' to condemn the Chinese to undergo the expense of educating the children of free white American and foreign families? 'We do not scruple much to get all the taxes that we can out of Chinadom for that special purpose.' Sawyer to Deady, October 13, 1884, Deady Collection. Sawyer emphasized that the father of the girl in question was a thoroughly assimilated Chinese as proved by his wanting the girl educated at all.

125 Sawyer Dictations, Folder C-D 321:1. Sawyer's notions of acceptable roles for the Chinese seem to me the necessary forerunner of the peculiar division of rights that McCurdy (see note 111, supra) finds Field indulging in. Once a truly equal position is threatened from one side and rejected from the other, legislators and then judges must construct a range of types of rights to counter the variety of demands that the struggle for full equality might engender.
Yick Wo, the Supreme Court accepted a statistical skew disfavoring the Chinese as *prima facie* evidence of unconstitutional racial bias, yet in a jury duty case of the period, black criminal defendants argued in vain that the complete absence of their race from local juries was enough to prove discrimination.\(^1\)\(^2\)\(^6\) Versions of federalism alone did not distinguish the differing fates of the Chinese and blacks at the hands of the judiciary. Equally important were judgments on the reasonableness of their complaints. The law of the Ninth Circuit could not expand upwards because the uncommon respect it granted one race of color was not transferable to another. Such a transference would have disturbed the power structure of the polity as white America had known it. That Sawyer would have done as much for his black fellow citizens as he was willing to do for people of Chinese origins is at best uncertain. What he did leave behind was an honorable treatment of one minority demonstrating how the federal judiciary could exercise power when it had the will.

Quotations from Lorenzo Sawyer's Dictations are published by permission of the Bancroft Library. The author thanks the Oregon Historical Society for access to the Judge Matthew P. Deady Collection.

\[^{1}\text{Virginia v. Rives}, 100 U.S. 313 (1880): "The assertions in the petition for removal, that the grand jury by which the petitioners were indicted, as well as the jury summoned to try them, were composed wholly of the white race, and that their race had never been allowed to serve as jurors in the county of Patrick in any case in which a colored man was interested, fall short of showing that any civil rights was denied, or that there had been any discrimination against the defendants because of their color or race," 322. What constituted proof was the issue because in two accompanying cases, Strauder v. *West Virginia*, 100 U.S. 303 and *Ex parte Virginia*, 100 U.S. 339, the Court prohibited state action, by statute or by individual official, which denied blacks the right and privilege of serving on a jury.\]**
"A POST OFFICE THAT'S A PALACE:"
U.S. COURT OF APPEALS AND POST OFFICE BUILDING

BY STEPHEN J. FARNETH

Standing implacable and austere in an unsettled and generally shabby part of San Francisco, the U.S. Court of Appeals and Post Office building presents itself to the surrounding city as an anchor, a steadfast presence in a difficult and changing world. At the time of its construction, it was one of the finest and most well-appointed public buildings in the country, representing an optimistic nation proud of its justice system. Over its lifetime the building has been altered, but not in any ways that detract from its original design. Today, the building survives in its nearly original state and has significance to us on many different levels.

As a work of architecture it is a fine and early example of the Beaux-Arts Classical style. Possibly more important than the overall design itself are the materials and craftsmanship embodied in the interior finishes of the building. In many cases both the materials themselves and the skills involved in their finishing and installation are no longer obtainable, making their existence in this building of tremendous historical and architectural value.

The building has importance to us, however, more than simply as evidence of the past. It is a symbol of the continuity between

---

Stephen J. Farneth, AIA, is a partner in Architectural Resources Group, an architectural and planning firm in San Francisco that specializes in the preservation of historic buildings. This article is excerpted from a Historic Structures Report for the U.S. Court of Appeals and Post Office Building, prepared by Architectural Resources Group in 1984 for the General Services Administration. Historical research for the report was done for Architectural Resources Group by Pamela Hawkes of the Ehrenkrantz Group, San Francisco. The Historic Structures Report project was supervised by Carl Blalock, Regional Historic Preservation Officer for the General Services Administration, Region 9.
the past and the future. This continuity is provided through the ongoing occupancy by the Post Office and the courts; the history of important events and judgments that have occurred and will continue to occur in the building; and by the continuing preservation and maintenance of the materials and surfaces that embody that history.

FINDING A HOME FOR THE COURTS

The nearly century and a half between California's admission to the Union and the present has been marked by numerous changes in the federal court system, changes that have had corresponding effects on the physical requirements of the courts. The first federal courts in California came into existence on September 28, 1850, eight months after the state entered the Union. The U.S. District Court for the Northern District of California, presided over by Judge Ogden Hoffman, met in San Francisco in the Merchants Exchange Building on Battery Street between Washington and Jackson streets.

On March 2, 1855 Congress established the superior United States Circuit Court for the Districts of California and, on the following day, appointed Matthew Hall McAllister circuit judge. In 1858 Judges McAllister and Hoffman moved to their own building at the corner of Washington and Oregon streets. Congress made another change in the courts in 1866 by forming the Ninth Circuit, composed of California and the recently admitted states of Oregon and Nevada. That same year the circuit (which, at that time, had no appointed judge) and district courts' new quarters on the southwest corner of Washington and Jackson streets were destroyed by fire and the courts found temporary facilities, just back in the Merchants Exchange Building and later in the offices of the chamber of commerce. In 1880 the courts moved again, to a building on Sansome Street, later the site of the Appraisers Building.

2 Ibid.
4 Ibid.
5 Merrill, "Ninth Circuit Court of Appeals, History of the Court and Building," supra note 1.
7 Ibid.
In 1891, in an effort to ease the congestion of the United States Supreme Court, Congress created the circuit courts of appeals, charged with "the review of decisions which have been already given in the lower Federal tribunals, the District and Circuit Courts."8 The court of appeals for the Ninth Circuit sat in San Francisco for three terms per year and in Portland and Seattle for one term each. The new court's work and staff added to the burden of the already strained facilities in San Francisco.9

SITE SELECTION AND DEVELOPMENT

By 1885 overcrowding in the Post Office and increased case loads in the federal courts made the need for a new federal building in San Francisco apparent. Late that year Congressman William W. Morrow introduced a bill requesting $350,000 to purchase a site for a courthouse and post office in San Francisco.10 An act passed in March of 1887 appropriated the desired sum and directed the secretary of the treasury to appoint a commission of three to select the site.11 Commissioners John F. Swift (later succeeded by N.B. Stone and then N.K. Master), W.C. Bryan, and Col. John P. Irish soon reported that no suitable site could be purchased with the allotted funds. The appropriation was increased to $800,000 in 1887, to $850,000 in 1890, and to $1,250,000 in 1891.12

In April 1890 the commissioners invited proposals from landowners in the city. L.G. Harvey offered property at the northwest corner of Seventh and Mission streets, measuring 275 feet on each thoroughfare for a total of 75,625 square feet, at a price of $700,000 in gold coin. Later he proposed to increase the lot by 50 feet on the Mission Street side for an additional $90,000. Of the twenty to twenty-five proposals received, the commissioners ranked this

---

8 Austin Lewis, "The United States Circuit Court of Appeals," Overland Monthly (1900) 507.
9 Ibid.
11 John F. Smith, Letter to Secretary of the Treasury, August 23, 1887, RG 121, Box 1127, National Archives.
12 John W. Roberts, Letters to Supervising Architect of the Treasury, January 21, 1889; February 23, 1889; March 6, 1889; April 4, 1890; and March 3, 1891, RB 121, Box 1127, National Archives. Galbraith claimed that "All proponents of the original legislation knew that the amount was insufficient, but expedience dictated that the then economically-minded Congress should not be shocked by a staggering figure into summary refusal to consider any appropriation." Galbraith, "The San Francisco Post Office and United States Courthouse," supra note 10 at 1.
parcel second, since it was situated over a mile away from the central business district and south of Market Street, even at that time considered to be rundown. Nonetheless, the postmaster general seemed to favor the site and on October 7, 1891 an offer of $1,040,000 was made for the 142,625 square foot lot.\textsuperscript{13}

As soon as the offer for the site was made, design development began. Although James Knox Taylor, the supervising architect for the U.S. Treasury, has been credited with the final Post Office and Courthouse scheme, no less than three other supervising architects had a hand in the project before him. A letter dated October 6, 1890 from James H. Windrim, supervising architect from 1889-1891, directed the chief of the Treasury’s engineering and drafting division to begin studies for the new building and proposed using “granite from Brady’s quarry and San Jose sandstone.”\textsuperscript{14}

Site of the future Post Office and Courthouse. More than a mile away from San Francisco’s central business district and south of Market Street, this field, at the corner of Seventh and Mission streets, was the site selection commissioners’ second choice. (National Archives, San Bruno)

\textsuperscript{13} John W. Roberts, Letter to Supervising Architect of the Treasury, RG 121, Box 1127, National Archives. The actual purchase was made December 18, 1891 for $1,055,000. Galbraith, “The San Francisco Post Office and United States Courthouse,” supra note 10 at 2.

\textsuperscript{14} James W. Windrim, Letter to James S. Low, October 6, 1890, RG 121, Box 1128, National Archives. Windrim (1840-1919) attended Girard College and practiced architecture in Philadelphia before and after his appointment as Supervising Architect of the Treasury from 1889-1891. Among the buildings he designed in Philadelphia were the Fidelity Trust Company Building and the Masonic Temple, and the State Library in Harrisburg. Henry F. and Elsie Withy, 

A preliminary design for the "Post Office & Courthouse" submitted by Supervising Architect William Martin Aiken in 1895. The towers and layers of Baroque flourish were among some of the elements left out of James Knox Taylor's more restrained final design. [National Archives, San Bruno]

Willoughby Edbrook, Windrim's successor, announced a year later that formal design work would begin once the title to the land had cleared. Upon being asked "whether his plans would contemplate a building of moderate cost or an elaborate one," he vowed that "I shall design a building that such a grand city as San Francisco ought to have in keeping with her business interest." A sketch of the design published in 1893 depicted a scheme similar to the final one, but the accompanying text noted that it did not meet with approval. In 1895 a new design was published by William Martin Aiken, newly appointed supervising architect. Aiken adopted the same

---

15 Unidentified newspaper clipping, October 9, 1891, RG 121, Box 1128, National Archives. Willoughby Edbrook (1843-1896) was born near Chicago and apprenticed with his father, a contractor-builder. Having practiced as an architect-builder in the Chicago area for over two decades, he was associated with Franklin P. Burnham in the design and construction of the Georgia State Capitol from 1887-1891. He served as Supervising Architect from 1891-1893, returning thereafter to private practice in Chicago. Withy, *Biographical Dictionary of American Architects Deceased*, supra note 14, and Old Post Office Building Historic Structures Report [prepared for GSA Region III, 1977] 5.

16 "Revised Design of the New Post Office Building," identified as from the San Francisco Examiner, October 12, 1893, RG 121, Box 1133, National Archives.

17 *American Architect and Building News*, 44 (February 1897) 1102. William
format used in Edbrook's design, but added layers of Baroque flourish. Closer in feeling to the San Francisco City Hall by Augustus Laver, the elevations included sculptured lintels above the third floor windows, a three-bay wide, moulded frontispiece in the center of the Seventh Street elevation, and slender domed towers. Aiken returned to private practice before ground was broken, and his ideas were never executed.

The final designs prepared by James Knox Taylor showed the same classical grandeur as the earlier proposals, with a dignity gained through restraint. In the plan, the structure was U-shaped, with the Post Office workroom filling the center of the "U" on the bottom floor. The main lobby of the postal service ran along Seventh Street, the base of the "U," with entrances at the corner pavilions. Above, the courtrooms were located adjacent to the two stairwell and elevator cores at the intersections of the sides and the base of the "U." This scheme, offering clear circulation and generous natural light and ventilation, can be seen over and over again, often smaller in size, in dozens of post office and courthouse structures erected during Taylor's tenure as the government's principal architect.

The scheme was a clear embodiment of the American Renaissance style, a mode that represented the height of accepted taste in the decades surrounding the turn of the century. Characteristic elements were classical details executed with

---

Martin Aiken (1855-1908) studied at the University of the South at Sewanee and at Massachusetts Institute of Technology, graduating from there in 1879. He worked first for Henry Hobson Richardson and then for James McLaughlin in Cincinnati before establishing his own practice in New York in 1886. A "working Democrat," Aiken was appointed to his federal post by President S. Grover Cleveland in 1895, serving until 1897. His work in that office included the U.S. Mints at Denver and Philadelphia and was termed by The New York Times "very superior, artistically, to that of his predecessors." Withy, Biographical Dictionary of American Architects Deceased, supra note 14 at 11-12, and Old Post Office Building Historic Structures Report, supra note 14 at 8.

James Knox Taylor (1857-1929) attended a two-year course at Massachusetts Institute of Technology and then "worked in offices in Boston and New York." In 1885 he established a partnership in St. Paul with Cass Gilbert, recognized as one of the foremost designers of the Gilded Age and responsible for the U.S. Customs House at Bowling Green in New York, which rivals the San Francisco Post Office in splendor. He moved to Philadelphia in 1892 and to Washington in 1895, entering the office of Supervising Architect of the Treasury as a senior draftsman. As head of the department from 1897 to 1912, Taylor was responsible for an enormous number of government buildings, including the San Francisco Customs House. Withy, Biographical Dictionary of American Architects Deceased, supra note 14 at 592, and Old Post Office Building Historic Structures Report, supra note 15 at 9.

See, for example, the federal buildings at Huntington, West Virginia (1908-1910, Parker & Thomas, Architects) and Martinsburg, West Virginia (1904-1905, March & Perer, Architects).

luxurious materials and craftsmanship, attempts to demonstrate that America had become Europe's "immediate successor in the march of civilization." Taylor had prefaced the 1901 *Report of the Supervising Architect* by announcing that:

> The Department, after mature consideration of the subject, finally decided to adopt the classical style of architecture for all buildings, as far as it was practicable to do so, and it is believed that this style is best suited for Government buildings. The experience of centuries has demonstrated that no form of architecture is so pleasing to the great mass of mankind as the classic,...and it is hoped that the present policy may be followed in the future, in order that public buildings of the United States may become distinctive in their character.

The style was introduced in the early 1890s by disciples of the French Ecole des Beaux Arts and gained widespread acceptance through the World's Columbian Exposition held in Chicago in 1893. There, the carefully composed grouping of monumental buildings proclaimed a vision of order and beauty for the chaotic cities of the late Victorian era. This concept marked the birth of city planning per se and became known as the City Beautiful Movement.

San Francisco proved a fruitful ground for the American Renaissance mode. The Hibernia Bank (1892) and the Ferry Building (1895) represented early manifestations of the style. The "Plan for San Francisco" prepared in 1905 by Daniel H. Burnham, head planner of the Chicago Fair, attempted to impose the ideas on the development of the entire city. In the wake of the 1906 earthquake, the only concept to take hold was that of a "grouping of City Hall, Court of Justice, Customs House, Appraisers Building, State Building, U.S. Government Building and Post Office in one place." One of the critical elements in this scheme, the Post Office and Court House, was by then just completed.

---

**CONSTRUCTION HISTORY**

After more than a decade of negotiations over money, land, and aesthetics, work began on the Post Office and Courthouse in 1897.

---


Bids were accepted for tearing down twenty frame buildings on the site in May of that year and on August 23, 1897 ground was broken. The San Francisco Bridge Company was awarded a $36,830 contract for excavation, drainage, and foundations, and began concrete work in the winter of 1897-98.

When the contractors began to lay steel grillage for the footings they discovered a forty-five-foot-deep bed of sand mixed with peat and loam in the southern corner of the site, extending seventy-nine feet along Mission and forty feet along Seventh Street. Superintendent of Construction John W. Roberts recommended driving "wooden piles to a firm resistance, sawing them off below the lowest water level and resting the foundation as planned upon them." Taylor's office noted in reply that "another and perhaps preferable method will be to carry the excavations...deeper, removing the soft materials and resting the footings on the hard sand below." W.W. Newman, Robert's assistant, later declared that no piles were used in the foundations. Work on the foundations was completed on July 29, 1898 after a delay of fifty-six days due to the change in footings, suspension of concrete work for seventeen days while a substitute cement was selected, and a slow-down due to insufficient labor.

General contractor for the superstructure was Bentley Construction Company of Portland, Oregon, who submitted a bid of $802,500. Work progressed at a steady pace, with all granite work completed and the roof ready for covering by August 1901, at which point $867,000 of the total funds allocated had been spent.

Interior construction was carried out under two major

24 Date of ground-breaking from "Are Killing Time to Use Up Plethora of Funds — Work on New Post Offices Going on at Snail's Pace," San Francisco Chronicle, April 20, 1905, 16. Other data from RG 121, Boxes 1132, 1133, National Archives.
25 John W. Roberts, Letter to Supervising Architect, February 15, 1898, RG 121, Box 1133, National Archives.
26 John W. Roberts, Letter to Supervising Architect, August 15, 1898, RG 121, Box 1133, National Archives. According to the Report of the Supervising Architect for the Year Ending September 30, 1898 (Washington, D.C., 1898), the Act of March 2, 1895 directed the secretary of the treasury "to have carefully examined, by two or more engineer officers of the Army, the nature of the subsoil and bed of foundation of the site" (p. 45), suggesting that doubts about the condition of the site had already been raised.
27 William Sooy Smith, C.E., Letter to Supervising Architect (February 15, 1898) RG 121, Box 1133, National Archives.
29 John W. Roberts, Letter to Supervising Architect, July 26, 1899, RG 121, Box 1133, National Archives.
30 Miscellaneous correspondence, RG 121, Box 1135, National Archives.
31 John W. Roberts, Progress Report, July 31, 1901, RG 121, Box 1137, National Archives.
contracts. The first was for interior finishes, signed with Davidson Brothers Marble Company of Chicago for $910,000; the second was for mechanical equipment, signed with Joseph McWilliams and Company of Louisville for $220,517.80. The latter contract, dated September 3, 1901, was to be completed within 400 working days. The former, recorded the same day, was to be finished by March 11, 1904, but work extended well into 1905, encompassing numerous changes in specified materials and a five-month strike by marble setters, cutters, and polishers. A 1905 newspaper report blamed the "snail's pace" on the "plethora of funds" appropriated by Congress and the provisions for "Mosaic floors, groined ceilings, and varicolored glass windows, which when well constructed are supposed to be remarkably effective absorbers of surplus funds." It also intimated that Roberts, on an annual

32 Synopsis of Bids for Interior Finish and Mechanical Equipment Contracts, September 3, 1901, RG 121, Box 1137, National Archives.

33 John W. Roberts, Letter to Supervising Architect, February 9, 1904, and miscellaneous correspondence, RG 121, Boxes 1140 and 1141, National Archives.

34 San Francisco Chronicle, April 21, 1905. Numerous stories have been propagated to account for the lavish finishes of the Post Office and Court House. One attributes these to a decline in the price of steel below that used in estimates for the appropriation. Gladys Hansen, ed, San Francisco: The Bay and Its Cities (New York, 1973) [reprint of WPA Guide] 160. Another relates that original plans and appropriations called for a five story building but, upon discovering that the soil structure would not support such a structure, the funds allotted for the upper two stories were spent on the decor. Susan Cheever Crowley, "A Collector's Courthouse," American Magazine (March 1975) 10.
salary of $6,000, had a stake in prolonging the work as much as possible. Davidson Brothers, in a letter to the Treasury Department, pointed out, however, that the labor situation and the magnitude of the work with its myriad details were cause enough to expect delays.

The United States Post Office and Courthouse was officially dedicated on August 29, 1905, although the U.S. marshal and other tenants had moved in the previous week. The ceremonies were sponsored by the Manufacturers and Producers Association of California and included speeches by Governor George Pardee, Mayor Eugene Smitz, judges, and the building commissioners. Highlight of the occasion, held in the mailing room before a crowd of 3,000 people, was the keynote address by Andrew Sbarboro, president of the sponsoring organization. He declared that the land between Market Street and the new building “should be immediately condemned by the city for park purposes, so that our magnificent Post Office, instead of being hidden behind other buildings, could be seen and admired.” Similar schemes flourished and faded many times in the twentieth century, to no avail.

Praise for the new structure was generally unanimous. An editorial in the San Francisco Call the day after the dedication pronounced:

In its exterior and interior...San Francisco's new postal and judicial building...is an expression of the highest art in architecture. We utter no local judgment, influenced by local pride and patriotism, but that of the best judges, in

Records in the National Archives indicate that, as early as 1892, the building was planned to be three stories high and cost $3,000,000. [Letter to Supervising Architect, January 28, 1892, RG 121, Box 1131, National Archives.] The steel story may have some basis in fact, however, for Superintendent John W. Roberts related in 1905 that “When we were ready to award the final contract for interior finishing, there was more money left than the original estimates indicated, so the specifications were made more elaborate.” San Francisco Chronicle, April 20, 1905.

35 San Francisco Chronicle, April 20, 1905.
36 Davidson Brothers Marble Co., Letter to W. D. Kemper, Treasury Department, November 10, 1905, RG 121, Box 1143, National Archives.
38 Copy of Invitation to the Opening Celebration in files of Honorable Richard H. Chambers.
40 Ibid. at 22. Following the earthquake and fire, Assistant Supervisor W. A. Newman repeated the suggestion that the park be created “forming a fit setting for such a magnificent structure and a fire protection for the future.”
saying that the building is second only to the new Congressional Library in Washington. That building is acknowledged to be one of the finest in the world. The Post Office immediately becomes a scenic feature, one which may be shown to strangers, among our crown jewels.41

A writer for Sunset Magazine called it "A Post Office That's a Palace" and repeated claims of experts that it was "the best constructed public building in the country." The reporter further noted that "Considerable comment has been made on the rich granite carvings ornamenting the exterior of the building. They are exceedingly well executed and architects say that they would have been considered impossible in granite." Regarding the oft-made comparisons to the Library of Congress, the writer stated that "experts say that while the library building may be more costly and ornate in some particulars, it is not, as a whole, equal in richness to the San Francisco Post Office Building."42

August C. Headman, reporting for the Architect and Engineer of California, was equally complimentary, declaring that "there is nothing obscure, slipshod, unformulated; no groping, no experimentation. The result is a work wherein everything seems definitely and purposely placed, and the building as you study it clearly declares itself."43 He repeated the remarks of the president of the AIA that the third floor corridor was "a thing of beauty and a joy forever," and called the U.S. Circuit Court "the cream of creation."44 He praised the high level of craftsmanship, and noted that the ceiling of the U.S. District Court was "an exact reproduction of one in the Congressional Library which has been the subject of such favorable criticism."45

1906 EARTHQUAKE

Claims that the United States Post Office and Courthouse was "the best constructed public building in the country" soon faced a severe test. Early on the morning of April 18, 1906 San Francisco was rocked by a series of strong earth tremors. Though the building custodian wired officials in Washington the following

41 "The New Postal and Court Building," San Francisco Call, August 30, 1905.
43 August G. Headman, Architect and Engineer of California (San Francisco, 1905) 19.
44 Ibid.
45 Ibid. at 17.
The Mission Street entrance soon after the earthquake of April 18, 1906, which caused the ground to subside twenty-three feet under this corner of the building. [National Archives, San Bruno]

day that "the post office may collapse at any time," the structure passed through the shock waves largely unscathed. Furniture was overturned and extensive cracks appeared in the masonry. The building dropped $3\frac{1}{2}$ feet on Mission Street and sank $1\frac{1}{2}$ feet on Seventh Street, creating the appearance of "a heaving sea frozen in one of its wildest contortions." The northeast and northwest corners of the building remained nearly level, but the southeast corner racked and the ground at the southwest corner subsided about twenty-three feet, "causing the entire surface of the building line to move out about five feet to the south."

Far more damage was caused in the aftermath of the disaster. The fires sweeping the city engulfed wood buildings on Stevenson

---

46 Fish, Telegram to Supervising Architect, April 19, 1906, RG 121, Box 1144, National Archives.


Street and entered the Post Office later that day. According to an eyewitness account:

It came first through a window in the northeast corner of the building, leaping over the wood-work in District Judge DeHaven's chambers and turning the beautiful rooms into a roaring furnace. Then it entered from the front into the money order division, and the ten men divided and fought it on either side. The windows were broken from the heat. The window frames and doors were on fire. The bricks rained on everything and the smoke was suffocating. Wet sacks were nailed on the doors and finally the doors were allowed to burn until nearly charred through and then were knocked down and beaten out...The only water in the building was in the freight elevator tank and into this mail sacks were dipped and carried up to men on the burning floors, and with these they beat the fire until, having swept past on Stevenson Street and left everything in ashes, it died out in the building and the building was saved.\(^{49}\)

Further destruction occurred during municipal clean-up operations. On April 23 a dynamiting squad blasted the foundations of the Odd Fellows Building across the street, setting

---

\(^{49}\) "Account of San Francisco Earthquake, and Fire," supra note 47.
off more than 750 pounds of dynamite. In the words of an on-the-scene observer:

These explosions nearly completed the wrecking of the post office. Every pane of glass in the windows and in the transoms in the corridors was shattered, and most of the glass roof over the main working floor was destroyed. Large quantities of marble cornice work and mosaics were blown down, doors were torn from their hinges, and furniture was scattered as if by another earthquake. The force of the blast may be judged from the fact that heavy law books were blown from the shelves in the district attorney's office out through the windows.50

Despite the damage, the Post Office and Courthouse was one of the few structures left standing in the parts of San Francisco that were consumed by the fire: "the only sign of life in a field of darkness."51 Postal workers made heroic efforts to keep the mails moving. Work was suspended on the 18th and 19th, but on April 20 regular service was resumed. The first order of business was enabling city residents to get word of their whereabouts to friends and relatives. "Bits of cardboard, pieces of wrapping paper, pages of books and sticks of wood all served as a means to let somebody in the outside world know that friends were alive and in need among the ruins," according to a Post Office spokesman.52 Many of the letters were sent on their way without stamps in the state of emergency. Next, the workers tackled the overwhelming task of forwarding mails from burnt out areas to new addresses, answering inquiries from anxious outsiders and processing money orders for the penniless, acting as "banker for the city."53

Damage from the earthquake and its aftermath was not repaired until 1910. An estimate prepared in May 1906 had put the cost of repairs at $448,057, but the contract signed on June 25, 1908 covered only $294,800 of the work.54 The job was undertaken by the Raymond Granite Company of San Francisco, original suppliers of the exterior masonry. Work was to be completed by March 1, 1910 and was intended "to restore the building practically to its condition prior to the earthquake and fire."55

50 "Account of San Francisco Earthquake and Fire," supra note 47 at 15.
51 Ibid. at 9.
52 Ibid. at 9-16.
53 "Estimate of Cost of Repairs," May 23, 1905, RG 121, Box 1144, National Archives.
54 James Knox Taylor, "Proposals for the Reconstruction and Repairs to the U. S. Post Office and Court House at San Francisco," June 25, 1908. San Francisco Public Library.
55 Ibid.
The Post Office and Courthouse from the corner of Seventh and Stevenson streets, undergoing repairs in 1909 for damage sustained in the earthquake three and a half years earlier. (National Archives, San Bruno)

1933 ADDITION

In the following two decades, the United States Post Office and Courthouse was repaired and refurbished periodically. Continuing growth in the courts' case loads and the volume of mail, however, eventually pressed the facilities to their limits. In October 1930 District Engineer W. A. Newman reported plans for alterations to the structure; twenty months later the supervising architect's office announced that a "Class A" addition was to be built at a cost of $500,000.56

Local architect George W. Kelham was selected by Supervising

56 California Architect and Engineer (October 1930) 112 and (July, 1931) 83. The appropriation was later raised to $750,000. California Architect and Engineer (April, 1932) 61. Files of the Foundation for San Francisco's Architectural Heritage.
Architect George O. Von Nerta to execute plans for the addition in May 1931. Kelham's credentials were impressive, including the San Francisco Public Library (1916), the Federal Reserve Bank (1924), and numerous important clubs and office buildings, yet his design was relatively undistinguished. The exterior detailing faithfully replicated that of the earlier design, while the interior repeated standard elements found in many other federal buildings of the era. Two major new public spaces, courtrooms 14 and 15, contain impressive Art Moderne light fixtures and sculptured eagles, yet are essentially box-like in character. This austerity may reflect the pressures of the Depression or simply the design's nature as an addition to a monumental structure.

Kelham presented tentative sketches in Washington on October 10, 1931. Minor changes were proposed by various administrative departments to be housed in the new offices, and schematic designs and cost estimates were in hand by the end of the month. Construction drawings were completed by mid-April 1932, but not approved until October. Eleven bids were received in January 1933 for construction of the new wing; Lingren and Swinerton of San Francisco, one of California's leading building firms, submitted the successful low bid of $625,534.60.

The new structure had a reinforced concrete pile foundation, structural steel frame, and reinforced concrete floor and roof slabs. Construction began in February 1933 and progressed rapidly, likely as a result of the abundance of willing laborers. The fourth floor offices were occupied in June 1934, but completion of the first through third stories was delayed until October of that year, while defective plaster work was remedied.

George W. Kelham (1871-1936) studied at Harvard, the Ecole des Beaux Arts, and in Rome. While working in the New York City office of Trowbridge and Livingston from 1898-1908, he was sent to San Francisco to supervise the post-earthquake construction of the Palace Hotel. He served as chief of the department of architecture at the Panama-Pacific International Exposition from 1912-1915 and as supervising architect for the University of California at Los Angeles. His other notable buildings include the Standard Oil Building (1921), Shell Oil Building (1929), and the American National Bank (Bank of America Building) (1922). Henry F. and Elsie Withy, Biographical Dictionary of American Architects Deceased, supra note 14 at 334; "Who's Who in This Issue," California Architect and Engineer (June 1932) 27; and files of the Foundation for San Francisco's Architectural Heritage.

57 George W. Kelham [1871-1936] studied at Harvard, the Ecole des Beaux Arts, and in Rome. While working in the New York City office of Trowbridge and Livingston from 1898-1908, he was sent to San Francisco to supervise the post-earthquake construction of the Palace Hotel. He served as chief of the department of architecture at the Panama-Pacific International Exposition from 1912-1915 and as supervising architect for the University of California at Los Angeles. His other notable buildings include the Standard Oil Building (1921), Shell Oil Building (1929), and the American National Bank (Bank of America Building) (1922). Henry F. and Elsie Withy, Biographical Dictionary of American Architects Deceased, supra note 14 at 334; "Who's Who in This Issue," California Architect and Engineer (June 1932) 27; and files of the Foundation for San Francisco's Architectural Heritage.

58 Progress Report, October 1931, RG 121, Box 1281, National Archives.

59 Letter from James W. Wetmore, Supervising Architect, to George W. Kelham, October 22, 1932, RG 121, Box 1281, National Archives.

60 Summary of Bids, January 12, 1933 and Letter of Recommendation from the Anglo California National Bank to James W. Wetmore, December 31, 1932, RG 121, Box 1281, National Archives.

61 Inspection Report, December 26, 1933, RG 121, Box 1281, National Archives.

62 Ibid.

63 Inspection Report, August 24, 1934, RG 121, Box 2669, National Archives.
The construction of the addition in 1933. [Photograph taken from Mission Street.] The exterior detailing faithfully replicated the design of the original 1905 building, while the interior repeated standard elements found in other federal buildings of the Depression era. [National Archives, San Bruno]

RECENT CHANGES

The newly-expanded building gradually became overcrowded. In 1962 offices and courtrooms of the United States District Court for the Northern District of California were transferred to the new federal office building at Golden Gate Avenue. The Court of Appeals moved into the vacated space and, at the same time, renewed interest was generated in the original building by Judge Richard H. Chambers. As junior judge, Chambers had been routinely appointed court custodian, a position he carried out with greater diligence than any of predecessors. He rescued original furniture being discarded from the building and commandeered additional furnishings, light fixtures, and plumbing fixtures from historic courthouses in Chicago, Spokane, Key West, Carson City, and Cheyenne, Wyoming. Some of these fittings were installed throughout the courthouse, while others remain in storage for future needs. In 1964 Judge Chambers was instrumental in changing the official name of the building from the United States Post Office and Court of Appeals Building to the United States Court of Appeals and Post Office.

The quality of its original design and construction, and the careful maintenance of the U.S. Court of Appeals and Post Office Building over its lifetime, have resulted in a structure that is still capable of serving its original functions without severe and destructive remodeling. In the 1970s and 1980s we have learned to preserve buildings, but we have been less successful at preserving buildings in conjunction with their original use. The important values that we associate with an old building are not really embodied in the physical materials [although they are important as well]; rather, the values are associated with the history of events that have occurred through the building's life and are directly linked to its historical functions. Important older buildings that still serve their original function are an increasingly rare and valuable commodity. It is greatly to the credit of Judge Richard Chambers and the U.S. Court of Appeals that both the form and function of the building survive today, and it is hoped that they will continue to exist for future generations.

ARCHITECTURAL DESCRIPTION

The United States Court of Appeals and Post Office is located on Seventh Street, two blocks east of the Civic Center of San Francisco. It occupies the entire width of a city block with side facades facing onto Mission and Stevenson streets.

The original building, completed in 1905, was 312 feet by 265 feet and four stories high above a basement, constructed in a U-shape plan. The interior portion of the "U" plan is enclosed at ground level, housing the Post Office workroom. The open side of the "U" faces the interior of the block, while the other sides of the "U" front to the three surrounding streets. A major addition in 1933 added a four-story wing across the open side of the "U."

The building is occupied by the Post Office at ground level and courtrooms, judges' chambers, and support areas of the United States Court of Appeals for the Ninth Circuit on the upper levels.

The structural system of the building is steel frame on a concrete foundation system. Floor construction consists of cinder concrete arches on expanded metal centers spanning between steel floor beams. The exterior walls are self-supporting granite blocks, tied directly into the steel frame. The walls of the interior courtyard are constructed of unreinforced masonry with glazed brick facing tied into the steel frame. Interior partitions consist of unreinforced hollow clay tile walls on which the finish materials are attached. The 1933 wing is constructed of a similar frame although with more modern connections and fireproofing.
The exterior elevations of the Court of Appeals and Post Office are regular symmetrical facades of granite in the American Renaissance/Beaux Arts Classical style with late Italian Renaissance detailing. The first two stories of the building are of heavily rusticated, bush-hammered granite ashlar, or squared stone, serving as a base for the third story, which is faced in smooth-finished granite ashlar.

The first story of the Mission, Seventh, and Stevenson streets facades has large repetitive, rusticated arched window openings, with even larger arches at the building entrances. Each window opening has a smooth-finished, granite-bracketed sill with a panel below containing a round medallion of green Vermont Verde antique marble. The panel and the window are recessed within the rusticated opening.

The second story window openings are smaller rectangular openings, centered above the first floor arches. The window openings are each capped by a rusticated flat arch. Located just above the top of these arches is a continuous granite belt course that completely wraps the building. The belt course terminates the lower rusticated stories of the building and serves as a base for the pilastered colonnade of the third story.
The third story consists of a regular colonnade of granite pilasters alternating with window openings. The large rectangular window openings on the third floor are centered over the arched openings of the first floor. Each opening is capped by a triangular pediment supported by granite brackets and architraves. Above each building entrance the pattern is varied with double pilasters and slightly more elaborate window surrounds.

The fourth story of the original building is set back from the main facade line and is generally obscured from view by the continuous projected cornice and balustrade. At the 1933 wing, the fourth story is in line with the main facade line of the wing, extending above the main cornice line of the original building. Window openings in the fourth story are rectangular and trimmed with a simple window surround [terra cotta on Northeast wing facade, granite on the Seventh, Stevenson, and Mission streets sides].

At the 1933 wing, wall areas above the rusticated base on the northeast facade are faced in terra cotta, finished to look like the smooth finished granite of the original building. The third story of this wing is constructed with flat wall surfaces without pilasters, and alternate windows are capped with pediments to simulate the original facades.

---

**INTERIOR**

To the public at large, the interior of the building is most memorable for the lobbies and main corridors of the Post Office on the first floor. These spaces run parallel to the facades of the building, connecting all the building entrances with the stairwells, elevator lobbies and Post Office service windows and support spaces. The main corridor running parallel to Seventh Street is 20 feet wide by 260 feet long. This long space is broken into smaller bays by marble pilasters supporting a groin vaulted ceiling, giving it the feeling of a series of linked spaces, each space serving a series of bronze grilled Post Office windows. Finish materials include ceramic mosaic tile flooring, marble mosaic tile ceilings, marble wall surfaces of several different types, and mahogany and bronze doors and grillwork. The impact of the space and its finishes is both dramatic and yet calming in its overall order.

For those who reach the upper floors of the building, the first floor serves simply as an introduction to the spaces of the third floor. The third floor contains the three main courtrooms, judges' chambers, and their connecting corridors and lobbies. Each of these rooms and spaces has different types of finish materials used
on its interior surfaces. These variations give each room its own special character, while the overall sense of Classical detailing and ornament provide a unifying influence.

Courtroom One is a strikingly ornamented room, fifty-four feet long and thirty-five feet wide, panelled in white pavonazzo marble. Behind the judges' bench are marble pilasters topped with cast plaster entablatures and curved pediments with paired plaster caryatids "supporting" the ceiling. The side and rear walls are similar, having paired marble columns with Corinthian capitals in a carved fruit motif. The capitals support a decorative cast plaster entablature and curved pediment with paired caryatids above. In the upper right of the photograph is seen one of three ceramic tile mosaic murals in arched panels depicting: "Science, Literature, Arts;" "Philippines, Puerto Rico, Columbia, Hawaii;" "Agriculture, California, Mining." The artists were E. S. Crawford and John Gibson. (National Archives, San Bruno)
United States Supreme Court Associate Justice Stephen J. Field. [Oregon Historical Society]
MY DEAR JUDGE

Excerpts from the Letters of Justice Stephen J. Field to Judge Matthew P. Deady

Edited and annotated by MALCOLM CLARK, JR.

"G
ot a letter from Field yesterday," Deady noted late in 1871. "As usual full of pleasant kind things well said. His flattery, although it is flattery, is not hard to take." Which will do to describe the letters Associate Justice Stephen J. Field wrote to Matthew P. Deady. For almost thirty years the associate justice poured down compliments on his Oregon friend.\(^1\)

The Field-Deady relationship was an oddity. The two men agreed, with some mutual reservations, on most of the larger legal questions of the day. But their personalities were quite unlike, and their backgrounds entirely so.

Stephen Johnson Field was a member of a prominent Connecticut family. His father was a Congregational minister and sometime historian, his elder brother, David Dudley Field, a famous constitutional and railroad lawyer and leading member of the New York bar. A younger brother, Cyrus West Field, promoted the laying of the first Atlantic cable.

Stephen Field was born in Haddam, Connecticut in 1816, traveled in the Near East with missionary relatives while still in his teens, graduated from Williams College, and read law in the offices of New York Attorney General John Van Buren when Van Buren's father was president of the United States. After passing the bar he practiced law, not altogether comfortably, with his brother, D. D. Field.\(^2\)

In 1849, with his brother's blessing, Stephen removed to California where he speculated in real estate, was elected alcalde

Malcolm Clark, Jr, an Oregon historian and writer, edited the diaries of Judge Matthew P. Deady.


\(^2\) For Field biographical material, see Carl B. Swisher, Stephen J. Field: Craftsman of the Law (Washington, 1930).
[mayor] of Marysville, and practiced his profession. Very early he became involved in the first of a series of unseemly vendettas. He was undeniably brilliant, but of an arrogant and unforgiving nature. In 1857 he was elected to the California Supreme Court, and in 1859 became its chief justice. That same year Matthew P. Deady was appointed U. S. district judge for Oregon.

Matthew Deady lacked Revolutionary forbears and distinguished siblings. His father, Daniel Deady, was an Irish immigrant from County Cork who married the daughter of a Baltimore grocer, like Daniel an immigrant from County Cork. Matthew Paul, the couple’s first child, was born in Talbot County, on the east shore of Chesapeake Bay in 1824.

Daniel Deady was an itinerating schoolmaster. The family moved often, to Wheeling, to Cincinnati, to Rodney, Mississippi, back North to Frederick, Maryland. There, in 1834, Mary Ann, the wife, died of consumption and weariness. In ten years she had produced five children.

In 1836 Daniel Deady settled his family on a farm in what is now Noble County, Ohio. His relations with his only son were worsening. Matthew rebelled against his father’s heavy-handed discipline and his boyish ambitions were too large for the confines of rural life. At age eighteen, after a bitter and never resolved quarrel with Daniel, Matthew Deady left home and trudged some twenty miles to Barnesville, Ohio, where he apprenticed himself to the local blacksmith.

At that time he had the rudiments of an elementary education. He could read, write, and cipher, and perhaps had some knowledge of history and geography. No more. During and after his apprenticeship he spent two terms at the Barnesville Academy. This was the end of his formal schooling but he had sorted out his ambitions. He removed to St. Clairsville, the county seat, taught school, read law with a local attorney, and in 1847 was admitted to the Ohio bar.

His practice was not lucrative. St. Clairsville had more lawyers than law business. In 1849, when the rest of the world was hurrying to California, Matthew Paul Deady crossed the continent to Oregon.

Before he was 30 Deady was one of the Oregon territory’s most influential citizens. He served in both houses of the territorial legislature, as a Democrat. He read omnivorously and was a quick study. In time he became noted for his erudition and developed a clean, concise literary style. In 1853 he was appointed to the territorial supreme court. He served, with a brief hiatus, until 1859 and his elevation to the federal bench.

There is no hard evidence Deady and Field were acquainted before 1863, when Field was appointed to the U. S. Supreme Court.

\(^3\) For Deady biographical material see the Introduction to Deady.
and circuit justice of the Tenth (later the Ninth) Judicial Circuit. How then the close relationship between them, a relationship during the whole of which Field, despite his birth, education, travels, means, and exalted position, treated the self-taught Oregon judge with obvious deference?

Certainly Field sought to use Deady to strike at Ogden Hoffman, Jr., district judge of the Northern District of California, with whom the associate justice carried on a feud terminated only by Hoffman's death in 1891. During and immediately after the Civil War, when Supreme Court business kept him in Washington, Field frequently directed Deady to hold the circuit court at San Francisco, a responsibility properly Hoffman's. When the judicial reform act of 1869 provided for a permanent judge of the Ninth Judicial Circuit, Field urged Deady's appointment and shamelessly
denigrated Hoffman, also a candidate. The post went to Lorenzo Sawyer of the California Supreme Court. Field tried to use the incident to cause trouble between Deady and Hoffman. He was unsuccessful, largely because of Deady's generous nature. Relations between Deady and Hoffman were always correct and eventually cordial. Sawyer and Deady became admiring friends.

Christian Fritz, historian of the U.S. District Court for the Northern District of California, suggests that Field was attracted to Deady because the two shared a rather loose regard for the standard of judicial behavior. Actually Deady's ethical conceptions were well above the standard of the day. Most of the conduct Fritz cites arose out of pure necessity.  

Most probably Field was attracted to Deady not because they were alike, but because they were unalike. Field was habitually devious. Deady could be devious but seldom was. Field's shrill complaints and groundless denunciations spill over into his letters. Deady reserved expressions of outrage for his diary. Field seemed incapable of reining in his nervous, questing intellect. Some of his major opinions are so diffuse scholars still argue over the true nature of his legal philosophy. Deady's opinions are brief, well-structured, move straight to the question. Field was kinetic, often undignified. Deady was solid, and his dignity was placid to the point of pompousness. Little wonder Mr. Justice Field admired, respected and deferred to the big Irishman whom the irreverent sometimes called, though never in the judge's presence, "the God Almighty of Portland."

4 "Deady," writes Christian Fritz, "...was willing to practice law while on the bench and accepted interest-free loans as well as monetary gifts from individuals who appeared before his court." [Christian G. Fritz, "San Francisco's First Federal Court: Ogden Hoffman and the Northern District of California, 1851-1891" [Unpublished dissertation, University of California, Berkeley, 1986] 440. The quote is by permission of the author.] It is true Deady occasionally gave legal opinions to individuals and performed legal services for public and quasi-public bodies, and he accepted fees. He needed the money. He had an expensive family to support and a position to maintain. His starting salary as a federal judge was $3,000 per annum, subsequently raised to $3,500 paid not in gold, but in Legal Tender which was, during the Civil War and for years after, subject to a stiff discount. Not until 1891 was Deady's salary raised to $5,000, the amount Judge Hoffman had received at least as early as 1869.

It is equally true that Deady borrowed $4,000, interest-free, from Portland financier W. S. Ladd, in order to repair and remodel his house. Even without interest it took the judge years to pay off the loan. In 1879 the Deadys were forced by straitened circumstances to rent out the home they could no longer afford to maintain. Thereafter they lived in a succession of boarding houses.

It is also true, as Fritz elsewhere observes [p. 440], that Deady requested — on one occasion demanded — accepted, and used — railroad passes. So did almost every other public official, federal, state, and local, of that day. The practice eventually became a national scandal.

The one act for which Deady might have been censured, even under the rudimentary ethical concepts of his day, was his accepting from railroad magnate Henry Villard a block of stock that shortly turned a $10,000 profit, by far the largest sum ever to come the judge's way. But the record is clear that neither
As late as the end of 1870, Mr. Justice Field was still regretting his failure to arrange Judge Deady’s appointment to the circuit bench. Now he was busy with a new concern, securing an increase in the judge’s salary and, incidentally, his own. Despite the justice’s confident hopes, Congress failed to act. The publication scheme described in the postscript is chiefly interesting because of Field’s intention to include Judge Hoffman’s opinions though he and Hoffman were, and would remain, on bad terms. Nothing came of the project. Deady arranged for the publication of some of his own opinions and subsequently contributed opinions to a series of reports brought out under the aegis of federal Circuit Judge Lorenzo Sawyer. (The circuit courts had both original and appellate jurisdiction. As circuit judge, Sawyer sat with both Circuit Justice Field and/or a district judge.)

Letter to Judge Matthew P. Deady from Justice Stephen J. Field [probably in his own hand], December 12, 1870. [Oregon Historical Society]

Villard, nor any corporation, railroad or otherwise, nor any other of Judge Deady’s benefactors ever received preferential treatment in the judge’s court. Deady sometimes regretted, to his diary, the necessity of finding against a friend. But he never hesitated to do so.
My dear Judge,

I have not written you for a long time simply because I have had nothing to write which could be of interest to you. For months the stirring events occurring in Europe [the Franco-Prussian War] have absorbed my thoughts to the exclusion of almost everything else, except the duties which I have been obliged to discharge from day to day.

But now that Congress has assembled I suppose you would like to hear from me as to the prospect of any action to increase our salaries. The amendment to the Appropriation Bill, which proposed an increase at the last session, failed by reason of the foolish fear of Congressmen, that by voting for the measure they would endanger their chances of reelection. Nothing could have been more unfounded than this apprehension. I believe the feeling throughout the country is that no public officers are so poorly — so miserably paid as the Federal Judges, and there is a very general desire that their salaries should be increased, at least to a living point.

I have met a great number of Congressmen within the last few days, and everyone without exception has stated that during the present session a bill increasing the salaries of all the Judges will pass. I hear it suggested that the Justices of the Supreme Court on a bill to be presented will allow $10,000 — each; the Circuit Judges $7,500 each; and the District Judges $5,000 each. I hope the latter figure may be changed to $6,000 — A bill allowing these sums though insufficient in amount would be a blessing indeed.

I tried very hard, my dear Judge, to secure your appointment as Circuit Judge, and I have never ceased to regret my failure, although I am very well pleased with Judge Sawyer, with whom I have always had pleasant relations. Your election to one of the highest positions of the Federal Judiciary is sure to come at some future day — and I trust at no distant day...

Ever, my dear Judge

Yours faithfully,
Stephen J. Field

P.S. I have thought of publishing two volumes of Reports of decisions of the Circuit Court of the Ninth Circuit, provided I can secure your cooperation and that of Judge Hoffman. I should wish the volumes to consist of opinions delivered before the recent act creating Circuit Judges, by Judges McAllister & Hoffman, and by yourself and myself. I should wish them to embrace only important cases — having a permanent interest to the profession.
Judge McAllister left a large number of opinions in manuscript, of which perhaps forty would be suitable for publication. I should select from my opinions about thirty. You and Judge Hoffman would each I suppose furnish about the same number. My plan would be that each judge should make the reports of the cases decided by himself, which fact would be stated in the preface of the volumes. The publication I would superintend, and advance the necessary means. If anything, which is doubtful, should be made from the sale of the volumes I should expect to divide the amount with you and Judge Hoffman.  

---

During the winter of 1876-77, the country was much exercised over the disputed outcome of the presidential election. Samuel J. Tilden, the Democratic candidate, had received 184 uncontested electoral votes, only one less than a majority. Rutherford B. Hayes, Republican, had 165. It would take all of the nineteen contested votes in Florida, Louisiana and South Carolina, and one contested vote in Oregon to push Hayes into the presidential chair. As Deady wrote Sawyer, "We hoped for Hayes and feared Tilden, but preferred either to both — at once!"

Washington  
December 29, 1876

My dear Judge:  
...There is great uneasiness in the public mind with reference to the Presidential question. The general opinion, I think is, with fair minded men that Mr. Tilden is elected and that if he is deprived of the Presidential office it will be by manipulation and frauds of the Canvassing Board of Louisiana. As I have said in several letters to friends I believe there is good sense and patriotism enough in the two Houses of Congress to devise a just mode of counting the votes of the electors so as to give the office to the person elected by the people. It would be a great reproach to us if the contest between the two great parties should lead to civil war. If either Mr. Hayes or Mr. Tilden is inaugurated without the general acquiescence of the country he will be utterly powerless in office. He would be resisted in every way and form, short of absolute force, known to our law. I see that good men of all parties are calling upon Congress by petition to devise a mode to reach a peaceful solution of the difficulty. For such a solution there must be a just count had. Fraud and trickery must not be permitted to prevail...

5 Matthew Hall McAllister was U. S. Circuit Court Judge, California Circuit, 1855-62.  
6 Deady, supra note 1 at 1:229.
Congress's solution to the controversy was to create an Electoral Commission composed of five senators, five representatives and five members of the Supreme Court, Field being one of the latter. The contests in the South were purely political. But the Oregon contest was based on a genuine legal point. One of the state's Republican electors, Dr. Joseph W. "Windbag" Watts, was a salaried federal official and therefore disqualified from serving as elector. Oregon's secretary of state certified Eugene Cronin, the Democratic elector who had received the largest number of votes in the general election, in Watts' place. Deady, formerly a Democrat, switched parties at the outset of the Civil War. He mistrusted Tilden and had voted for Hayes, but on December 7, 1876 he wrote Field, "(1) Watts was not elected (2) Cronin was (3) But no authority in executive [the state governor] to make the investigation (4) If Cronin not elected a vacancy to be filled by other electors but in case of failure to elect under § 34 of R[evised] S[tatutes] in which case the legislature should have been called to make the appointment." Field wrote back expressing doubts as to Cronin's election. As the following letter shows, the justice changed his mind.

Washington
April 2, 1877

My dear Judge,

I send you by today's mail a copy of my Remarks in the Electoral Commission on the cases of Florida and Oregon. You will see that my views in the Oregon case were in accord with yours, substantially as expressed in your letter to me of the 7th of December. The decision of the Commission, not to enquire into the correctness of the action of the Canvassing Boards of Louisiana was a great shock to the country. It is the first time, I believe, that it has ever been held by any respectable body of jurists, that a fraud was protected from exposure by a certificate from its authors...8

7 Deady, supra note 1 at 1:221.
8 By identical votes of 8-7, with Associate Justice Joseph P. Bradley casting the deciding ballot, the Electoral Commission refused to look behind the electoral certifications of the Republican-controlled Louisiana and Florida returning boards. But in the case of Oregon, which had no returning board, it threw out the Oregon certifications issued by Oregon's Democratic secretary of state, the Oregon official authorized to make the return.
Field, though he denies any such ambition in the excerpt that follows, was a serious candidate for the Democratic presidential nomination in 1880.

Washington, D.C.
May 31, 1879

...You say my name is being mentioned in connection with the presidency. I suppose you smiled at that, as I have; and would probably smile more if I should be generally taken up as a candidate. But there is little probability of that — not one chance in a thousand. Therefore I do not give any thought to the subject, nor allow it to disturb my sleep or trouble my digestion. Seriously, I would not give up the independence of thought and action I enjoy for the presidency for life.

In 1885 Mr. Justice Field became inexorably tangled in the Sharon-Hill controversy, a notorious and complicated case which wound its intricate way through the California courts, both state and federal, for nearly a decade. Ohio-born William Sharon practiced law and engaged in mercantile pursuits before removing to California in 1849. In 1864 he became manager of the newly founded Bank of California's Virginia City, Nevada branch. The position offered large opportunities for an unscrupulous man, and Sharon was unscrupulous. He accumulated a considerable fortune by acquiring title to valuable silver properties by dubious means.
In 1874 he was elected to the U. S. Senate by the Nevada legislature.

Sharon's wife died in 1875, the year he entered upon his senatorial duties. Thereafter the senator seems to have spent his chilly passions upon whatever doxy was available. But in 1880 ill-fortune introduced him to Sarah Althea Hill. Miss Hill was twenty-seven, by report the daughter of a Missouri family of some consequence, and — the witnesses are unanimous — beautiful beyond belief. The fifty-four year old Sharon was so powerfully smitten he promptly offered to make her his mistress, at a salary of $500 a month. Althea demurred. She was not that kind of a girl. Whereupon the senator, who was fond of quoting poetry, recited the whole of Byron's 'Maid of Athens' and, what is more, according to Althea, he offered to join her in a private contract of marriage, a form then binding in California, with the understanding she would not reveal the existence of the document for a period of two years without his prior consent. Touched in heart and pocket book, the lady accepted.

Thereafter they lived openly together, and were much seen in society. But the course of the marriage, if marriage it was, did not run smoothly. Althea was excitable, occasionally irrational, and full of demands, both for money and other favors. The Senator wearied of her importuning, broke up their menage and moved into the Palace Hotel, which he owned. In 1883 Althea sued for divorce, alleging the contract of marriage and demanding half of Sharon's estate, an amount her attorneys fixed at $7,500,000.

Despite Sharon's outraged insistence that the document was a forgery, the trial court ruled it to be genuine. Althea was granted a divorce and alimony. But back in 1883 Sharon had filed an action in the U. S. Circuit Court praying the federal courts to take jurisdiction because Sharon, though a resident of California, was a citizen of Nevada. On December 26, 1885 Judge Deady, sitting on the circuit court with Lorenzo Sawyer, handed down a decision declaring the wedding contract to be forged and fraudulent. Sharon was six weeks dead.

There was no end to surprises. On January 7, 1889 Sarah Althea married Davis S. Terry, one of her attorneys and, at 63, only two years younger than the late Sharon.

In spite of his age, Terry was formidable. A sound lawyer, he had served as chief justice of the California Supreme Court when Field sat on that court. He had killed Senator David Broderick in a duel and served gallantly during the Civil War in the Confederate ranks. Terry promptly appealed Deady's decision to the U. S. Supreme Court. With Sharon dead the defense was carried on by his heirs.

The Supreme Court did not act until the late summer of 1880. Deady was sustained. Field, though he need not have, came west to read the decision at the fall term of the circuit court. During the
proceedings Althea and her new husband created a noisy and somewhat violent disturbance. Field cited the two for contempt, Althea to serve three months, Terry six. And both were indicted for resisting arrest and assaulting the U. S. marshal. It was the assault case to which Field refers in the following letter.

Washington, D. C.
December 3, 1888

My Dear Judge:

As the time approaches for the trial of Terry and Sarah Althea on the indictments found against them, the question is discussed as to the Judge who shall preside. There seems to be a well founded objection to any of the Judges who were present in the Circuit Court when the violent proceedings occurred which are the foundation of the indictments, as they may be called as witnesses. This covers Judges Sawyer, Sabine, Hoffman and myself. It would be very unpleasant for either of those Judges to preside for undoubtedly he would be called as a witness for the purpose of embarrassing his action and instructions to the jury. According to the admissions of Terry himself in his sworn application to the Circuit Court for revocation of the order of commitment, there can be little doubt of the result of a trial, provided everything moves on in the regular course of procedure, without collateral issues, or any disturbing incidents.

There is also an objection to Judge Ross sitting, because he has had some unpleasant correspondence with Judge Terry which would render it embarrassing to him. It seems to me and also to Judge Sawyer that you are the only proper person to preside at the trial of both Terry and his wife. Nor do I see any possible objections. Certainly the fact that you passed upon a civil action and the issues involved can in no respect affect your position on the trial for forcible resistance to an officer of the court of the United States in a proceeding occurring more than a year afterward.

Aside from all this there is another and more potential reason than all. You have a clear knowledge of the law applicable to the cases, to the manner in which jurors are to be summoned and examined, as well as to the proper conduct of the trial. No Judge on our coast has had more experience, or is better fitted to preside at the trial of criminal cases than yourself. I understand that an effort will be made to inquire into the motives and dispositions of the grand jurors that found the indictments, which I believe is permissible under the State law. But nothing of that

9 George M. Sabin was U. S. District Judge, Nevada, 1882-90.
10 Erskine Mayo Ross was U. S. District Judge, Southern District of California, 1887-95.
kind is permissible under the Federal law. Parties may indeed show, if they can, that grand jurors were incompetent to act, from alienage, non-residence, or some other like quality; but no inquiry can be had as to the motives, feelings, or dispositions of the jurors. It seems to me from what I know of the facts of the cases, the trials in all of them need occupy but a brief time. The forcible resistance to the Marshal in the execution of an order of the Court, the drawing of a deadly weapon and threatening Deputy Marshals in the corridor, and other violent acts, which are the subjects of indictment, are admitted by him in his application, or are susceptible of ready and conclusive proof. So I do not think that you would be detained a long time in the trials, or be subjected to the investigation of any difficult problems.

All things considered, I think the Circuit Judge will be obliged to call upon you to sit on the trial, which will take place probably in March next. By section 596 of the Revised Statutes the Circuit Judge can designate and appoint you to hold a District or Circuit Court at San Francisco, whenever in his judgment the public interest so requires. I am decidedly of the opinion that it is the demand of public interest that you be designated and appointed for that purpose. I shall therefore write to Judge Sawyer the substance of what I here write to you, and tell him to make the designation and appointment so that you may be ready to come down to San Francisco in the month of March next....

________________________

To Field's fury, the Terrys were not tried in March, 1889. Their attorneys brought charges before Judge Hoffman that the U. S. district attorney had acted precipitously and improperly in persuading an indictment from the grand jury. Hoffman, uncertain on the question, equivocated, which prompted Field to write Deady the letter that follows.

Washington, D. C.
May 25, 1889

My Dear Judge:

Your letter of the [omitted] instant was received a few days since. You are quite mistaken in stating that I have not written to you during the winter. I think if you will refresh your recollection you will find I have written to you several times. Certainly, if the letters have not been more frequent it has not been because you have not been in my constant rememberance, for not a single week goes by, I might almost say not a day, without some reference to you, and all such references have pleasant associations...

I hope to see you in California, for it is understood you have been requested to preside over the trial of the Terry indictments,
provided always they are ever brought to trial. I do not know what delays the decision by Judge Hoffman of the objections urged to the indictments. They did not strike me as being entitled to any merit. After the multitude of persons present at the disturbances in Court were called before the Grand Jury I cannot see how the refusal of the District Attorney to call two more witnesses, at the request of some of the jurors, can vitiate an indictment. If that fact could have any effect it should at least be accompanied with a statement of what the witnesses who were not called would have testified to. Nor do I see how the fact, if it be so, that the indictment was not read by all of the jurors, is of any moment. I suppose that the language used at the commencement and conclusion of every indictment, though important, is substantially the same, and that when the Grand Jury say they are satisfied that a man should be accused of a particular offense, the District Attorney carries out their wishes and writes down the proper description of the offense which they all assent to, without each one taking up and reading the indictment through. Moreover, I do not see how such objections can be heard at all, how a grand juror can be permitted to say that he did not do his duty in finding the indictment. A wide door for fraud would be opened if affidavits to that effect could be received.

What the result will be with Judge Hoffman no one knows. Judge Sawyer writes me that he is very much disturbed by the difficulties which Judge Hoffman pretends to find in the objections. Should he (Hoffman) give weight to them and abate the indictments on their account he would submit to the implication of having acted under fear and apprehension of Terry. He is not, as you know, a very courageous man...

Precisely why Justice Field so earnestly espoused the Sharon cause is unclear, but certainly one reason was his conviction that Sarah Althea, by her wicked ways, had destroyed what little credulity she might have deserved, as a woman, from the courts. That Sharon had been guilty of at least an equal wickedness was not germane. In the summer of 1889 the California Supreme Court reversed its first decision in the Sharon divorce case, now holding that because the contractual arrangement was a secret it did not constitute a marriage. Field's satisfaction spilled over in the following excerpt.

San Francisco
July 23, 1889

...The recent decision of the Supreme Court of California in the Sharon case effectually puts an end to any further serious contest on behalf of Sarah Althea. That case, with all its incidents is the
most extraordinary one in history. There is nothing like it that I have ever read of which for vileness, for filthiness and for criminality is equal to it. It is a matter of great congratulation on the part of all good people — all lovers of society who believe in the sacredness of the family relation — that the conspiracy of that vile woman with others has come to naught...

Exactly three weeks after the above was written the feud between Field and the Terrys resulted in tragedy. Both Terrys had frequently and openly threatened to do damage to Field’s person if it was in their power and their temper was not sweetened by their recent reversal before the California Supreme Court. On August 13, 1889 and unbeknowest to one another, Field, U.S. Marshal David Neagle, Field’s bodyguard, and the Terrys came together in a Fresno railroad dining room. When he learned of Field’s presence Terry sent his wife from the room then, approaching from behind, slapped the justice violently about the head. Whereupon Marshal Neagle shot the lawyer dead.

When it was discovered Terry had not been armed — though Althea was, a loaded pistol being found in her reticule — Field and Neagle narrowly escaped being lynched on the spot. They escaped by re-boarding the train upon which they had been traveling, but Neagle was shortly arrested and held on a charge of murder. Neagle’s friends, Field among them, applied to U. S. Circuit Judge Sawyer for the writ of habeas corpus, which Sawyer granted. Ultimately the U. S. Supreme Court found the marshal innocent of wrong-doing, on the ground he had acted in his official capacity.

The Fresno killing might have softened Field’s heart toward Terry’s widow, but did not. Hoffman had at last sustained those indictments for resisting arrest and assaulting a federal officer and the justice was determined Althea be tried, and before Judge Deady. But Deady had grown disgusted with the controversy and perhaps resentful of Field’s unsubtle attempts to influence him. In the fall of 1889 he went east as a delegate to the General Convention of the Episcopal Church. On his way home he paid a visit to the national capital where he was interviewed by a reporter of the Washington Post. The resulting story misquoted him and he demanded clarification. “The Post of this morning,” he wrote in his diary, “contained an editorial correction of the interview contained in the issue of the 22nd inst insofar as I was made to say that I thought Sara [sic] Althea would kill Field, Sawyer and myself at the first favorable opportunity. I only asked a correction as to myself, and it was so written by the manager of the paper...in my presence, before I left the office. Field writes me a note this afternoon in which he says he is much displeased that I
should be made to say that I never heard she threatened his life and wants me to contradict. But I don't want to meddle with it any more. So let it go."  

Deady used the incident to disqualify himself from further participation in the case. Althea was tried in the spring of 1890 before U.S. District Judge Erskine M. Ross of the Southern District of California. The jury disagreed.

Mr. Justice Field's reaction, poured out in the following letter, is an unpleasant mix of derogation and self-justification.

Private

Washington, D.C.
April 3d, 1890

My dear Judge:

...Of course you heard in San Francisco that the jury in the Sarah Althea case disagreed. I was not at all surprised by the result after noticing the loose way in which the trial was conducted. Indeed, it is difficult to reconcile the conduct of Judge Ross with any regard for the decencies of his position.

A lawyer of character in San Francisco writes to a friend here, and after stating generally the proceedings, says "it is sufficient to say that the defense made every effort to bring Judges Field and Sawyer into the case, and also the Sharon Estate. Counsel for the defense were allowed to put questions and make arguments upon the evident theory that Judges Field & Sawyer were very bad men & were parties to a conspiracy to persecute this poor woman. Foote in his argument denounced Joe Redding as a perjurer & charged that he had committed perjury in order to ingratiate himself with these federal Judges before whom he had cases to be tried.  

Again, in questioning jurors upon their voir dire, Foote was allowed to ask the jurors if they were satisfied this prosecution was being backed by Mr. Justice Field would that affect their verdict in the matter, etc. I cannot understand how one federal Judge could allow it to be asserted in his presence while holding court, that one way to make yourself popular with other federal Judges was to commit perjury, or that a Judge could allow it to be constantly intimated and asserted in a criminal trial that the prosecution was a conspiracy of which one Associate Justice of the United States Supreme Court was the head and front."

The Marshal of the Court writes me with great feeling as follows:

"I do not wish to shirk my responsibility when duty calls me. But I think I should have been protected and that Judge Ross

---

11 Deady, supra note 1 at 2:556.

12 Lucius Harwood Foote was a San Francisco attorney and U. S. Minister to Korea, 1883-85. Joseph Redding was a San Francisco attorney.
should not have permitted the attorneys to abuse me...calling me coward, assassin, perjurer, etc., and my deputies cowardly hirelings...

Another lawyer of character writes me as follows:
"...Everybody and everything was tried except the charge whether she [Mrs. Terry] did on a certain day & in a certain place, resist the United States Marshal in the execution of a lawful order...the comments of counsel were worthy of cowboys...

The truth is Sawyer and Hoffman have been in mortal terror of Sarah Althea's pistol and they have been constantly saying that she could not be convicted or that they did not believe she could be convicted; and Judge Hoffman has said openly that the prosecution ought to be withdrawn — that it was a shame it was not discontinued — that the widow of Terry had suffered enough. These statements were made openly by Hoffman in the [Pacific] Club, and Sawyer could not conceal his expressions. They were heard by friends of Terry and Sarah Althea and were repeated, and
thus quite a noise was made by a few rowdies in her favor, which those Judges took for public sentiment.

Judge Ross seems to have fallen into the same notion and to have lost his head and wits and all decency.

The truth is no Judge in the Circuit was fit to try that case except yourself. No other Judge would have kept out extraneous and irrelevant matter. Had you presided, after the impanelling of the jury the trial could not have lasted more than one day, for you would have confined both testimony and counsel in comments upon it to what was directly in issue. When you were induced... to withdraw from presiding at the trial the Terry side had gained their greatest victory. From that time, I have myself felt no interest in the case...

I have expressed these views pretty strongly to Judge Sawyer. Of course I have a great regard for the Judge for many things that he has done, and he acted very nobly in the N[elagle Case and his opinion in that case will always be read to his honor... But it is not pleasant to find the moment one leaves the State, all spirit and courage oozes out from the federal Judges in San Francisco...

Sarah Althea Terry was never re-tried but her tribulations were not ended. She never recovered from the shock caused by the violent death of her husband. Her conduct became increasingly bizarre and in March, 1892, she was committed to the state asylum at Stockton. She did not die until 1937, having been institutionalized forty-five of her eighty-seven years.

In 1891 Judge Deady's salary was finally raised to $5,000 per annum. That same year Judges Hoffman and Sawyer died. Deady himself was seriously ill.

Supreme Court of the United States
Washington, D. C.
October 13, 1891

My dear Judge:

I was very sorry you were not able to attend the October Term of the Circuit Court of Appeals at San Francisco... I did not like to have the first regular term of that court after its organization fall through, and I was particularly anxious that you should preside in my absence. Your great learning and experience would have added weight and authority to everything that might be done by the Court..."}

13 The Evarts Act of 1891 established the circuit courts of appeals, while retaining both the district courts and the old circuit courts at nisi prius courts, but it did abolish the appellate jurisdiction of the circuit courts. Hence, there
Letter to Judge Matthew P. Deady from Justice Stephen J. Field [presumably transcribed by his secretary], October 13, 1891. (Oregon Historical Society)

were still two courts with original jurisdiction, but appeal from each was either to the circuit court of appeals or to the Supreme Court.
I hope that your inability to attend was not owing to continued ill-health from your old trouble. From what I learned at Portland... I concluded that you had obtained an entire mastery over the source of that complaint and could look forward with confidence to years of vigorous health. I was of course delighted with that prospect; indeed I do hope that for the few years that I may remain on the bench you will be one of the judges of my circuit. I wish you could be the circuit judge, succeeding Judge Sawyer, and you would be, I am quite sure, if only you would consent to take the place. You know that I originally favored your appointment over Judge Sawyer. Great as was my respect for that Judge and much as I became attached to him afterwards, I have never regretted what I did in your behalf in that matter, and have never known a moment when I did not think your appointment would have been the better of the two. In this respect I do not wish to disparage Judge Sawyer, for he was a good and in many respects a great Judge. He did faithful service; but we may admire two stars though one differs from the other in glory. Your remarks upon him, which you have been kind enough to send me, are eminently just and appropriate...

I shall try this winter to get the law in regard to pensions so explained that there will be no questions that the pension will go after ten years of judicial service, no matter in what court it is rendered, and will be according to the salary at the time of the judge's retirement. If such an alteration should be made before the appointment of a circuit judge by the President, would you not take it?

But Deady was too ill to any longer entertain ambitions for a higher position. He was crippled by bi-lateral sciatica and tormented by urine retention, symptoms of prostatic cancer. He somehow managed to hang on through 1892 and into the following year. On March 6, 1893 he opened the March Term of the district court in Portland. A week later he took to his bed for the last time. He was sixty-nine.

In the years following his friend Deady's death, Mr. Justice Field's mind deteriorated, but until 1897 he stoutly resisted the efforts of his brother justices to force him into retirement. He died at Haddam in 1899, being then in his eighty-third year.

Justice Field's letters have been selected from the 179 held in the Matthew P. Deady Papers [Mss. 48] of the Oregon Historical Society and are here reprinted, in part, with the Society's permission. The author acknowledges, with thanks, the assistance rendered by Professor Ralph James Mooney of the University of Oregon Law School and Margaret N. Haines, Manuscripts Librarian of the Oregon Historical Society, in the preparation of this article.
I'm delighted to be here today and to talk to you about one of my favorite subjects, Ogden Hoffman and the early history of the United States District Court for the Northern District of California. It seems particularly appropriate to me that we've gathered in the ceremonial courtroom, presided over in a sense by the spirit of Ogden Hoffman and certainly by his portrait that hangs to the rear of this room. Just as that portrait gives us a visual sense of the man, I hope to provide a sketch of Hoffman as a judge and leave you with an impression of his forty years on this bench.

First, I'd like to talk about his background. Then I will discuss three areas of law important to Hoffman's court: admiralty, land, and Chinese immigration. Finally, I'd like to assess the meaning of Hoffman's judgeship in contrast to that of United States Supreme Court Associate Justice Stephen J. Field.

Born and raised in New York, Hoffman came from a very old and respected Dutch family. He grew up taking a fierce pride in what he called his "long descent from an historic name." Both his father and grandfather had taken prominent roles in the political and legal affairs of the state. Hoffman's father, in particular, became one of the preeminent criminal trial lawyers of his generation and ultimately served as the United States Attorney for the Southern District of New York.

The impressive legal and political accomplishments of the Hoffmans helped give them access to the highest circles of New York society. The combination of social and literary figures, politicians and financiers that formed his father's circle was an experience that Hoffman never forgot. Indeed, he claimed it as his birthright.
Judge Ogden Hoffman, Jr., 1822-1891. Educated at Columbia University and Harvard College, New York lawyer Hoffman moved to California in 1850 and a year later was appointed by President Fillmore as the new state's first district judge. He presided over the majority of the land grant cases and his court gained a strong reputation — among both passengers and commercial interests — in admiralty. Frustrated at not being appointed to a higher court, Hoffman nevertheless remained committed to his work in San Francisco, serving forty years as a district judge there. [U.S. District Court, Northern District of California]
Hoffman's enormous pride in his family and his background is vital to understanding not only his character but his self-perception as a judge. As the only judge for the northern district during its first forty years, Hoffman came to directly identify with the court. He was the court. Attacks on the court were seen as personal attacks. His personality thus assumed a major role in how the institution itself functioned and responded.

Like his grandfather and father, Hoffman was also extravagant. All three tended to spend more than they could afford and, despite numerous professional opportunities, were unable to provide financial security for themselves and their families. Hoffman's grandfather spent his last year dodging creditors, and when Hoffman's father died he left his family with tremendous debts. Indeed, friends and political allies were forced to take up a collection in order to stave off the disgrace of destitution. Hoffman as well, although he never married, was apparently perpetually in debt and, even though he experienced a financial windfall in the 1870s, died a relatively poor man in 1891.

Hoffman had quite a good education. He received his B.A. from Columbia and then attended Harvard Law School [class of 1842] while Joseph Story was still teaching there. In addition Hoffman received the more common practical training of reading law for several years in the offices of New York lawyers. After passing the bar, Hoffman, like many law graduates today, took a well deserved vacation. In his case he went to Europe and spent a considerable amount of time in Paris. Upon his return to New York, Hoffman seemed restless and his father was after him to settle down and seriously practice law. After about a year in his father's office, Hoffman left for California in the wake of the gold rush, arriving in San Francisco in May of 1850.

Hoffman's effort to succeed in San Francisco was ill-fated. The frenetic pace of the gold rush bar, high inflation, the lack of social deference, and his own propensity to spend money doomed his success. One observer noted that a background such as Hoffman's could be a liability. "Polished education without a strong Democratic feeling" unfitted a man from taking part in such a "hand-to-hand struggle" with other lawyers. Some business did come Hoffman's way, however, mainly from New York connections, but inflation ate up most of what he made. Moreover, Hoffman, unlike other lawyers, was not about to sleep on the floor of his office to save money. Indeed, to maintain himself as a gentleman undoubtedly placed him under a severe financial strain.

Hoffman's struggle at the bar was cut short, happily for him, by his appointment as judge of the northern district less than one year after he arrived in San Francisco. He was only twenty-nine years old.
Admiralty

The story of Hoffman's appointment is quite a complex one and really beyond the scope of this talk. Suffice it to say that behind Hoffman's appointment loomed the figure of his father, whose good friend Daniel Webster was President Millard Fillmore's secretary of state. In addition to his father's influence and efforts, Hoffman found strong support from William H. Aspinwall, the president of the New York owned Pacific Mail Steamship Company, the firm that provided a vital transportation link between California and the East Coast.

Aspinwall hoped that Hoffman, whom he knew as his son's youthful friend, would declare the taxation of his vessels by California unconstitutional. Whatever the expectations of Hoffman's judgeship, his youth and relative inexperience were major objections to his appointment on February 1, 1851.

Hoffman's first test as a judge came in his admiralty docket. A great many of those who came to California during the gold rush arrived in San Francisco by sea, and the city quickly became the state's foremost port and commercial center. The many sailing vessels that choked San Francisco's harbor in the 1850s led an observer to describe them as "a perfect forest of masts." Such a "forest" guaranteed a tremendous admiralty docket. In fact, Hoffman would hear over three thousand cases during the first decade he was on the bench.

Although many of these cases, some 40 percent, were libels for wages by seamen, Hoffman's admiralty court was most frequently used as an important commercial tribunal by San Francisco's businessmen and merchants. The commercial litigation tended to
fall into two broad categories: suits for nondelivery or damage to goods shipped to San Francisco and suits for payment for supplies, repairs, services, or money provided a ship. Hoffman's relationship with the business community was ultimately something of an ambivalent one. While he frequently rendered decisions that were highly unpopular to that group, his court provided a very useful forum, and collectively businessmen became Hoffman's staunchest defenders. The source of that support and the respect Hoffman received from the business community stemmed far less from the substantive results of his decisions than from his manner of handling admiralty matters.

From the first case Hoffman adjudicated he was determined to demonstrate his legal scholarship. He was, of course, relatively young and mindful of the fact that he needed to prove himself, especially to the local bar. This impulse manifested itself in the extended factual discussions and the scholarly productions of his earliest opinions.

While Hoffman may have impressed lawyers and businessmen with his erudition, he won their support by insisting that his court be true to the traditional de-emphasis of procedure in admiralty, by hearing the testimony of witnesses and arguments of counsel with patience, by sifting and weighing evidence and arguments with extraordinary conscientiousness, and by exhibiting a fierce judicial independence.

Despite the crush of business before his court, particularly in the first decade of its existence, Hoffman took the time to insure that litigants had their day in court. With cases that came to trial, Hoffman invariably took notes that in effect created a transcript
of the testimony presented in court. In the commercial cases these notes ranged in length from just a few pages to several hundred pages and symbolized his close attention to detail.

One of the most fascinating series of cases Hoffman dealt with in admiralty concerned his handling of the grievances experienced by passengers coming to California in the wake of the gold rush. One historian of this event has entitled his book *The World Rushed In*, which captures, I think, the essence of the experience of San Francisco in the 1850s.* The eagerness to get to California, whether from the East Coast of the United States or from Australia or other parts of the world, led to the terrible conditions under which such argonauts traveled.

Upon their arrival in San Francisco, passengers often brought suit before Hoffman's court alleging that the carriers, the ships that brought them to the city, had violated their passenger contract. If the carriers had deliberately overbooked or were unable to provide the promised provisions and accommodations, the issue was readily resolved as a breach of contract.

More interesting is the process whereby Hoffman became increasingly innovative in providing legal relief for passengers and in facilitating their law suits. In the early 1850s Hoffman allowed several passengers to join in one suit — a type of class action — to overcome costs and time that made individual suits impractical. Moreover, he permitted passengers to sue *in rem* [i.e., to sue the vessel], in effect to hold shipowners responsible not only for the negligence but also for the intentional torts of their employees. In so doing, Hoffman developed a theory of implied passenger contract that converted what were essentially tort claims into contract actions. In Hoffman's words the passenger contract was breached "whether the passenger be deprived of suitable food and accommodations or be subjected to ill usage by blows and false imprisonment or by habitual obscenity, insult and opposition."

Hoffman's willingness to stretch the passenger contract to include torts stemmed in part from his seeing himself as the only hope for many of the passengers who had suffered during their voyages to California. Moreover, he had personal knowledge of the conditions complained about, having traveled by steamship from New York to San Francisco via the Panama route. His sensibilities as a gentleman were particularly outraged when women bore the brunt of hardship, ill-treatment, or lewd behavior. Indeed, virtually all of the suits based on rudeness and verbal abuse involved women.

Giving relief by allowing passengers to sue ships *in rem* helped, but did not complete, the process of educating the ship owners.

---

about their duty to passengers. Punitive damages in cases of flagrant abuses provided yet another means of monitoring behavior on the high seas. In the face of profits to be made in transporting human cargo, Hoffman declared that “it is only by the firm and constant enforcement by the courts of the rights of passengers that the repetition of abuses [against them] can be prevented.” In taking such a stance, Hoffman clearly disappointed William H. Aspinwall, whose Pacific Mail Steamship Company often found itself before the northern district. We can only speculate whether Hoffman’s judicial reputation insured him a comfortable passage during his subsequent visits to New York.

**LAND**

If the law of the sea initially preoccupied Hoffman’s court, by the mid-1850s he began hearing a series of cases dealing with title to California’s most valuable lands. Arising as appeals from a specially created federal land board, these cases involved claims to often vast ranchos based on land grants issued by the Mexican government. Under the terms of the Treaty of Guadalupe Hidalgo, the United States promised to respect the Mexican ownership of property within California. The Mexican land grants that predated the American conquest in 1846 ultimately became the focus of bitter controversy lasting several decades.

One claimant summed up the frustrations of many others when he declared in 1857: “That we should be kept back to be made the foot ball for squatters and speculators and lawyers to kick at is something I never looked for when I invested my money in this property.” This complaint by a non-Hispanic Californian points up a common myth about the state’s early land disputes. It is often assumed that the decisions of the American courts were responsible for depriving California’s Hispanics of their most valuable lands. In fact, over 40 percent of the land claims presented were filed by non-Hispanics. California’s Hispanics did indeed lose much of their land to the Anglos, but it is important to keep in mind how many claims passed out of their hands prior to and during the litigation before the courts and how relatively few as a result of the decisions of those courts. Indeed, the adjudication over California’s land grants assumed a distinctly national character, with significant individual and collective interests in such claims centered in Washington, D.C., Philadelphia, and New York City.

One case in particular, San Francisco’s claim for its pueblo lands, pitted Judge Hoffman against his colleague, Associate Justice Stephen J. Field of the United States Supreme Court. As successor to the Mexican town of Yerba Buena, San Francisco claimed it was entitled under Mexican law to approximately eighteen thousand
acres. These pueblo lands were the keystone to an extraordinarily complex and attenuated land struggle. For the purpose of today's talk, however, the most interesting aspect of this struggle is the contrast in judicial style, so to speak, between Hoffman and Field.

Stephen Field was on the California Supreme Court for six years and presided as its chief justice at the time of his appointment to the United States Supreme Court in 1863. By that date Hoffman had more than a decade's experience on the northern district court and some, including Judge Hoffman, felt that the promotion to the higher federal bench was his by rights. If Hoffman's disappointment at being passed over created some tension between the two judges, Field's aggressive approach toward settling the pueblo case deeply strained their relationship.

By the early 1860s San Franciscans could perceive important differences in the attitudes of these two judges toward the pueblo title. Hoffman seemed to be dubious about the existence of the pueblo and his general approach to the land grant adjudication emphasized the technical requirements under Mexican law. On the other hand, Field had clearly indicated his support for the existence of a pueblo and seemed determined to see it confirmed.

From the moment of his appointment, Field sought to gain control over the pueblo case, which was technically before Hoffman's court. In conjunction with a political ally, Senator John Conness of California, Field worked to insure that San Francisco's
pueblo title was confirmed and that Hoffman's judgeship was eliminated in the process. The failure of bills that struck at his judgeship could not erase Hoffman's bitterness that Field had plotted with Conness to do him in.

Field did manage to get jurisdiction over the pueblo case and, as expected, promptly and perfunctorily confirmed the city's claim. Field's refusal to hear arguments against the existence of a pueblo and his refusal to allow an appeal to the Supreme Court underscored his determination to settle the case. Indeed, even after the Supreme Court, with Field vigorously dissenting, granted a writ of mandamus directing Field as the circuit justice to allow the appeal, Field refused to acquiesce. While the pueblo case remained in the Supreme Court docket pending appeal, Field drafted a bill that Conness introduced into the Senate to confirm San Francisco's title. The bill passed in March 1866 and effectively ended an ongoing struggle of sixteen years.

How Field and Hoffman viewed their role as judges was shaped in part by their different characters, while the clash of their personalities tended to accentuate differences between them. It may well be that their contrasting behavior in part reflected the fact that Field's judicial experience was primarily appellate while Hoffman mainly served as a trial judge. Each man's perception of the appropriate role for a judge and the nature of the judicial process, however, had a far greater impact on the degree of restraint or activism that each employed in doing his job. Field had the utmost confidence in his ability to perceive the problems inherent in the struggle over the pueblo title and to devise the appropriate solution for it. He proceeded with aggressive determination, and even if contemporaries questioned his means, there was no denying that he ended a troublesome dispute.

To a man of action such as Field, Hoffman's careful, conscientious, and seemingly plodding approach to judicial questions must have seemed unnecessary or even a sign of weakness. At the same time, Field's heavy hand in resolving the pueblo dispute and his legislative collaboration with Conness insulted Hoffman's pride and estranged him from California's circuit justice.

---

**Chinese Immigration**

The clash between Field and Hoffman over the pueblo case marked only the beginning. The two judges would be at odds once again in the 1880s over the issue of Chinese immigration.

With reference to the Chinese, Field is best known for his decisions pertaining to the Fourteenth Amendment, of which *Yick Wo v. Hopkins* is perhaps his most famous opinion. Field's decisions in the Chinese civil rights cases had in a sense less to do
with the Chinese than they did with Field's particular view of the Fourteenth Amendment and the judiciary's role in maintaining a balance between business and government. The important doctrinal legacy of these civil rights opinions has obscured another series of cases that had a far greater practical impact on the Chinese in America.

Far less well known are the over seven thousand habeas corpus cases brought by the Chinese in Hoffman's court after 1882. In resolving whether the Chinese petitioners were unlawfully detained by federal customs officers, Hoffman embarked on a series of cases that would preoccupy him for nearly a decade. In the process he allowed many thousands of Chinese into San Francisco despite intense pressure not to.

Nonetheless, there was a big difference between what Hoffman said and did about the Chinese appearing before him. Along with most white Californians — including most of the lawyers representing the Chinese and the other federal judges serving the Far West (including Field) — Hoffman favored the restriction of Chinese immigration and regarded them as racial inferiors.

Anti-Chinese sentiment had long existed in California, but the movement to exclude them peaked in the 1870s. Part of that pressure resulted in the renegotiation in 1880 of the Burlingame Treaty with China. The revised treaty continued to extend "most favored nation" status to the Chinese already in the country while giving Congress the right to suspend the immigration of Chinese laborers. In 1882 Congress passed the first of several laws designed to halt the influx of Chinese laborers. Interpreting these so-called restriction acts in the light of the treaty proved no easy task.

From the very beginning San Francisco's customs officials refused to land virtually every Chinese person who arrived by sea and questioned their right to seek writs of habeas corpus from Hoffman's court. At the heart of most of the habeas corpus cases was the factual question of whether the Chinese petitioner was a laborer (and thus excludable) or was a merchant or a returning resident who had simply gone to China on a visit (and was thus entitled to entry). Ultimately, the tremendous number of petitioners seeking relief from the northern district induced Hoffman to nickname his court "the Habeas Corpus Mill."

There were two aspects to these cases: the hearings themselves, after which Hoffman rendered a decision, usually without a written opinion, and some dozen "test cases" that sought to discuss the interpretation of the restriction acts more generally. While Field participated in these "test cases," he took no part in the individual hearings.

In fact, as California's circuit justice, Field presided over these "test cases" when he was in San Francisco. Initially, Field agreed with Hoffman that the restriction act should be interpreted in the light of the treaty with China. However, with increasing public
pressure adversely affecting his bid for the United States presidency, Field reversed himself and took a much harder line toward the Chinese. On the other hand, Hoffman steadfastly upheld the treaty with China. In 1884 the Supreme Court vindicated Hoffman’s position, but not before he came in for considerable abuse from the local press.

In some sense the institutional pressure on Hoffman’s court came from his own commitment to judicial due process. By insisting that each detained Chinese person had a right to challenge his imprisonment, Hoffman insured himself of a crowded docket. Moreover, such hearings could be protracted because Hoffman held that the Chinese were entitled to present any evidence that might establish their unlawful confinement.

Denial of access to his court or of the right to testify and present evidence was not merely a violation of basic rights to a fair trial guaranteed by the treaty with China and the Fourteenth Amendment, but also ran counter to Hoffman’s conception of his role as a federal judge. He refused to abdicate the decision of Chinese exclusion to customs officials regardless of the grief it caused him. Despite serious misgivings, Hoffman felt obliged to render decisions that, in his words, suggested he was “engaged in a persistent effort to defeat on technical grounds the operation of the law.”

Eventually, proponents of unilateral exclusion of Chinese laborers prevailed with federal legislation enacted in 1888. Even then, however, Hoffman refused to allow the local customs officers to bully him into denying due process to those Chinese who sought relief before the northern district.

Perhaps the most fascinating question about Hoffman’s behavior in these cases is why he didn’t avail himself of the many options that could have relieved the pressure of his court. At one level, his adherence to treaty obligations and procedural guarantees provides answers. In the final analysis, however, I would suggest that Hoffman’s experience as a trial judge, rather than his attitudes toward treaties, procedure, or judicial independence, proved more determinative of the fact that thousands of Chinese walked out of his courtroom.

Despite his generalized bias against the Chinese, in his court he did not face “the Chinese,” but rather individual Chinese petitioners. The thousands of separate hearings individualized the Chinese and forced Hoffman to see and hear them as human beings with distinct explanations and histories that had to be dealt with on a case-by-case basis. Hoffman ultimately could not maintain the detachment of Field, who only heard test cases in which the Chinese petitioner at hand was largely incidental. For instance, Hoffman expressed his delight at being able to avoid separating Chinese children from their parents. Likewise, he repeatedly spoke of the admirable and respectable qualities of
individual Chinese even as he decried their limitations as a race.

In contrast, Field, whose vision remained unclouded by the intensity of human interaction faced by Hoffman, would speak in sweeping terms about how to deal with "the Chinese problem." His perspective did not include the need to look at the Chinese coming before the federal courts as individuals.

As a trial judge, Hoffman found himself enmeshed in a far more complicated process. Despite his strong desire to be rid of "the habeas corpus mill," Hoffman could not avoid those cases without repudiating his concept of judicial review and duty. By adhering to that call to duty, his court gave thousands of Chinese the chance to convince him on an individual basis that they were entitled to their freedom to enter the country.

In summing up Ogden Hoffman's judgeship, it is perhaps appropriate to cast a glance at his more famous colleague Stephen Field. Without a doubt Field had a brilliant mind and his thirty-four years on the United States Supreme Court left an important impact on the doctrinal history of American law. In that sense, Field was a great judge in a way that Hoffman was not. At the same time, it seems to me that if we compare the two in terms of those qualities we value in a judge — evenhandedness, being apolitical, and conscientiousness — Hoffman emerges as the better judge. It is ironic to think that some of the qualities that insured Field's importance as a legal figure — his dynamism and singlemindedness — detracted from his judicial capacity.

In the final analysis, Hoffman's life and judgeship tell us far more about the nature of federal courts and process in the nineteenth century. There were, after all, far more Hoffmans than Fields. And despite his faults as a man and a judge, Hoffman emerges as a sympathetic character worth our attention in his own right. Hoffman's judicial legacy was a proud one and marks a fitting beginning to the history of this court.

The editor thanks Michael Griffith, Ph.D., Archivist of the U.S. District Court for the Northern District of California, for his assistance in preparing this article for publication.
State constitutions and the conventions that created them compose one of the great untapped sources for the history of American legal culture. There have been a few scholarly articles in law, history, and political science and a few research monographs on these matters, but the entire problem of the recurrence by Americans to fundamental principles of government through state constitutions remains unexplored. For this reason alone, Gordon Bakken’s new book is worthwhile. The fact that it deals with the American West, an area whose legal history has been largely ignored, makes it all the more welcome.

Bakken, a lawyer and historian at California State University, Fullerton, analyzes the emergence of the first constitutions in the eight Rocky Mountain states. Relying on an array of quantitative and letristic sources, he persuasively argues that these initial constitution makers assumed the burden of “stating fundamental principles for their respective states and of dealing with the demands of their times.” [p. 3] Bakken effectively demonstrates how convention delegates blended the concerns of a “living generation” with traditional commitments, rooted in American constitutional practices stretching back at least to 1787, to fundamental principles of government. He does so by giving separate attention to the emergence of constitutional provisions treating individual rights (religion, speech, press, and such), the allocation of scarce resources (notably water), corporations and labor, the taxation of mineral wealth, and women’s suffrage. Bakken skillfully invokes cluster-bloc analysis and the Guttman scaleogram technique to probe the interplay of party, economic interest, and personality in framing each of these provisions.

Bakken argues that in each instance the ultimate composition of a constitution in the Rocky Mountain states was shaped by two conditions: environment and prior territorial status. Delegates were acutely aware of the impact of the region’s arid environment on their economic well being, and they responded to this reality by molding provisions on eminent domain, mining, and irrigation that set their charters of government apart from documents crafted in the humid East. Bakken also shows that prior territorial experience contributed to the new documents, with the political and economic arrangements of the territorial era shaping the way delegates formed themselves into blocs on matters involving
labor, corporate charters, separation of powers, and women's suffrage.

Bakken has made good use of original sources and of appropriate quantitative methods in fitting the history of these early Rocky Mountain constitutions to the pluralist-consensus view of American legal history associated with James Willard Hurst. Both in substance and interpretation, this is the best book that Bakken, a prolific author on western legal history, has written to date.

Kermit L. Hall
University of Florida
ARTICLES OF RELATED INTEREST

With this inaugural issue, Western Legal History establishes its commitment to provide readers with information about work — research, publishing, collecting, and exhibits — in the history of law — in the American West. In this section, we list citations to recent articles from other journals relating to this history. The Editor regrets the exclusion of any articles missed in the review of the literature and invites contributions from readers.

1986


1987


Kathleen L. Vallarruel, "The Underground Railroad and the


REPORT ON THE NINTH JUDICIAL CIRCUIT HISTORICAL SOCIETY

Founding  The Ninth Judicial Circuit Historical Society was incorporated in San Francisco on November 7, 1985. Incorporators included Chief United States Circuit Judge James R. Browning of San Francisco, Senior United States District Judge William P. Gray of Los Angeles, and San Francisco attorney Mr. John A. Sutro, Sr. On August 22, 1986 the board of directors held its first general meeting, in Sun Valley, Idaho, at which members of the board were elected and plans for beginning the Society’s work were agreed upon. Mr. Chet Orloff, a historian and assistant director of the Oregon Historical Society, was hired by the board on January 22, 1987 as the Society’s executive director. With the establishment of its office in Pasadena, the Ninth Judicial Circuit Historical Society began its first year of operation, a year of planning and introducing itself to members of the bench, bar, and public; building a membership for its on-going support; and laying the foundation for its collections, exhibits, and publications programs.

Publications  The principal effort of the Society will be the publication of a new journal, Western Legal History. During the past year the Society has recruited an editorial board of historians, legal scholars, and lawyers and judges who have guided the founding of the journal, led its editor to contributors, and shared their knowledge and publishing experience in helping put together the first issue, Winter/Spring 1988. Several members of the editorial board will be submitting articles for future issues. The Society will continue its efforts to acquire articles, book reviews, and items of interest to readers. The Summer/Fall 1988 issue of Western Legal History will be published in September. The journal will move from a semi-annual to a quarterly format when support for the Society and the availability of excellent manuscripts allow.

In August 1987 the Ninth Judicial Circuit Historical Society and the U.S. District Court for the Northern District of California Historical Society co-published Authorized By No Law. This seventy-one page book by New York attorney and historian John D. Gordan, III tells the story of the 1856 Vigilance Committee uprising in San Francisco and the efforts of a beleaguered United States circuit judge to try members of the Committee for piracy and to save from the gallows a state supreme court justice by the writ of habeas corpus. Plans are now underway for the publication, in late 1988, of a book-length collection of oral histories of judges and lawyers from throughout the Ninth Circuit.
Oral History Using materials and questions developed by the Society, volunteer interviewers — law partners, judges, former law clerks, and historians — are helping the Society collect the oral histories of western judges and lawyers in every state in the circuit. The Society is building a Biographical File for tapes and transcripts of these oral histories, access to which is determined by agreement with the interviewee. (Interested researchers and prospective interviewers are invited to contact the Society for information on oral histories.)

At the time of publication of this first issue of Western Legal History, oral histories of the following individuals have been initiated, completed, or are in progress: Joseph A. Ball, Esq. (California), Judge Stanley M. Barnes (California), Harry J. Cavanagh, Esq. (Arizona), Judge Herbert Y. C. Choy (Hawaii), Judge Sherrill Halbert (California), Judge William J. Jameson (Montana), Orme Lewis, Esq. (Arizona), Judge Thomas J. MacBride (California), Karl H. Mangum, Esq. (Arizona), Judge Russell E. Smith (Montana), Judge Thomas Tang (Arizona), Judge Fred M. Taylor (Idaho), Judge Bruce R. Thompson (Nevada), Judge J. Clifford Wallace (California), and Judge Eugene A. Wright (Washington), Judge William J. Jameson of Montana has kindly put together and provided the Society with substantial biographical information on past Montana judges George M. Bourquin and Charles N. Pray. Alaska historian Claus-M. Naske has sent transcripts of the interviews he has done with Judge James M. Fitzgerald and Judge James A. von der Heydt.


Exhibits In August 1987 the Society launched the circuitwide tour of its first exhibit, The Constitution and the Courts. With illustrations gathered from archives nationwide, this exhibit tells the story of the founding of the federal courts and of the origin and early years of the Ninth Circuit's courts. It will visit court-
houses in each of the districts and, ultimately, will be available for loan to schools and libraries.

The Society has begun to work with representatives from several districts and the National Archives to produce a series of exhibits on the development of all 15 districts in the circuit. The first displays may go up as early as fall 1988. The Society is also working with affiliated historical groups in New York and Washington, D.C. to help produce and tour an exhibit on the Judiciary Act of 1789 and the creation of the nation's courts.

*Union Guide to Western Legal History Resources* In partnership with state historical societies and state archives, the Society will develop an inventory of archival materials—manuscripts, personal collections, court and law firm records—that are accessible to the public. The goal of this long-term project is to provide researchers with a cumulative, comprehensive, and coherent guide—including brief descriptions and locations—to law- and court-related matter held by regional historical repositories. The first major step will be to survey library holdings at the state and local level. As with the oral history program, the Society invites interested members to help gather this vast volume and diversity of information. Members interested in working on this project should contact the Society's director, Chet Orloff.

*Meetings and papers* In addition to its affiliations with state and regional historical agencies, the Ninth Judicial Circuit Historical Society is working with the American Historical Association/Pacific Coast Branch, the Western History Association, and the American Society for Legal History. The Society is helping organize sessions for the annual meetings of these professional groups at which papers will be presented on several facets of western legal history. *Western Legal History* will regularly publish selected papers read at these meetings. For the 1989 annual meeting of the American Society for Legal History, the Society plans to organize a colloquium of legal historians to address the question: "What is western legal history?" Details about this event will follow in future issues of *Western Legal History*.

---

**HISTORICAL NOTES FROM THROUGHOUT THE CIRCUIT**

In 1987 the U.S. District Court for the Northern District of California Historical Society, one of the first legal historical societies in the nation, co-published [with the Ninth Judicial Circuit Historical Society] *Authorized By No Law* and issued two numbers of its newsletter, *The Historical Reporter*: presented an exhibit on the Field family; and sponsored a four-part speakers'
program on the Constitution. The Society has recently issued its Fall/Winter issue of The Historical Reporter, which features an article on San Francisco attorney Harold Faulkner, and is now planning a speakers' program for the spring. The Society's 1988 officers are: Hon. Robert F. Peckham, Chairman; John A. Sutro, Sr., Esq., President; John H. Finger, Esq. and William K. Coblentz, Vice Presidents; William L. Whittaker, Esq., Secretary-Treasurer; Armando M. Menocal, III, Esq., Assistant Secretary-Treasurer. For information on the Society write to: U.S. District Court for the Northern District of California Historical Society, P.O. Box 36112, San Francisco, California 94102.

The U.S. District Court of Oregon Historical Society (501 U.S. Courthouse, 620 S.W. Main Street, Portland, Oregon 97205) held its annual meeting on November 2, 1987 at which the following officers were elected: Hon. Owen M. Panner, Chairman; Wayne Hilliard, Esq., President; Don S. Wilner, Esq., Vice President; Katherine H. O’Neil, Esq., Corporate Secretary; Robert M. Christ, Executive Secretary; Millard McClung, Treasurer. The Society is continuing its collection of oral histories of Oregon judges and lawyers, as well as collecting law firm histories. The Society’s newsletter, The Bulletin, is being redesigned and the next issue will be published this spring.

Members of the bench and bar in Idaho are forming the District of Idaho Historical Society. The Society is being organized under the direction of Boise attorney Carl Burke. The Society’s first effort was to obtain the oral history of Judge Fred M. Taylor, who was interviewed by former governor, Robert Smylie, Esq. Inquiries about this new group should be addressed to Carl Burke, Esq. at Elam, Burke and Boyd, 1010 1st Interstate Bank Building, Boise, Idaho 87302.

The Northwest Women’s Law Center has sponsored the production of a historical documentary titled “Her Day in Court: Women and Justice in Washington State.” The thirty minute video program explores the involvement and achievements of women in the Washington State court system. For information regarding the project and the videotape contact the Northwest Women’s Law Center, 119 S. Main Street, Suite 330, Seattle, Washington 98104.

Western Legal History invites the submission of information regarding law-related historical programs of historical agencies, bar associations, courts, and other organizations. News concerning events, publications, exhibits, meetings, and public programs may be sent to the Editor at P.O. Box 2558, Pasadena, California 91102-2558.
MEMBERSHIP
DECEMBER 31, 1987

FOUNDER
$3,000 or more

Bank of America, San Francisco
Gibson, Dunn & Crutcher, Los Angeles
Heller, Ehrman, White & McAuliffe, San Francisco
Irell & Manella, Los Angeles
Latham & Watkins, Los Angeles
McCutchen, Doyle, Brown & Enersen, San Francisco
O'Melveny & Myers, Los Angeles
Paul, Hastings, Janofsky & Walker, Los Angeles*
Pillsbury, Madison & Sutro, San Francisco*
Thelen, Marrin, Johnson & Bridges, San Francisco
United States Court of Appeals, Ninth Circuit
Attorney Admission Fund, San Francisco*
Van Loben Sels Foundation, San Francisco*

*Indicates a contribution of more than $3,000 in the Society's first year.

PATRON
$1,000 - $2,999

Adams, Duque & Hazeltine, Los Angeles
Atlantic Richfield Company, Los Angeles
Ball, Hunt, Hart, Brown and Baerwitz, Long Beach
Brobeck, Phleger & Harrison, San Francisco
Bronson, Bronson & McKinnon, San Francisco
Buchalter, Nemer, Fields, Chrystic & Younger, Los Angeles
Burlington Northern Inc., Seattle
Cotkin, Collins & Franscell, Los Angeles
Crosby, Heafey, Roach & May, Oakland
Dewey, Ballantine, Bushby, Palmer & Wood, Los Angeles
Donovan, Leisure, Newton & Irvine, Los Angeles
Farella, Braun & Martel, San Francisco
The Furth Foundation, San Francisco
Gendel, Raskoff, Shapiro & Quittner, Los Angeles
Greenburg, Glusker, Fields, Claman & Machtinger, Los Angeles
Hufstedler, Shirley M., Esq, Flintridge
Janofsky, Leonard S., Esq, Santa Monica
Jones, Day, Reavis & Pogue, Los Angeles
Lillick, McHose & Charles, San Francisco
and Los Angeles
Lyon & Lyon, Los Angeles
Morgan, Lewis & Bockius, Los Angeles
Morrison & Foerster, San Francisco
Munger, Tolles & Olson Foundation, Los Angeles
Musick, Peeler & Garrett, Los Angeles
Orloff, Chet, Pasadena
Pettit & Martin, San Francisco
Pircher, Nichols & Meeks, Los Angeles
Sidley & Austin, Los Angeles
Skadden, Arps, Slate, Meagher & Flom, Los Angeles
Spears, Lubersky, Campbell, Bledsoe
   Anderson & Young, Portland
Sutro, John A., Sr., Esq., San Francisco
Tuttle & Taylor, Los Angeles
United States District Court, Southern District of
   California, Library Fund

STEWARD
$750 – $999
Kilkenny, Hon. John F, Portland
Sullivan, McWilliams, Lewin & Markham,
   San Diego

SPONSOR
$500 – $749
Alioto & Alioto, San Francisco
Blecher & Collins, Los Angeles
Bledsoe, Cathcart, Eliot, Curfman & Allswang,
   San Francisco
Caulfield, Barbara A., Esq., San Francisco
Chandler, Tullar, Udall & Redhair, Tucson
Corinblit & Seltzer, Los Angeles
Daily Journal Company, Los Angeles
Diepenbrock, Wulff, Plant & Hannegan, Sacramento
Fogel, Rothchild, Feldman & Ostrov, Los Angeles
Galane, Morton R., Esq., Law Offices of, Las Vegas
Garlington, Lohn & Robinson, Missoula
Grand [Richard D.] Foundation, Tucson
Hahn & Hahn, Pasadena
Hepworth, Nungester, Felton & Lezamiz, Twin Falls
Hoecker & McMahon, Los Angeles
Kendrick, Elwood S., Esq., Los Angeles
Khourie, Crew & Jaeger, San Francisco
Lasky, Haas, Cohler & Hunter, San Francisco
Lawler, Felix & Hall, Los Angeles
Manatt, Phelps, Rothenberg & Phillips, Los Angeles
McAniff, Edward J., Esq., Los Angeles
Nibley, Robert, Esq., Los Angeles
Procopio, Cory, Hargreaves and Savitch, San Diego
San Diego County Bar Association, San Diego
Sideman & Bancroft, San Francisco
Sheppard, Mullin, Richter & Hampton, Los Angeles
Smith, Gerald K., Esq., Phoenix
Stutman, Treister & Glatt, Los Angeles
Sullivan, Roche & Johnson, San Francisco
United States District Court, District of Hawaii
   Library Fund, Honolulu
United States District Court, District of Oregon
   Library Fund, Portland
United States District Court, Eastern California
   Library Fund, Sacramento & Fresno
Warren, Robert S., Esq., Los Angeles
GRANTOR
$250 - $499
Armstrong, Orville A., Esq., Los Angeles
Baker, Ancel, Morris & Hruby, Los Angeles
Beatty, Thomas, D., Esq., Las Vegas
Bright, Patrick, F., Esq., Los Angeles
Byrne, Jerome C., Esq., South Pasadena
Cades, J. Russel, Esq., Honolulu
Charles, Allan E., Esq., San Francisco
Chernoff, Vilhauer, McClung & Stenzel, Portland
Cooper, White & Cooper, San Francisco
Cronin, Fried, Sekina, Kekina & Fairbanks, Honolulu
Cullinan, Vincent, Esq., San Francisco
Davis, Wright & Jones, Seattle
Dinkelspiel & Dinkelspiel, San Francisco
Doyle, Morris M., Esq., San Francisco
Gold, David B., Professional Law Corporation, San Francisco
Guild & Hagen, Ltd., Reno
Hanson, Bridgett, Marcus, Vlahos & Rudy, San Francisco
Harney, Wolfe, Pagliuso, Shaller & Carr, Los Angeles
Henigson, Robert, Esq., Los Angeles
Herman, Horton, Esq., Spokane
Hoge, Fenton, Jones & Appel, Inc., San Jose
Horvitz, Levy & Amerian, Los Angeles
Jett & Laquer, Pasadena
Kunz, Donald R., Esq., Phoenix
Loeb & Loeb, Los Angeles
Lorig, Frederick A., Esq., Los Angeles
Mattson, Marcus, Esq., Los Angeles
McDonough, Holland & Allen, Sacramento
Miller, Louis R., Esq., Los Angeles
Munger & Myers, Los Angeles
Newell, Donald P., Esq., San Diego
Novack, Kenneth M., Esq., Portland
Paul, Johnson & Alton, Honolulu
Reavis & McGrath, Los Angeles
Spensley, Horn, Jubas & Lubitz, Los Angeles
Talcott, Lightfoot, Vandevelde, Woehrle & Sadowsky, Los Angeles
Trost, J. Ronald, Esq., Los Angeles
Vaughn, William W., Esq., Los Angeles
Vogel, Charles S., Esq., Los Angeles
Williams, Kastner & Gibbs, Seattle
Wolff, Payson, Esq., Beverly Hills
Ziffren and Ziffren, Los Angeles

SUSTAINING
$100 - $249
Allison, MacKenzie, Hartman, Soumbeniotis & Russell, Ltd., Carson City
Alsdorf, Robert, Esq., Seattle
Anderson, Hon. J. Blaine, Boise
Bakaly, Charles G., Esq., Los Angeles
Bakken, Gordon, M., Ph.D., Placentia
Barger, Richard D., Esq., Los Angeles
Barker, Leroy Jr., Esq., Anchorage
Beard, Ronald S., Esq., Los Angeles
Bennett, Joel R., Esq., Los Angeles
Bevan, Bruce A., Jr., Esq., Los Angeles
Bosl, Phillip L., Esq., Long Beach
Brown, Jack E., Esq., Phoenix
Browning, Hon. James R., San Francisco
Byrd, Christine Swent, Esq., Studio City
Carlock, George Read, Esq., Phoenix
Clary, Everett B., Esq., Los Angeles
Clinton, Gordon S., Esq., Seattle
Cooper, Bertrand, Esq., Los Angeles
Damon, C. F., Jr., Esq., Honolulu
de Grasse, Michael E., Esq., Walla Walla
Dwyer, William L., Esq., Seattle
Eastough, F. O., Esq., Juneau
Edlund, William I., Esq., San Francisco
Fasman, Michael J., Esq., Beverly Hills
Federal Bar Association, Los Angeles Chapter
Ferguson, Hon. Warren J., Santa Ana
Fish, Richard N., Esq., Los Angeles
Fletcher, Hon. Betty B., Seattle
Freese, Paul L., Esq., Los Angeles
Gilmore & Feldman, Anchorage
Goldberg, Lawrence, Esq., San Francisco
Goodwin, Hon. Alfred T., Pasadena
Gordon, John D., III, Esq., New York
Gray, Hon. William P., Pasadena
Hagen, Pamela L., Esq., Los Angeles
Halbert, Hon. Sherrill, San Rafael
Haythornwhite, Jas. F., Esq., Nogales
Hemmeinger, Pamela L., Esq., Glendale
Hill, Earl M., Esq., Reno
Hochman, Salkin and DeRoy, Beverly Hills
Houser, Douglas G., Esq., Portland
Irving, Hon. J. Lawrence, San Diego
Jackson, Samuel, Esq., Santa Monica
Jameson, Hon. William J., Billings
Jimmerson & Combs, Las Vegas
Kazan, Steven, Esq., Oakland
Kindig, Holly E., Esq., Los Angeles
King, Hon. Samuel P., Honolulu
Kleinberg, James P., Esq., San Jose
Kleinfeld, Hon. Andrew J., Fairbanks
Kolb, Theodore A., Esq., San Francisco
Kolisch, Hartwell & Dickinson, Portland
Krischer, Gordon E., Esq., Los Angeles
Lewis, Marvin E., Esq., San Francisco
Logan, Ben H., Esq., Los Angeles
Marsch, Hon. Malcolm F., Portland
McCoy, Thomas M., Esq., Los Angeles
McDermott, Thomas J., Esq., Los Angeles
McDonough, John R., Esq., Los Angeles
McDonough, Martin, Esq., Sacramento
McIntyre, Mr. and Mrs. Edward J., San Diego
Mathews, John J., Esq., Portland
Merrill, Hon. Charles M., San Francisco
Mesch, John K., Esq., Tucson
Milam, Robert D., Esq., Sacramento
Morris, Steve, Esq., Las Vegas
Murray, Hon. W. D., Butte
Myers, Smithmoore P., Esq., Spokane
Netter, George J., Esq., Los Angeles
Niles, John G., Esq., Los Angeles
O'Brien, Charles F., Esq., Monrovia
O'Hara, John F., Esq., Los Angeles
Orloff, Monford A., Esq., Portland
Paine, Hamblen, Coffin, Brooke & Miller, Coeur D'Alene
Peckham, Hon. Robert F, San Francisco
Pepe, Stephen, Esq., Los Angeles
Pollock, John P., Esq., Los Angeles
Poore, Roth & Anderson, Butte
Rees, Paul G., Esq., Tucson
Renfrew, Charles B., Esq., San Francisco
Richter, Harlan M., San Francisco
Rohde, Stephen F., Esq., Los Angeles
Rosenblatt, Hon. Paul G., Phoenix
Rubin, Eagan & Feder, Beverly Hills
Selna, James V., Esq., Los Angeles
Sneed, Hon. Joseph T, San Francisco
Steinberg, Mark R., Esq., Los Angeles
Tang, Hon. Thomas, Phoenix
Taylor, John D., Esq., Pasadena
Taylor, John F, San Francisco
Thompson, Hon. Bruce R., Reno
Thompson, Hon. David R., San Diego
Trautman, William E., Esq., San Francisco
Vanderet, Robert C., Esq., Los Angeles
Wardlow, Kim McLane, Esq., Los Angeles
Warren, James L., Esq., San Francisco
Whitmore, Sharp, Esq., San Diego
Wiggins, Hon. Charles E., Reno
Willett, Robert E., Esq., Los Angeles
Workman, Thomas E., Jr, Esq., Los Angeles

ADVOCATE
$50 – $99
Andrews, Bradley G. Esq., Boise
Armstrong, Rex, Esq., Portland
Aronovsky, Ronald G., Esq., San Francisco
Ashland, Hon. Calvin K., Los Angeles
Banfield, Norman C., Esq., Juneau
Belknap, Michal, Ph.D., San Diego
Berg, Lori Nelson, Esq., South Laguna
Bilby, Hon. Richard M., Tucson
Boochever, Hon. Robert, Pasadena
Booth, Brian and Gwyneth, Portland
Bryan, Hon. Robert J., Tacoma
Bremson, Francis L., Esq., San Francisco
Buehler, John W., Esq., Portland
Busch, Joseph P., Esq., San Juan Capistrano
Campisi, Dominic J., Esq., San Francisco
Carroll, Hon. Earl H., Phoenix
Cella, Christopher L., Esq., Irvine
Char, Vernon F. L., Esq., Honolulu
Chernick, Richard, Esq., Los Angeles
Choy, Hon. Herbert Y.C., Honolulu
Christopher, Warren, Esq., Los Angeles
Chu, Morgan, Esq., Los Angeles
Cleary, John J., Esq., San Diego
Clements, Richard R., Esq., Los Angeles
Cleveland, Charles A., Esq., Spokane
Clifton, Richard R., Esq., Honolulu
Connelly, James P., Seattle
Cranston, John M., Esq., San Diego
Cressman, Paul R., Sr., Esq., Seattle
Diamos, Jo Ann D., Esq., Tucson
Dodd, William H., Esq., Honolulu
Dunham, Scott H., Esq., La Cresenta
Ebiner, Robert M., Esq., West Covina
Enright, Hon. William B., La Mesa
Fenton, Lewis L., Esq., Monterey
Fernandez, Hon. Ferdinand, Upland
Fleming, Macklin, Esq., Los Angeles
Franks, Pamela, Esq., Phoenix
Friedman, Stanley L., Esq., Los Angeles
Fuhrman, William A., Esq., Boise
Gates, Francis, Esq., San Francisco
Graham, Robert W., Esq., Seattle
Grebow, Arthur, Esq., Los Angeles
Haase & Harris, Reno
Handzlik, Jan Lawrence, Esq., Los Angeles
Haselton, Rick T., Esq., Portland
Hastert, Diane D., Esq., Honolulu
Hellman, Arthur D., Esq., Pittsburgh
Herman, Richard P., Esq., Balboa Island
Hill, Hon. Irving, Los Angeles
Hug, Hon. Procter, Jr., Reno
Jacobsen, Frederik A., Esq., San Francisco
Kadans, Joseph M., Esq., Las Vegas
Karlton, Hon. Lawrence K., Sacramento
Keep, Hon. Judith N., San Diego
Kirkham, James F., Esq., San Francisco
Kirschner, Richard H., Esq., Los Angeles
Lane, William Gregory, Esq., Newport Beach
Lavine, Hon. Richard A., Los Angeles
Lierz, Richard, Esq., Boise
Logerwell, Donald L., Esq., Seattle
Lund, James L., Esq., Beverly Hills
Mandel, Maurice II, Esq., Newport Beach
Manweiler, Kay C., Esq., Boise
Mar, Patricia S., Esq., San Francisco
Martin, Alan G., Esq., Beverly Hills
McDonald, Russell W., Esq., Reno
McFeeley, Neil D., Esq., Boise
McKeen, Hon. Roger Curtis, San Diego
McNulty, James F., Jr., Esq., Tucson
Michaelson, Alvin S., Los Angeles
Mitchell, Michael T, The Sea Ranch
Morrison, Charles T., Jr., Esq., Los Angeles
Mull, Barbara, Esq., San Francisco
Niles, John G., Esq., Los Angeles
O'Brien, Ben L., Esq., San Jose
O'Brien, Charles F., Esq., Monrovia
Ordin, Andrea S., Esq., Los Angeles
Orrick, Hon. William H., San Francisco
Parise, John S., Esq., Garden Grove
Pence, Hon. Martin, Honolulu
Pizzulli, Francis C., Law Corporation, Santa Monica
Pollack, John, Esq., Los Angeles
Power, Michael R., Esq., San Francisco
Pregerson, Hon. Harry, Los Angeles
Price, Hon. Edward Dean, Fresno
Quackenbush, Hon. Justin L., Spokane
Rattner, Mr. & Mrs. Jonathan, Palo Alto
Real, Hon. Manuel L., Los Angeles
Reed, Hon. Edward C., Jr, Reno
Richebourg, Ron, Esq., San Diego
Robertson, A. James II, Esq., San Francisco
Robinson, David K., Jr., Esq., Coeur d'Alene
Ryan, Hon. Harold L., Boise
Salinger, Thomas S., Costa Mesa
Schlei, Norbert A., Esq., Los Angeles
Schwarzer, Hon. William W., San Francisco
Sears, George A., Esq., San Francisco
Shallenberger, Garvin E., Costa Mesa
Sherwood, Arthur L., Esq., Los Angeles
Skopil, Hon. Otto R., Jr., Portland
Smith, Selma Moideil, Esq., Encino
Smith, Hon. Russell E., Missoula
Soloway, Howard B., Esq., Los Angeles
Strand, Hon. Roger G., Phoenix
Sutton, Hon. Richard C., Honolulu
Talt, A. R., Esq., Pasadena
Thornbury, William M., Esq., Santa Monica
Turk, A. Marco, Esq., Los Angeles
Uelmen, Gerald F., Esq., Santa Clara
Vanhole, William R., Boise
Voorhees, Hon. Donald S., Seattle
Wallace, Hon. Clifford, La Mesa
Warner, Ralph, Esq., Berkeley
Weil, Ruth M., Esq., Los Angeles
Wilkins, Hon. Philip C., Sacramento
Williams, Hon. Spencer M., San Francisco
Wood, J. Kirk, Esq., Los Angeles
Wood, W. Mark, Esq., Los Angeles
Woodsome, Edwin V., Jr., Esq., Los Angeles
Wright, Charles E., Esq., Portland
Wright, Hon. Eugene A., Seattle

SUBSCRIBING

$25 – $49

Alaska State Library, Juneau
Allen, Randall, L., Esq., Redlands
American Heritage Center, Univ. of Wyoming, Laramie
Arizona Superior Court, Phoenix
Barry, Patrick, F., Esq., Phoenix
Baum, Lawrence A., Ph.D., Columbus, OH
Bederman, David J., Esq., Reno
Boseker, John F., Esq., Sacramento
Chambers, Hon. Richard H., Tucson
Chiappinelli, Eric A., Esq., Seattle
Church, Harris, Johnson & Williams, Library, Great Falls
Connolly, Mark J., Esq., Santa Ana
Coughenour, Hon. John C., Seattle
Creighton, J. Kenneth, Esq., Reno
Cruzd, Robert G. P., Esq., Guam
Dahl, Annabell H., Esq., Glendale
Del Duca, Dr. Patrick, Los Angeles
De Lorme, Roland L., Ph.D., Bellingham
Dillman, Lori Huff, Esq., Los Angeles
Fiora, Hon. Nancy, Tucson
Forgnone, Robert, Esq., Los Angeles
Frazer, Douglas H., Esq., Phoenix
Friedman, Lawrence, M., Esq., Stanford
Fritz, Christian G., Ph.D., Albuquerque
Funston, Richard, Ph.D., El Cajon
Georgia State University, Atlanta
Golden Gate University, San Francisco
Goodwin, David B., Esq., Oakland
Gordon, Robert W., Esq., Stanford
Gregor, Eugene C., Esq., New York
Griffith, Michael, Ph.D., San Francisco
Guam Territorial Law Library, Agana
Hall, Kermit L., Ph.D., Gainesville, FL
Hall, Kirk R., Esq., Portland
Hulse, James W., Ph.D., Reno
Jensen, Shawn B., Esq., Boise
Kelleher, Hon. Robert J., Los Angeles
Kelly, Mary E., Esq., Los Angeles
Knapp, Patricia A., Esq., Lincoln, NE
LaMothe, Louise, Esq., Los Angeles
Langum, David J., Esq., Birmingham, AL
Lawton, Daniel A., Esq., San Diego
Lester, Robert I., Esq., Los Angeles
Licini, Felix, Esq., Boulder
Lillard, Monique C., Esq., Moscow, ID
Lindley, David, Esq., New York
Los Angeles County Law Library, Los Angeles
Mack, Joel H., Esq., San Diego
Matsuda, Mari, Esq., Honolulu
McCurdy, Charles W., Ph.D., Charlottesville, VA
McGeorge School of Law, Sacramento
Miller, M. Catherine, Esq., Lubbock, TX
Montana State Law Library, Helena
Mooney, R. James, Esq., Eugene
Naske, Clause-M., Ph.D., Fairbanks
Neff, Nancy, Esq., Canyon Country
Nelson, Hon. Dorothy W., Pasadena
Nicklason, Fred, Ph.D., Washington, D.C.
Norris, Hon. William A., Los Angeles
Nugent, S. Douglas, Esq., Seattle
Nycum, Peter, Esq., Portland
Oregon Historical Society, Portland
O'Reilly, John F., Esq., Las Vegas
O'Reilley, Kenneth, Ph.D., Anchorage
Orloff, Jon, Ph.D., Portland
Panner, Hon. Owen M., Portland
Parks, Marian Louise, M.A., Corona del Mar
Parrish, Michael E., Ph.D., La Jolla
Penrod, James N., Esq., San Francisco
Petrik, Paula, Ph.D., Bozeman
Porter, John E., Esq., Los Angeles
Reid, John Phillip, Esq., New York
Roethe, James N., Esq., San Francisco
Reynolds, Ray, Esq., San Francisco
Scheiber, Harry, Ph.D., Berkeley
Schneider, Lynn C., Esq., San Francisco
Selvin, Molly, Esq., Santa Monica
Sheldon, Charles H., Ph.D., Pullman
Sommer, John R., Esq., Los Angeles
Stanford Law School, Stanford
Stepp, John Edd, Esq., Los Angeles
Steuer, David S., Esq., Palo Alto
Stevens, Robert B., Ph.D., Santa Cruz
Stevenson, Noel C., Esq., Laguna Hills
Stoel, Caroline P., Esq., Portland
Stovall, John F., Esq., Bakersfield
Superior Court of Arizona,
Maricopa County, Phoenix
University of California Law Library, Berkeley
University of California Law Library, Los Angeles
University of Chicago Library, Chicago
University of Idaho Law Library, Moscow
University of San Diego Law Library, San Diego
University of Southern California, Los Angeles
University of Washington, Seattle
Walton, Bruce, Esq., Pasadena
Wasby, Stephen L., Ph.D., Albany
Wegner, William E., Esq., Los Angeles
Western Historical Quarterly, Logan, UT
Wheeler, Carolyn L., Esq., Phoenix
Willamette University College of Law Library, Salem
Winters, Barbara A., Esq., San Francisco
Wunder, John R., Ph.D., Clemson
Yackulic, Corrie Johnson, Esq., Seattle
Yale University Law School, New Haven
Young, Stanley, Esq., Palo Alto

HONORARY AND MEMORIAL CONTRIBUTIONS

In Memory of the Honorable Raymond E. Plummer
Hon. John F. Kilkenny, Portland

In Memory of Mrs. Richard H. Chambers
Hon. John F. Kilkenny, Portland
Chet Orloff, Pasadena

In Memory of Martin McDonough, Esq.
The Board of Directors of the Ninth Judicial Circuit Historical Society

In Honor of the 75th Birthday of the Honorable William P. Gray
John D. Taylor, Esq., Pasadena
Chet Orloff, Pasadena