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COMMENORATING THE CENTENNIAL OF THE
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1905–2005

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FOREWORD

On August 29, 1905, San Francisco welcomed a grand new building to its burgeoning cityscape at the corner of Seventh and Mission Streets.

With congressional authorization, that corner lot was purchased in 1891. Designed by James Knox Taylor, supervising architect for the Department of the Treasury, the building was constructed over seven years at a cost of $2.5 million, the equivalent of about $50 million today, although the materials and workmanship are irreplaceable. Like many federal government buildings of the era, it was designed in the Beaux Arts classical style, and like many built around the country, it was intended to house a post office, the federal courts, and other federal agencies. In fact, for many years the building was known by San Franciscans as the U.S. Post Office building, not as the federal courthouse, although it was home to the U.S. District Court for the Northern District of California and the U.S. Court of Appeals for the Ninth Circuit.

Less than a year after its opening, the granite-clad, steel-frame structure survived the 1906 earthquake with relatively minor damage. In 1934, a four-story, Art Deco-style annex was added. The 1989 Loma Prieta earthquake damaged the building much more seriously than the quake eighty-three years earlier. It was declared structurally unsound, and the tenants had to find new quarters. The district court was no longer there, having relocated to another building more than two decades before. The court of appeals moved out temporarily, but the post office left permanently. After a seismic retrofitting and historic rehabilitation, the Ninth Circuit Court of Appeals returned to Seventh and Mission Streets in 1997.

In 2004, the building was named in honor of James R. Browning, chief judge of the Ninth Circuit from 1976 to 1988. The building's new name also recognized Judge Browning's more than forty years' service on the U.S. Court of Appeals for the Ninth Circuit. A native of Montana, James Browning was nominated by President John F. Kennedy in 1961 to fill a vacancy created when fellow Montanan Walter Pope assumed senior status. Browning had already distinguished himself as
an attorney in the Antitrust Division of the U.S. Department of Justice, in private practice in Washington, D.C., and as Clerk of the Supreme Court of the United States. During his tenure as chief judge of the Ninth Circuit, he became an innovator in judicial administration. Among his many other accomplishments, he founded the Ninth Judicial Circuit Historical Society, the publisher of this journal. The second issue of *Western Legal History*, volume 1, number 2, was dedicated to him in recognition of his service as chief judge.

This special double issue of *Western Legal History* commemorates the centennial celebration held by the Ninth Circuit Court in 2005 to honor this extraordinary building. We are pleased to reprint articles and documents that first appeared in 1905 when the building opened, as well as many of the speeches that were delivered in 2005 by the distinguished guests who helped celebrate both the building's centenary at the two ceremonies and its naming in honor of Chief Judge Emeritus James R. Browning.

Bradley B. Williams
Editor
INTRODUCTION

JUDGE M. MARGARET McKEOWN

Welcome to the Ninth Circuit Court of Appeals, circa 1905. It was an interesting, if not notable, year:

- Howard Hughes, Dag Hammarskjold, and Lillian Hellman were born;
- Scientists announced the discovery of Jupiter's seventh satellite;
- Eleanor Roosevelt married Franklin in New York;
- Part of Angel Island became an immigration detention center where thousands of Chinese would later transit;
- Ty Cobb began his Hall of Fame baseball career;
- In the landmark case of *Lochner v. New York*, the Supreme Court held the maximum workday unconstitutional;
- And, in San Francisco, the Ninth Circuit Court of Appeals moved to its grand headquarters at Seventh and Mission Streets. At the time, the building was viewed as on a par with the Library of Congress and showcased as "the cream of creation," an "architectural gem."

The Ninth Circuit held its inaugural session in 1891 in the Appraisers Building in San Francisco. Justice Stephen Field presided. Like all of the courts of appeals that Congress created through the Evarts Act, the court initially had only two judges. Congress authorized a third judgeship in 1895, and for

Judge M. Margaret McKeown has served on the United States Court of Appeals for the Ninth Circuit since 1998. She was co-chair of the Centennial Celebration of the James R. Browning United States Courthouse, along with her colleagues Judge Marsha S. Berzon and Judge Carlos T. Bea.

2*Evarts Circuit Court of Appeals* Act, ch. 517, 26 Stat. 826 (1891).
forty years the circuit prospered with only three judges and a caseload of less than 150 each term. This leisurely workload is hard to imagine in light of today's crushing filings of more than sixteen thousand cases per year.

One hundred years ago, the court heard the case of United States v. Ah Sou, against the backdrop of the Chinese Exclusion Act of 1882, one of the earliest federal immigration laws and the first to exclude a particular nationality. The act was amended and extended until its repeal in 1943. Declaring "the Chinese . . . peculiar in every respect," the law barred the entry of Chinese laborers into the United States. Because the act permitted the entry of merchants, students, teachers, travelers, and minor children of citizens, the courts had to draw fine lines among categories of immigrants, like merchants and laborers. Often the deciding factor was physical, such as evidence of the calluses built up through hard labor.

Both the Gold Rush and the construction of the railroad brought a growing demand for labor in the West, filled in large part by Chinese immigrants. But once the railroad was completed and the country fell into a recession, anti-Chinese sentiment spread like wildfire. In 1894, the American Law Review unabashedly wrote that "the one all-important result of permitting Chinese labor to enter into competition with white labor has been found to be the industrial extermination of the white man." The racist sentiments against Chinese immigrants were not candycoated.

Despite the strict exclusion laws, many Chinese women were smuggled into the country illegally to live lives of slavery. Few Chinese men brought their wives with them, and a great demand for women developed. The lives of the women brought to meet that demand were not happy ones. A particularly heart-wrenching example was three-year-old Ho Ping, who was featured in the New York Times because she was prodded with a hot poker when she couldn't keep the babies under her care from crying.

138 F.775 [9th Cir. 1905]. This case is the subject of a law review article by Judge McKeown and Emily Ryo [J.D., Harvard; Ph.D. candidate, Stanford; former law clerk to Judge McKeown], "The Lost Sanctuary: Examining Sex Trafficking Through the Eyes of United States v. Ah Sou," Cornell International Law Journal 41:3 [forthcoming].


Many Chinese women were forced into lives of prostitution. One such immigrant was Ah Sou, a young girl whose mother sold her to a Chinese man, Moy Bun, when she was just sixteen years old. Moy Bun brought her to the United States, instructing her to deceive customs officials by telling them that Moy Bun was her father. She became a "paper daughter," just as other Chinese became "paper" brothers and sisters in order to escape deportation. Once here, Ah Sou was forced into prostitution and held as a slave by her Chinese master. After escaping to a home for Chinese women in Portland, Oregon, she married a Chinese laborer who was a legal resident of the United States. Even so, the bona fides of the marriage were in doubt. Pursuant to the Chinese Exclusion Act, she was ordered deported.

Ah Sou successfully challenged her deportation before district court Judge Hanford of Washington. A side note about Judge Hanford: he left the bench in 1912, with the threat of impeachment looming over him. The charges arose in part because of a ruling he made in an immigration case involving a socialist. Charges also included being a "habitual drunkard." He resigned on the eve of the vote before the House of Representatives.

Judge Hanford found that Ah Sou's marriage had not been consummated by cohabitation and appeared "questionable." He called the case "unique and perplexing" because the "law requires the Court to deport her." Nonetheless, he found that compliance with the statute would be "barbarous," equivalent to sending her back to perpetual slavery in China. He wrote, "[I]t is shocking to contemplate that the laws of our country require the court to use its process to accomplish such an unholy purpose." He invoked the Thirteenth Amendment and said it was "not a mere abstract theory of liberty, impotent when subjected to the test of practical application to the case of a helpless victim of oppression. . . ." Judge Hanford reversed the deportation order.

The United States appealed the ruling to the Ninth Circuit. It was a time when the word brief was not only a verb and a noun, but an adjective. Taking a page from good appellate practice, the lawyers filed thoughtful, succinct, and brief arguments of less than fifteen pages each. The parties are now before the circuit for oral argument. Judges Gilbert, Ross, and Morrow originally heard the case. But the passage of time has brought change and

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1John Rupp, "Hanford: An Almost Impeachment," speech before the Monday Club [1985], University of Washington Libraries, Special Collections.

enlightenment. The panel today, with Judge Rymer presiding, includes Circuit Judges Dorothy Nelson, Michael Daly Hawkins and William Fletcher, and, sitting by designation, District Judge Philip Pro. Will the clerk please call the case. [At this point, Judge Marsha Pechman (W.D. Wa.), representing Ah Sou, and Judge Charles Breyer (N.D. Ca.), representing the government, argued the case based on the briefs and the district court record.]

The Ninth Circuit today is known as a "hot bench," meaning that the members of the court come to the argument very well prepared and pepper the advocates with question after question. You saw evidence of that process tonight. Following argument, the court retired to consider its decision. In an amazingly quick turnaround, tonight the court not only came to a resolution but issued a four-page written decision. The court asked me to relay its decision.

In 1905, the Supreme Court had exclusive jurisdiction over constitutional questions; those questions were beyond the jurisdiction of the circuit courts, an historic artifact that no longer endures, as constitutional questions abound in the caseloads of the circuit courts. But the court retained jurisdiction here because the case was not brought as a constitutional case, and the Thirteenth Amendment reference surfaced only in the district court opinion. The Ninth Circuit opinion cites no specific statute or case law as precedent. After a recitation of the case history, the court observed that the district court was "undoubtedly correct" in holding that the marriage did not "legalize" Ah Sou's presence in the United States. The court viewed the district court as conceding that the Thirteenth Amendment did not prohibit deportation, nor was Ah Sou being sent into slavery in the United States or within its jurisdiction. In the end, the Ninth Circuit Court of Appeals saw no "escape" from the conclusion that the district court must be reversed and Ah Sou "remanded to the country whence she came." The court was not without sympathy. I quote from the opinion: "This case . . . enlists the sympathy of the court and we regret that the law is so written that it does not permit us . . . to yield to the humane considerations which actuated the court below."

My crystal ball tells me that Ah Sou will appeal this court's ruling to the United States Supreme Court, which will dismiss her appeal for lack of jurisdiction. Eventually, Ah Sou will be deported on the steamship S.S. Manchuria, bound for Hong Kong, on March 8, 1906.9 Nothing more is known of Ah Sou.

The court is now adjourned.

9C.B. Hopkins, United States Marshal for the Western District of Washington, Execution of the Deportation Order Against Ah Sou [March 13, 1906].
INTRODUCTION

With these words, Judge McKeown kicked off the centennial celebration of the Ninth Circuit's James R. Browning United States Courthouse in San Francisco. The year-long celebration spanned two commemorative events, a celebration involving the judges of the Ninth Circuit in January 2005, and a public event in August 2005. Chief Judge Schroeder appointed Circuit Judges Margaret McKeown, Marsha Berzon, and Carlos Bea to organize the commemoration.

January 31, 2005 Celebration

In conjunction with the Federal Judicial Center, the Ninth Circuit sponsored an educational symposium focusing on legal issues affecting the West. Dr. Kevin Starr, former California state librarian, was the keynote speaker. Dr. Starr traced the parallel development of the law and the westward expansion, particularly in California, from the 1800s to the present. He was followed by Professor Pamela Karlan, Stanford University Law School, who put in context the often-reviled *Lochner* decision. In *Lochner*, the Supreme Court held that New York's decision to create a maximum-hour work week unconstitutionally interfered with the rights of parties to set employment terms. Lawrence M. Friedman, a historian and law professor at Stanford University Law School, spoke on "Law in the West." The session concluded with reflections on the Ninth Circuit by former Chief Judge J. Clifford Wallace, retired Ninth Circuit Judge Shirley Hufstedler, and retired District Court Judge Charles Renfrew.

That evening, in the Ninth Circuit's ceremonial courtroom, the judges reenacted the saga of *Ah Sou*. Down the hall from the courtroom, the president of the Ninth Judicial Circuit Historical Society, Marc M. Seltzer, dedicated the Supreme Court Circuit Justice's chambers. This room in the courthouse was originally intended to serve as the chambers for the Supreme Court justice who was designated to "ride circuit" as a judge of the circuit court. Justice Sandra Day O'Connor, then-associate justice of the Supreme Court of the United States and the circuit justice for the Ninth Circuit, abandoned the horse in favor of the airplane to fulfill her duties. During her tenure on the Court, Justice O'Connor was a frequent participant in Ninth Circuit judicial conferences, and, following her retirement, she sat on a three-judge panel with the Ninth Circuit in San Francisco.

Combining two of her passions—law and music—Justice O'Connor regaled the audience with the parallels between
judicial reasoning and music composition. Indeed, the Supreme Court has been enshrined in musical history in the Gershwin brothers' description of the court in their musical Of Thee I Sing, in which the Supreme Court justices announce that they have powers that are positively regal.

Only we can take a law and make it legal. 10

The celebration concluded with a concert by the Quartet of Appeals, a talented group of musicians that included Susan Soong, a supervising staff attorney for the Ninth Circuit.

August 29, 2005 Celebration

The August celebration, which opened with The Golden Gate Band, focused on the courthouse itself. Judge Sidney Thomas offered a dramatic rendition of a speech by Judge William Morrow, who dedicated the courthouse in 1905, and actor Keith McGough portrayed President Theodore Roosevelt, during whose administration the courthouse was built. This volume includes remarks from the public officials who spoke, including U.S. Congresswoman Nancy Pelosi, Chief Judge Vaughn Walker of the Northern District of California, and General Services Administration administrator Stephen Perry. U.S. Senator Max Baucus and Ninth Circuit Judge Dorothy Nelson paid tribute to former Chief Judge James R. Browning. The courthouse was named in honor of Judge Browning in 2004.

The celebration also included a reprise of the United States v. Ah Sou presentation, as well as reenactment of the trial in Levi Strauss Realty v. Transatlantic Fire Insurance Company, an early district court case. Judge Marilyn Patel, former chief judge of the Northern District of California, presided; Magistrate Judges Edward Chen and Bernard Zimmerman of the Northern District of California acted as advocates for the parties. The case arose from the 1906 earthquake that devastated San Francisco and caused several fires to burn for days in various parts of the city. The earthquake and the fires destroyed close to three thousand acres and more than twenty-eight thousand structures, causing an estimated $1 billion in damage.

After the disaster, Levi Strauss Realty Company filed a claim with the Transatlantic Fire Insurance Company to recover $10,000 for two incinerated buildings that Transatlantic

10Ira Gershwin, "Entrance of Supreme Court Judges," Of Thee I Sing.
had insured against “direct loss or damage by fire.” Transatlantic denied the claim, and Levi Strauss brought suit in the United States Circuit Court for the Northern District of California. The circuit court of the time was not an appellate court, but rather served as a trial court; the circuit courts were later abolished in 1911.

At trial, Transatlantic argued that it was not liable for the loss because of the unusual circumstances surrounding the fires. According to Transatlantic, the earthquake and the ensuing destruction of San Francisco’s infrastructure were responsible for the fires that destroyed Levi Strauss’s properties. Transatlantic offered testimony that the earthquake had caused telephone lines to fall, gas lines to fail, and water mains to break, making it impossible for the city to control the fires effectively. The fire chief testified that the roads were cluttered with fallen electrical lines, and exhausted firefighters were relieved by volunteer citizens. In the words of Transatlantic’s counsel, it was the “irresistible and superhuman” nature of the fires that precluded coverage under the insurance policies.

Despite the somewhat histrionic appeal by Transatlantic, at the conclusion of the trial the court directed a verdict for Levi Strauss, holding that the fire damage was not excluded from the coverage under insurance policies because Transatlantic had failed to protect itself against insuring fire damage that was the result of an “act of God.” Levi Strauss was awarded $10,000 in loss damages under the policies, and $58.33 in interest.

The year 1905 was a landmark year in the history of the Ninth Circuit. One hundred years later, the court had expanded to twenty-eight active judges and sixteen thousand new case filings. Immigration cases dominated its docket, with 40 percent of the case filings. But the court also saw a wide array of cases that represented the new age of the twenty-first century: intellectual property, the environment, energy, international law, employment discrimination, and multidistrict litigation. Circuit judges one hundred years ago would not have conceived of the subjects of these cases. And one hundred years from now, we can expect even greater changes. For now, readers of this special issue of Western Legal History can join in the celebration of the Ninth Circuit’s headquarters’ first one hundred years.
A Centennial Celebration
Honorable Mary M. Schroeder, Chief Judge, and the members of the Ninth Circuit Court of Appeals are honored to welcome you to the 100th Anniversary Celebration of the James R. Browning United States Courthouse.

5:00 - 5:15
Dedication of Circuit Justice Chambers
Circuit Justice Chambers
(Room 329B)
From the nation’s beginning until 1911, Supreme Court justices were assigned to ride circuit in the various federal districts. This room was set aside for the justice assigned to the Ninth Circuit. The Honorable Sandra Day O’Connor, Supreme Court Justice for the Ninth Circuit, will dedicate this room and the Ninth Judicial Circuit Historical Society will unveil a commemorative plaque.

Introduction
Marc M. Seltzer, Esq.
President, Ninth Judicial Circuit Historical Society

Remarks
The Honorable Sandra Day O’Connor
Associate Justice, United States Supreme Court

5:15 - 6:00
Docent Tours and Permanent Exhibit
A permanent exhibit highlighting representative cases decided by the Ninth Circuit Court of Appeals in the last 100 years will debut during this evening’s celebration. Please take some time to view the exhibit, which will be available for display in other courts within the circuit. S2 Associates Inc., Napa, California, collaborated with the Ninth Circuit in the development of this project.

6:00 - 6:45
Historical Re-enactment
Ceremonial Courtroom
United States v Ah Sou, 138 F. 775 (9th Cir. 1905)
Ah Sou, a Chinese slave, was illegally brought to the U.S. by her master, where he continued to enslave her. While here, she escaped and entered into what may have been a sham marriage in an attempt to avoid being returned to China. She was ordered to be deported to China. In granting a stay of deportation, the district court referred to the 13th Amendment’s prohibition on slavery and concluded that Ah Sou’s deportation would remand her to a life of slavery. District Judge Cornelius Hanford wrote, “It is shocking to contemplate that the laws of our country require the court to use its process to accomplish such an unholy purpose.” The Ninth Circuit reversed. Chief Judge William Gilbert wrote: “The case is one which, from its nature,
enlists the sympathy of the court and we regret that the law is so written that it does not permit us, as we view it, to yield to the humane considerations which actuated the court below."

Counsel Hon. Charles R. Breyer (N.D. Ca.)
Attorney for Appellant, United States
Hon. Marsha J. Pechman (W.D. Wa.)
Attorney for Appellee, Ah Sou

Ninth Circuit Panel Hon. Dorothy W. Nelson,
Hon. Pamela Rymer, presiding, Hon. Michael Daly Hawkins,
Hon. William A. Fletcher, Hon. Philip M. Pro (D.Nev.)

Clerk of Court Roxanne Ashe, Ninth Circuit Mediator

6:45
Great Hall

6:45
Great Hall

Dinner Reception

8:00
Atrium

Welcoming Remarks
Honorable Mary M. Schroeder
Chief Judge, Ninth Circuit Court of Appeals

Introduction
Honorable M. Margaret McKeown
Chair, Ninth Circuit Education Committee

Music and the Law
Honorable Sandra Day O'Connor
Associate Justice, United States Supreme Court

Introduction
Cathy Catterson
Clerk of Court, Ninth Circuit Court of Appeals

100th Anniversary Celebration Concert
Performed by the Quartet of Appeals
Mark Fish, Viola
Wangchen Long, Violin
Michael Graham, Cello
Susan Soong, Violin (Ninth Circuit Staff Attorney)
PROGRAM

3:30 P.M._ MUSIC

THE GOLDEN GATE PARK BAND
CONDUCTOR, MICHAEL WINGLER

4:00 P.M._ DEDICATION OF THE 1905 COURTHOUSE (OUTDOORS)

WELCOMING REMARKS
THE HONORABLE MARY M. SCHROEDER
CHIEF JUDGE, U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

OVERVIEW OF THE CELEBRATION
THE HONORABLE MARSHA S. BERZON
JUDGE, U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

"JUDGE WILLIAM W. MORROW" DEDICATES THE COURTHOUSE
THE HONORABLE SIDNEY R. THOMAS
JUDGE, U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

REMARKS BY "PRESIDENT THEODORE ROOSEVELT"
KEITH MCGOUGH, ACTOR

5:15 P.M._ PRESENTATIONS (ATRIUM)

INTRODUCTIONS
THE HONORABLE CARLOS T. BEA
JUDGE, U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

THE HONORABLE NANCY PELOSI
UNITED STATES REPRESENTATIVE, CALIFORNIA, 8TH DISTRICT

THE HONORABLE VAUGHN R. WALKER
CHIEF JUDGE, U.S. DISTRICT COURT, NORTHERN CALIFORNIA

THE HONORABLE STEPHEN A. PERRY
ADMINISTRATOR, U.S. GENERAL SERVICES ADMINISTRATION

"THE HONORABLE JAMES R. BROWNING: AN ENDURING LEGACY"
THE HONORABLE MAX S. BAUCUS
UNITED STATES SENATOR, MONTANA

AND

THE HONORABLE DOROTHY W. NELSON
U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

"A SENSE OF THE TIME"
PROFESSOR WILLIAM DEVERELL, DIRECTOR
INSTITUTE ON CALIFORNIA AND THE WEST
UNIVERSITY OF SOUTHERN CALIFORNIA

6:15 P.M._ RECEPTION (3RD FLOOR)

HOSTED BY THE NINTH JUDICIAL CIRCUIT HISTORICAL SOCIETY

Program of events for Courthouse Centennial Celebration, August 29, 2005
1ST FLOOR EXHIBITS

U.S. Postal Service Distribution of Commemorative Envelopes

Historic Renovation and Seismic Retrofit of Today's Courthouse
U.S. General Services Administration and Earthquake Protection Systems, Inc.

Great Baseball Teams of the Era
The Honorable William R. Shubb
Judge, U.S. District Court, Eastern California

San Francisco Historical Exhibit
California Historical Society Museum

U.S. Court of Appeals for the Ninth Circuit Exhibits

3RD FLOOR EXHIBITS

The Honorable James H. Browning Exhibit

Furnishing Requisitions of Judge Richard Chambers
Ninth Judicial Circuit Historical Society

The Court That Tamed the West
United States District Court Historical Society

Heroic Postal Workers Save Courthouse
U.S. Postal Service

U.S. Supreme Court Chambers and Exhibit
Ninth Judicial Circuit Historical Society

7:00 p.m. — Re-enactment of Early Cases

(Courtroom 3)
U.S. District Court, Northern District of California
Judge Marilyn Hall Patel, Magistrate Judge Edward M. Chen and Magistrate Judge Bernard Zimmerman, along with members of the Historical Society Board, explore the aftermath of the 1906 earthquake through the eyes of one of San Francisco's venerable corporations — the Levi Strauss Company — with testimony and appearances by many of San Francisco's early political and business "movers and shakers."

United States v. Ah Sou
(Courtroom 1)
Should Ah Sou be deported back to China to a condition of slavery or should the stay of deportation, granted by the U.S. District Court despite her sham marriage, be upheld? Judge Marsha Pechman (WAW) represents Ah Sou and Judge Charles Breyer (CAN) represents the Immigration & Naturalization Service. Judge Margaret McKown presides.

7:45 p.m. — Evening Concludes
THE BUILDING IN 1905
A POST OFFICE THAT'S A PALACE:
DETAILS CONCERNING THE
MAGNIFICENT STRUCTURE UNCLE SAM
HAS BUILT IN SAN FRANCISCO

FRANCIS J. DYER

San Francisco's new Postoffice and Court-house building is a stately structure of white granite costing $2,500,000, located a little to the west of the business center. In the opinion of experts, it is the best constructed public building in this country.

Especial attention has been given to the interior work, which is said to be more beautiful than that of any other public building in the United States. A possible exception might be the Library of Congress in Washington, but 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 postoffice building in which expensive woods, marbles, bronzes, mosaics and other materials have been used lavishly but with discrimination to get this result. James Knox Taylor, supervising architect of the Treasury Department, should have credit for the design, while to J.W. Roberts, superintendent of construction, and his chief assistant, W.A. Newman, fall the praise for the execution of it.

The principal work of the postoffice, the receiving, sorting, and dispatching of mail-matter, will be done in the large glass-covered court on the ground floor. There seems to be abundant office room on the three sides of this area for the postal and judicial arms of the Federal service.

On entering the building, the visitor is impressed by the big bronze doors with ornamental panels in high relief, and by the marble mosaic on the groined and arched ceilings of the corridor. The marble walls of the main corridor are of the

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beautiful Italian pavonazzo, white strongly veined in black, with a base of verde antique, and capped with green Maryland. Pavonazzo is also used for the door casings. The floor is of ceramic tiling in intricately beautiful designs. The effect of the whole is very fine, but many will consider the corridor on the third floor even more elegant. It is a long colonnade flanked by forty-eight shining pillars of white Italian marble. Above the polished marble walls rises a plaster cornice, from which springs the groined and arched ceiling, rich with plaster decorations. Under the windows is a series of radiators screened by bronze panels, and the floor is of ceramic tiles.

All of the rooms are finished in a costly manner. Some of them would exhaust all the superlatives in the vocabulary to describe. The most superb are those assigned to Judge Morrow of the United States Circuit Court, which represent an outlay of $75,000. The Circuit court-room contains marbles which alone are worth about $50,000. The walls are of pavonazzo, paneled and heavily molded, the base being red Numidian from Africa. Columns of pavonazzo and pillars for the reception of marble busts are placed at intervals around the room. From the composite capitals spring arches with decorative plaster work surrounding art-glass mosaics. Highly ornamented bronze doors swing in marble door-frames deeply carved in fruit designs. The bench and desks are of marble, with bronze tops. Back of the bench is a design of colored marbles and glass, inlaid on marble. The jury box is inclosed
The United States Court of Appeals will sit in this room; it is magnificent with marbles, bronze, plaster and inlaid work.

by a solid bronze rail, and a similar rail divides the bench and bar from the public. The ceiling lights are of art glass and the floor is of ceramic tiling in rich designs. Heavy silk velours curtains temper the light from the windows, and the furniture is of solid mahogany.

Judge Morrow’s library contains $8,000 worth of the finest, selected East Indian mahogany, fashioned into bookcases which entirely surround the room to a height of ten feet. The red Numidian mantle cost $1,500. The floor is of parquetry, and the ceiling light is of art glass. The judge’s chambers are in keeping with the remainder of the suite. Prima vera or West Coast mahogany is the prevailing wood. The domed ceilings and the paneled walls are handsomely decorated. Some of the plaster modeling is so wonderfully executed in high relief as to excite the surprise and admiration of visiting architects. It may be interesting to know that all the plaster work was done on the premises under the direction of Superintendent Roberts.

District Judge De Haven’s court-room and chambers are scarcely less ornate and costly than those of Judge Morrow,
The visitor is impressed by the ornamental panels in high relief and by the rich plaster and marble walls.
although quite different. The library is in California curly redwood, the heavy ceiling beams being supported on fantastically carved consoles. There are wall seats of marble, pigskin panels above the bookcases, parquetry floor, and art-glass ceiling lights. In the other rooms beautiful Numidian marbles and East Indian mahogany inlaid with holly are the chief characteristics. All the judges' chambers are provided with baths and every possible luxury.

The Court of Appeals will sit in a sumptuous room magnificent with marbles, bronze, plaster and inlaid work.

Under the Act of March 31, 1891, circuit judges hold circuit courts of appeals but no longer hold circuit court. Judge W.W. Morrow is an exception to this rule. The United States Circuit Court of Appeals for the ninth judicial circuit is the highest tribunal west of the Rockies. It not only includes California, Oregon, Nevada, Idaho, Washington, Montana, the territories of Alaska, Arizona and Hawaii, but it hears appeals from consular and ministerial courts in China and Japan.


The United States Circuit Court, northern district of California, has jurisdiction over the counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo and Yuba. Its officers consist of W.W. Morrow, resident circuit judge; Robert T. Devlin, United States attorney; Benjamin L. McKinley, assistant United States attorney; E.H. Heacock, master in chancery and United States commissioner; J.H. Shine, marshal; Southard Hoffman, clerk; William Beaizley and John A. Schaertzer, deputy clerks; John T. Grey, crier.

The United States District Court for the northern district has jurisdiction over the same territory as the circuit court, and its officers are: J.J. De Haven, district judge; Robert T.
Devlin, United States attorney; Benjamin L. McKinley, assistant U.S. attorney; J.H. Shine, marshal; James P. Brown, clerk and United States commissioner; J.S. Manley, deputy clerk and United States commissioner; John Fouga, deputy clerk; John W. Janes, crier.

Postmaster Arthur G. Fisk has a private office furnished in regal style with paneled walls of East Indian mahogany, artistically carved. The mantle-piece is of old convent sienna and verde antique marbles. The other rooms of the suite are scarcely less magnificent.

United States Marshal Shine and the grand and petit juries will be provided with suitable surroundings.

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; but they have been done and will stand as a marvel to the old-time stone cutter. A wide space on the east of the postoffice has been reserved for a lawn and flowers.
E.H. Heacock, master in chancery of the United States Circuit Court and United States commissioner [Peters, photo]

The building is equipped with the latest thermostatic device for automatically regulating the heat and ventilation. About $25,000 will be expended for tinting and mural decorations. No detail has been slighted. Even the window-sashes are of mahogany and the whole structure has a palatial effect not often secured in the public edifices of the world's greatest democracy.
AN ARCHITECT'S VIEW
OF THE SAN FRANCISCO COURTHOUSE

AUGUST G. HEADMAN

San Francisco's newest and most impressive Postoffice edifice now greets the eye of anyone in the vicinity of Seventh and Mission streets. Towering some 90 feet above the sidewalk, it forms a most striking and beautiful picture in glistening, silver-white granite; stone so uniform in color and quality as at once to give the impression that the whole must have been cut from one huge perfect block. It is perhaps largely due to this granite that the more than ordinary solidity of appearance is obtained. On closer examination one is pleased by the numerous windows in the three stories, which, to the observer, suggests a large number of rooms, and evidence the honesty of the architectural treatment, the whole forming a most perfect and harmonious composition.

So the structure appealed to me on its eighth birthday. On that day the members of the San Francisco Architectural Club were the invited guests of Mr. Wm. A. Newman, Assistant Superintendent of Construction. The writer entered with a feeling of disconcern, having formed the opinion (as have the people of our city) of viewing a building of startling examples of poor construction.

This opinion is greatly due to the nonsense our up-to-date newspapers are wont to publish. The occasion for these criticisms is far beyond solution by the writer.

To go back to our subject. The building is truly a model of architecture, only to be compared with the Congressional Library

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1This article originally appeared under the title of “A California Postoffice Building” in The Architect and Engineer of California 2:1 (August 1905), pp. 13–19. For much of the last one hundred years, the federal building at Seventh and Mission streets in San Francisco was known for its main occupant, the U.S. Post Office. Like many federal buildings, it was originally designed to house several governmental agencies as well as the federal courts.

2The building was dedicated on August 29, 1905, so it is not clear what the author meant by “birthday.”
in Washington. Memory refuses to make all details clear to me, and I have only consented to write my personal impressions.

At any rate those impressions would be of little worth as to the logic and ingenuity of the interior planning, and can have value only as regards the picturesque quality of the result. This result is determined largely by the use of harmonious coloring, either in the marbles used throughout, plaster, modeling or the introduction of mural decorations by our best artists. The architect has designed an effect of subdued splendor, and has become an artist as well as a draughtsman. He has never allowed richness to degenerate into gaudiness, or beauty of material to disguise beauty of design. One is impressed upon first entering the building by the huge ornamental bronze doors and the beautifully designed inlaid mosaics on the grained and arched ceiling of the corridors.

The entire postal system is located along this corridor. The walls are of the very best white imported Italian Pavonazzo, with a base of Verdi antique, and capped with green Maryland. The floors are of ceramic tiling.

Before turning our attention to the other floors, suppose we take a peep into the mailing room, of 33,500 square feet of

The first-floor corridor of the courthouse originally housed the post office.
floor area, spanned by a huge skylight. This mailing room is a model of cleanliness, being wainscoted with glazed brick many feet high, with a dull bronze metal base. Another interesting feature is the inspector’s lookout, which flanks the entire south and west walls. By this mode of concealment the inspectors are in a position to detect any dishonesty displayed by Uncle Sam’s hard-working mail men.

On either side of the main staircases are two large, electrically controlled elevators of modern type, capable of carrying twenty people each.

Landing on the third floor we are impressed by this corridor, and certainly more impressive is the corridor to our left (the Hall of Wisdom I would call it), which is a long colonnade flanked by forty-eight Doric columns of white Italian marble. A glance at the illustrations which accompany this article will conceive the idea better than many pages of description of how admirably the coupled columns carry down the lines of the arches enriched by ornamental plaster panels in good deep undercuts; how the entire treatment is bound into a perfect whole. Architect Eames, president of the American Institute of Architects, said that this corridor was “a thing of beauty and a joy forever.” Indeed, he hit the nail on the head.

The corridor on the third floor, now known as The Great Hall, is a long colonnade flanked by forty-eight pillars of Italian marble.
Courtroom One is paneled in white Pavonazzo marble with marble pilasters and plaster caryatids.
Every room received special study, every detail being considered, but the cream of creation, in the writer’s opinion, is the United States Circuit Court, in which Judge Morrow\(^3\) will preside. The cost of this courtroom alone is $75,000. The chamber contains marbles which are worth $50,000. The walls and columns are of the Pavonazzo marble, the very best in the world. Pedestals for future use are placed between the engaged columns. Above the cornice line the $7,000 plaster ceiling springs. This courtroom contains three inlaid mosaic lunettes, representing California, the Philippine and the Hawaiian islands. Art glass mosaic work is quite evident here, and the effect is most charming. The desks are of marble capped with bronze. A solid bronze rail incloses the jury box. The Judge’s chambers show much study, it being very evident that Judge Morrow will be quite comfortable here.

The United States District Court, to be occupied by Judge de Haven,\(^4\) is closely related to the Circuit Court room in standard of design. The color scheme is deserving of special note. The lunettes representing Justice, Wisdom and Majesty of the Law are splendid examples of the work of the artists of this day. The ceiling in this room is an exact reproduction of one in the Congressional Library which has been the subject of such favorable criticism.

If the San Francisco Postoffice shows anything it certainly denotes the great advance which has taken place during the past ten years in the ability of the leading contracting firms and their workmen to execute with skill the decorative purposes of an architect. In the early years of the architectural revival in this country nothing hampered architects more than the difficulty of securing assistance of competent artisans, but the long educational effort is now having its effect. No one can look at the admirably executed finish of this building without realizing that the architects have been skillfully and loyally assisted by the contractors and the expert men in their employ, under supervision of the Government’s representative, Mr. J.W. Roberts, Superintendent of Construction. The value of this assistance is shown very much in every division of the

\(^{\text{3}}\)William W. Morrow was nominated to a seat on the U.S. Court of Appeals for the Ninth Circuit by President McKinley and confirmed in 1897. As noted in another article in this issue, he was instrumental in efforts to fund this building.

\(^{\text{4}}\)President McKinley nominated John J. DeHaven (1845–1913) to the U.S.D.C. for the Northern District of California to fill a seat vacated by William Morrow. He was confirmed in 1897, after a career in private practice in Eureka, five years on the California Superior Court bench, a term in Congress, and four years as an associate justice of the California Supreme Court.
work, but particular attention should be directed to the modeling of the plaster, stone and metallic detail; to the exceptional workmanlike setting and finish of the marble, both on the walls and floors; to the care with which the woodwork has been installed and stained; to the great beauty of the woods chosen, and to the excellence of the fixtures, whether in the main courtrooms or the smallest.

On no building in this country has better workmanship been shown and a higher standard of execution laid down, and I doubt whether this standard will be matched for many a year. It is much to be regretted that the conditions under which we are building to-day make it impossible for an architect to follow his work as closely and as intimately as the Greek and Roman architects had an opportunity of doing. This is a misfortune, which the architect should minimize as much as possible by devoting every moment of his time, even at the sacrifice of other considerations, to following the execution of his work.

Much of our modern work demonstrates the value of such supervision. We can daily see beautiful designs ruined in the execution, and indifferent designs made not only bearable but beautiful because of the wonderful care, intelligence and art with which they have been executed.

And just a few words as to the architect of this edifice, James Knox Taylor. The designs of few men in the country are more sought for and studied professionally than are Mr. Taylor's. This interest is perhaps livelier with men of the rising generation than with the older architects, and the basis of this interest lies in the fact that Mr. Taylor's designs are, if one may say so, thoroughly professional or technical, have been so arrived at by a special trained process of thought, and are expressed in a manner thoroughly grammatical and educated. His work is the creation of a man who has thoroughly accepted certain well-defined principles from which he works logically.

There is nothing obscure, slipshod, unformulated; no groping, no experimentation. The result is work wherein everything seems definitely and purposely "placed," and the building as you study it clearly declares itself. One may or may not like the building; one may prefer something more structural, or something more picturesque, or something more lofty; but there is no denying that this building has been deliberately done, is organic and logical, and represents a clear process of architectural thought, and not a number of loose reminiscences forced together carelessly.
Mr. President, Ladies and Gentlemen:

The growth of a great city, like the growth of a great individual, is usually in the beginning a struggle with adverse conditions; indeed, it seems to be a law of nature that real substantial strength and power come from efforts employed in overcoming great difficulties. San Francisco has been no exception to this rule. In early days it had to contend with many difficulties. It had some advantages, it is true, but it had also many disadvantages. It was a long distance from anywhere. It took a long time to get here. Its transportation facilities with the rest of the world were poor, irregular, and constantly changing. It was on the edge of the Continent, with its principal trade and commerce projected inland and eastward, and not at all points of the compass, as is usually the case with great trade centers.

In the early days we were not in very close touch with the general government, and we grew up with our own manners, customs, currency, and business system. We were a law unto ourselves. But we grew, and poured the wealth of our resources into all the channels of trade and commerce, bettering the conditions, and adding to the comforts of mankind in all parts of the globe.

And now San Francisco has grown to such dimensions that she cannot be ignored. As a community we are beginning to attract attention, and our Uncle Samuel is taking notice of us. In this magnificent building he has made a splendid investment in our midst for himself and in his own name, but for our benefit, and for the benefit of those who shall come after us, and we have assembled here to-day to look it over and see how we like it, and make suitable acknowledgement for his generosity and good taste. We are also prepared to look forward with a lively sense of appreciation to the new and commodius Custom-house to be erected upon the site of the old one, an appropriation for which amounting to $1,500,000 has been obtained by our able and efficient representative in the upper House of Congress, Senator Perkins, aided by our genial Representative, Mr. Kahn.
The legislative history of this beautiful building may be of some interest on this occasion. You will remember—or some of you will—that the great earthquake of 1868 very nearly destroyed the Custom-House and Post Office Building on Battery Street, and the old Merchants' Exchange just across the street, rented and occupied by the United States Courts. That seismic disturbance was almost as appalling in that neighborhood as a change of administration, and for some time the Custom-House and Post Office Building was exhibited to the curious stranger as a ruin, rivaling anything to be found in the old world.

The general government was at that time reconstructing the Union, and it had neither time nor money to rebuild our Custom-House. The temporary expedient was therefore resorted to of repairing the building. Accordingly, twenty or more large iron rods were run through the building, and the falling walls braced and bolted up, and the inside and outside of the building plastered over. Across the street the landlord swept out the fallen plaster, plastered anew, and repainted the building, and the Federal business at these two buildings went on as serenely as before.

But San Francisco wanted a new building, and the Chamber of Commerce and other organizations petitioned Congress for a new Federal building. Our Senators and Representatives in Congress introduced bills providing for such a building, but for one reason and another they were not favorably considered. In 1878 the Postmaster-General addressed Congress upon the subject, urging that an appropriation should be made for such a building. The Attorney-General, representing the United States Courts, also urged Congress to take action in the same direction. In 1883 Senator Miller from this State introduced a bill providing for an appropriation of $350,000 to purchase a site for such a building. The Senator secured that passage of the bill through the Senate, but it failed in the House, although Governor Budd, who was then a Representative in Congress from the Second Congressional District, came very near forcing an extra session of Congress in this effort to compel the House to consider the Senate bill.

In 1884 I was nominated for Congress in the Fourth Congressional District. Incidentally, I may say that I was nominated by the Republican party, although that circumstance has "nothing to do with the case," except in so far as it enables me to say that I added two planks to my party platform. I promised, first, that if elected I would secure an appropriation for a new building in San Francisco for the accommodation of the Post Office and United States Courts; second, that I would secure an appropriation for the reclamation of the Presidio Military
Reservation, which at that time was a barren, wind-swept waste. It was not supposed that I had much chance of an election, but Mr. Blaine was the nominee of the Republican party for President, and as he was very popular in this State, it was thought possible that he might pull through some of the other candidates. On the morning after the election the people of San Francisco awoke to two surprises as the result of the election: First, that Mr. Blaine had been defeated in the country at large, and second, that I had been elected in San Francisco. I was elected with my two planks, and practically that was all there was left to stand on, as the party platform had gone down with the ticket at the election.
In the Congress to which I was elected, I introduced, immediately upon its convening, my two bills: one for the purchase of a site for a Post Office and Court House building, and the other for the reclamation of the Presidio Military Reservation. I will dispose of the latter proposition by saying that after some obstructions and humorous experiences I secured an appropriation, for the construction of roads and planting of trees and shrubs in the Presidio Reservation, and you know now the very desirable changes that have taken place on that part of the peninsula by this and continuing appropriations.

The bill for the Post Office and Court House building was referred to the Committee on Public Buildings and Grounds, of which Hon. Barclay Henley, a Representative in Congress from the First District, was a member. He took charge of the bill in committee, and in a short time secured a favorable report, and the bill was reported to the House. In the meantime Senator Stanford had introduced the same bill in the Senate, and it was referred to the Senate Committee on Public Buildings and Grounds of which he was a member. He secured a favorable report, and soon after the bill was passed by the Senate. In the House the Senate bill was substituted for the House bill, and at this point we began to encounter the wonderful legislative obstructions devised by the then House Rules. This was prior to the changes made by the now famous Reed Rules. The bill contained an appropriation, and under the rules it was required to go to the calendar of the Committee of the Whole House. The purpose of this rule was to secure theoretically unlimited debate for all appropriations, as the previous question does not prevail in committee. But the rule has another effect: It prevents extravagant legislation, since no bill can get through the Committee of the Whole House unless it is privileged, like a general appropriation bill, or is highly meritorious and is called up in the House by unanimous consent, or on a motion to suspend the rules. A bill providing for a public building is not privileged. It could therefore only be reached by one or the other motions I have mentioned.

After our bill was placed on the calendar, the delegation, including particularly Mr. Henley, Mr. McKenna, now a Justice of the Supreme Court, and Mr. Felton, afterward a Senator from this State, proceeded to canvass the House, preparatory to asking the Speaker for a recognition to pass the bill by an appropriate motion. The House had 355 members, and this work of forestalling opposition took time and patience. We found some objections, particularly from some of the older members, who had bills of this character of their own, which they had been trying to pass for years without success. We had
At the Centennial Celebration in August 2005, Circuit Judge Sidney Thomas got into the historic spirit of the occasion to deliver Judge William W. Morrow's 1905 dedication speech.
to help them first, and we did so, but much to our astonishment, these bills came back from President Cleveland, vetoed. His objections were that the finances of the Government did not warrant such expenditures, and in several cases, that there were no regular sessions of any United States Courts held at the place where the building was proposed to be erected. The Speaker, Mr. Carlisle, and the leading Members of the House, thereupon determined that it was not wise to pass any more public building bills until it was ascertained that conditions existed which would meet the President's approval. We thereupon called upon the President and discussed the subject with him. After presenting the facts showing the necessity for such a building in San Francisco, we received such an intimation that we resumed our effort to pass the bill through the House, but it was not until the very last hours of the last session of the 49th Congress that I was able to secure a recognition for a motion to suspend the rules and pass the bill. The bill was called up, and after some discussion, not, however, in opposition, the rules were suspended and the bill was passed. The President's approval was one of his last acts connected with that Congress.

The bill provided an appropriation of $350,000, for the purchase of a site and the appointment of a commission to make the selection. We knew that $350,000 would be insufficient for the purpose, but that was the amount provided in the bill that failed in the previous Congress, and we did not think it wise to increase the amount at that time. The President appointed as a Commission John E. Swift, W.J. Bryan, the then Postmaster of San Francisco, and Col. John P. Irish. This Commission, after investigation, reported that a suitable site could not be obtained for less than $850,000. A bill was then introduced and passed, increasing the appropriation to $800,000. This amount was also found insufficient, and the amount was again increased to $1,250,000. The personnel of the Commission had changed in the meantime; Mr. Swift, having been appointed Minister to Japan, he resigned as a member of the Commission, and Mr. N.K. Masten was appointed in his place. This Commission purchased the present site for $1,050,000.

My Congressional career terminated March 3, 1891. In 1893 Congress fixed the limit of the cost of the building at $2,500,000. The appropriations amounting to about that sum were secured by our Senators and Representatives, mainly, I believe, through the efforts of Senators Felton and Perkins, and Representatives Loud, Maguire and Kahn.

This completes the legislative history of this building, and, as you can see, it has been so far completed as to be occupied by the Post Office and United States Courts and the other offices assigned to the building. It has been built within the
appropriation of $2,500,000, and I am informed that it is the most perfect building for post office purposes ever constructed. The part assigned to the United States Courts has been finished in a manner so artistic and substantial as to be beyond my powers of description. It is sufficient to say that it is as substantial as the Congressional Library at Washington and second only to that marvelous building in elegance and artistic finish. For the perfection and character of the plans for this building, we are indebted to Mr. Taylor, the Architect of the Treasury Department and his staff of assistants. The materials in the building are of the very best quality, and the workmanship of the highest degree of skill. For all this we must pay our tribute of respect to Mr. Roberts, for the untiring industry and especial capacity he has displayed in carrying forward the work of construction. It only remains for those who are to occupy the building to make use of its conveniences with a skill and energy in some relation to the perfection of the building.

The Post Office is for the convenience of the public. It is the privilege of every inhabitant of this city to receive a letter through this Post Office whenever he or she desires one, and I am sure Mr. Fisk will see that all are so accommodated. If he does not do so, I am sure the fault will have to be placed elsewhere.

It is the duty of the courts to administer justice to all alike, whether rich or poor, great or small. The building cannot determine with what success this duty will be performed. Injustice and wrong may emanate from a palace, while right and justice may come from a hovel.

For justice
All place a palace, all season summer

It is to be hoped, however, that the courts in this building will meet the reasonable expectation of an intelligent and law-abiding people, and that such an administration of the law may contribute in some measure to the glory and perpetuity of this great Republic.
THE CENTENNIAL CELEBRATION IN 2005
INTRODUCTION OF THE
HONORABLE SANDRA DAY O'CONNOR

MARC M. SELTZER

On behalf of the Ninth Judicial Circuit Historical Society, it is my privilege to welcome the Honorable Sandra Day O'Connor, Associate Justice of the Supreme Court of the United States, the circuit and district judges of the Ninth Circuit, and our many distinguished guests to this ceremony which is part of the celebration of the centennial of this magnificent courthouse, now quite appropriately named the James R. Browning United States Courthouse.

This afternoon, we will be dedicating Room 329B, the room that was originally intended to serve as the chambers of the Supreme Court justice who was designated to ride circuit as a judge of the circuit courts in the western United States. It is an irony of history that in 1911, soon after this courthouse was completed, Congress abolished the circuit courts altogether by merging them with the district courts.

This room serves as a reminder of the role of the circuit courts in American life, which traces back to the earliest years of our republic. The history of this singular institution, whereby justices of the Supreme Court rode circuit and sat as trial judges throughout the country, is rich with controversies and colorful events. The circuit riding duties imposed on the justices of the Supreme Court were very arduous and required the justices to travel thousands of miles over difficult roads. So difficult and time-consuming were these duties, that the justices sought the aid of President Washington and the Congress to alleviate their burdens. But efforts to change

Marc M. Seltzer is a partner in the firm of Susman Godfrey LLP, litigating complex cases in both state and federal courts. He joined the Ninth Judicial Circuit Historical Society Board of Directors in 1998 and was elected its president in 2003. These remarks were delivered at the Centennial Celebration in January 2005.
Historical Society Board Members (l to r) Jerome Braun, Jeffrey Fisher, and Marc Seltzer presented the court with a plaque commemorating the Supreme Court Circuit Justice’s chambers.

the circuit riding system were unsuccessful for more than one hundred years. It was contended that the justices, by traveling throughout the country and holding court, were visible representatives of the new central government, and would act as “republican schoolmasters” teaching the nation about the virtues of our Constitution.

But part of the colorful history of the circuit court is thought also to be the reason why circuit riding was ultimately abolished, when its dangers were made most apparent. The famous assault on Justice Stephen Field took place when he was traveling by train from Los Angeles to San Francisco. He was in the state to hold court in both cities in his capacity as a circuit justice. One scholar has said this assault may have helped hasten the practice’s demise.

The Ninth Judicial Circuit Historical Society is very pleased to participate in commemorating these historic chambers on the occasion of the 100th anniversary of this great courthouse.

We are most honored that Justice O’Connor is here to join us in this dedication ceremony. Thank you, Justice O’Connor.
MUSIC AND THE LAW

THE HONORABLE SANDRA DAY O'CONNOR

[An overspeaking judge is no well-tuned cymbal.]

—Francis Bacon, The Essay on Judicature

As you know, I've made a life in the law. And I've always loved music, from childhood on.

Lawyers feature in plenty of operas, of course. It starts with Moses, the first Lawgiver, in Rossini's Mose and Arnold Schoenberg's Moses und Aron. As expected, Moses generally comes off as an admirable character. But operatic evaluations of later lawyers are more critical. What we find in opera concerning lawyers after Moses is Puccini's opera Gianni Schicchi about forging a will; a lawyer in Gershwin's Porgy and Bess who sells Bess a divorce for a dollar—when he learns Bess was never actually married, he raises the price of the "divorce" to $1.50; we also see the lawyer in Strauss' Die Fledermaus, who is so incompetent that he gets his client's sentences increased.

The law's presence is also palpable in the many operas which take place in jails. Jails must be irresistible to composers looking for a place to set a reflective aria—there is plenty of time to think in jail; there is nothing better to do; and the resonance is good. There are jail scenes in Faust, Don Carlo, and Tosca, for instance. Fidelio takes place entirely in jail, portraying a disguised woman's successful attempt to save her wrongly imprisoned and soon-to-be-executed husband.

Gilbert and Sullivan also come through, as usual, with well-placed pokes at the law. In Trial by Jury, we meet a lonely Lord Chancellor whose job of approving marriage proposals for orphaned young women gives rise to a special complaint:

Sandra Day O'Connor was nominated by President Ronald Reagan to be the first female associate justice of the United States Supreme Court. She served from 1981 until her retirement in 2006. O'Connor is currently the chancellor of the College of William and Mary.
Supreme Court Justice Sandra Day O'Connor (photograph by Dane Penland, Smithsonian Institution, Collection of the Supreme Court of the United States)
And ev'ry one who'd marry a Ward
Must come to me for my accord,
And in my court I sit all day,
Giving agreeable girls away.
With one for him and one for he,
And one for you and one for ye,
And one for thou and one for thee,
But never, oh never a one for me!¹

And who can forget the endlessly creative solutions of a
self-professedly "humane" Mikado endeavoring to "make the
punishment fit the crime":

The advertising quack who wearies
With tales of countless cures
His teeth, I've enacted
Shall be extracted
By terrified amateurs.²

Finally, those in my position might listen carefully to the
Gershwin brothers' description of "the super Solomons of this
great nation," in their musical Of Thee I Sing, where a chorus
of Supreme Court justices count off, one through nine, and
announce that they

    have powers that are positively regal;
    Only we can take a law and make it legal.³

If only it were so.

The links between music and the law run deeper than that,
though. The list of major composers who studied law is both
surprising and impressive: Igor Stravinsky, Jean Sibelius,
Ernest Chausson, Pyotr Tchaikovsky, George Friedrich
Handel, and Georg Philipp Telemann, to name just the most
famous.⁴ Undoubtedly, there are also a number of prominent
lawyers who have studied music or are serious concertgoers.
You will seldom hear actual singing in the courtroom, despite
what you might think from Gilbert and Sullivan. But at any
opera or concert in the District of Columbia area, the seats

³Ira Gershwin, "Entrance of Supreme Court Judges," Of Thee I Sing.
⁴See Wayne Alpern, "Music Theory as a Mode of Law: The Case of Heinrich
will be filled with lawyers; in fact, a few seats will likely be filled by some of my colleagues on the Supreme Court.

I don't know the source of this overlap, though I like to think that musically attuned lawyers have improved the legal profession, and legally attuned musicians the musical world. But I've realized that there are far more similarities between the two fields than one might at first suppose. To be more specific, the best musicians share certain traits with the best judges and lawyers.

First, judges and musicians both write for an audience. However good our private reasoning or practicing skills, we are judged by the quality of what we do publicly. There is no option to take a willfully idiosyncratic viewpoint and ignore the public's appraisal. Our goal has to be to convince the public that our take on the law, or on the musical piece, is indeed right and correct.

The musicians we remember and admire are not those who were the most original; they are those whose originality makes a deep connection to the audience. Public demand to hear such “warhorses” as Beethoven's Ninth Symphony are a sign not of triteness, but of artistic success. And the truly great performers are not those who play best alone in their studios, but rather those whose playing moves audiences. The pianist Gary Graffman once wrote that, when he toured Russia in the 1960s, the question everyone asked was, “When is Horowitz coming back?” Russian audiences vividly remembered Vladimir Horowitz’s concerts from forty years earlier, and their appreciation transcended not only the intervening decades, but also national boundaries and Cold War tensions.

I can assure you that judges, too, are aware that we have an audience looking on. Law is not a popularity contest, of course. We would not be doing our constitutional duty if we aimed simply to please as many people as possible. Our job, instead, is to do our best to reach the correct decision, and then to convince the public of its correctness by our stated reasons. Judges, who do not command any army or police force to enforce their decisions, rely instead on the public’s recognition of a decision’s legitimacy, and on willingness of the other branches of government to enforce the law. This means that it is not enough that our decision be based in law and soundly reasoned; we try to make the decision’s legitimacy clear on the face of the opinion.

This does not mean, however, that either lawyers or musicians can be content merely to reconfirm their audience's

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"Gary Graffman, I Really Should Be Practicing [New York, 1982]."
prejudgments and settled tastes. A second thing musicians and lawyers share is that they write not just for the audience of their own time, but also for audiences of the future. When Igor Stravinsky premiered his pathbreaking *Rite of Spring* in Paris in 1913, there was an uproar, because audiences were not ready for its unusual rhythms and dissonances. Since then, the *Rite of Spring* has taken its place in the standard repertoire and cemented Stravinsky’s reputation as a genius. Beethoven, too, was forward-looking. His music stretched the capabilities of contemporary instruments and instrumentalists, not to mention listeners. For instance, the Grosse Fugue with which he ended one late string quartet was closer in spirit to twentieth-century music than to what nineteenth-century Vienna expected. To appease audiences of the time, he did eventually write a more accessible alternate finale to that quartet, but the Grosse Fugue has gained increasing appreciation in modern times.

In the law, too, the public’s initial reaction is not the last word. Conventional wisdom is sometimes mistaken, though it takes a courageous judge to recognize that. Sometimes a judge makes her best contribution by a dissent whose force of reasoning will later touch a nerve with the public’s growing understanding. Indeed, many of the law’s great heroes are judges who made clear their disagreement at shameful points in the nation’s history. One of the finest was Justice John Marshall Harlan, who sat on the Supreme Court from 1877 to 1911. In 1896, in the case *Plessy v. Ferguson*, a majority of the Supreme Court gave its blessing to racial segregation and Jim Crow by ruling that Louisiana could require railroads to separate black passengers from white passengers. But Justice Harlan was our Stravinsky—or better yet, our Beethoven. While others were stuck in their time, Justice Harlan looked ahead, writing a dissent that argued forcefully against racial segregation, in the most stirring terms. When the Supreme Court finally got around to correcting its error in 1954 in *Brown v. Board of Education*, the Court and the country finally realized that Justice Harlan had been right to say that “[o]ur Constitution is color-blind, and neither knows nor tolerates classes among citizens.” In law, like music, the best are sometimes ahead of their own time.

There is a third way law is like music: neither is a solitary profession. Instead, music and the law both depend on people

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*The Grosse Fugue was originally published as the last movement of the Quartet in B-flat, opus 130.*


*Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).*
working together. Musicians, of course, study harmony—the technique of writing multi-part compositions whose voices are vertically integrated with each other, yet where each voice retains its own individuality and interest. I think that is a good description of judging at its best, too. I, too, do most of my work in concert with others—eight others, to be precise—who form together what in musical terms would be called a nonet. We try our best to work together, even while preserving our independence. And, just as in music, the addition of these other voices, while it removes a bit of freedom from me, incomparably enriches my own part.

Now for the final point—the one I’ve saved for last, because of its importance. At their best, both law and music are a fusion of reason and passion; learning and living; erudition and inspiration. The musicians who will play tonight know the truth of what I’ve just said. The true artist is not that of popular imagination and B-movie lore. Brahms was not just impassioned; Schumann was not simply crazy; Mozart was not merely exuberant. Rather, great musicians combine emotion and inspiration with deep learning about their craft, and with careful attention to detail. For performers, there are tireless hours of practice, and close attention to the score. For composers, inspiration and emotion become music only when filtered through careful technique. To take but one example, Schubert, tonight’s featured composer, studied counterpoint, figured bass, and other compositional technique with a variety of teachers, including Antonio Salieri.9

Yet music without true inspiration would obviously fail as art. Composers of intellectual accomplishment, but nothing more, are shunned by audiences, who have never been interested in arid formalism. And performers, too, know that mere technical brilliance is not enough. Fast and flawless playing is impressive in its own way, but cannot be truly moving unless the performer also has an urge to share with his audience what it is in his life and in the music that moves and impassions him.

In the law, too, the best figures are touched by both reason and passion. A lawyer cannot, of course, get anywhere on emotion alone. Our courtroom rules are meant to focus judges and juries on facts and on logic. We want to prevent passionate outbursts, in order to protect litigants from prejudice and arbitrariness. But good lawyers know that they need something more than cold logic—they need a belief in their cause and their client. To sustain a long career in the law and to leave a lasting impression, an advocate needs real conviction,

9See Franz Schubert, Grove Music Online (2004), § 1.i.
Sandra Day O'Connor's talk about "Music and the Law" was followed by a performance of Antonin Dvorak's "American Quartet," by the Quartet of Appeals.

like the sense of mission my late colleague Thurgood Marshall showed as the leading civil rights attorney of his age. Great lawyers also have an instinct for the law. Fastidious research and a good dictionary will only get you so far. As one of the twentieth century's great judges, Learned Hand, said many years ago, "the meaning of a [law] may be more than that of the separate words, as a melody is more than the notes." 10

It is this mix of craft and conviction that keeps truly devoted lawyers working well into years when their friends are comfortably retired. A law school classmate of mine, Frederick Steiner, wrote to his colleagues a few years ago that to those

who "hear the law's music," it is not a profession of greed or of shady dealing. Instead, he said:

[T]he law is something else entirely. It is a music filled with the logic and clarity of Bach, the thunder, sometimes overblown and pompous, of Wagner, the lyric passion of Verdi and Puccini, Mozart's easy genius, Gershwin's invention, Brahms' calm, Handel's good manners, Rossini and Vivaldi's energy, Offenbach's boisterous panache, Copeland's folksy common sense, Beethoven's majesty, and, unfortunately, not a little of the ponderous tedium of Mahler and the sterile intellectualism of Schoenberg. . . . The words [of the music of the law] are words of equality, justice, fairness, consistency, predictability, equity, wrongs righted. . . . It is the music sung in the world . . . of childlike innocence in which the lion lies down with the lamb. [Perhaps it] is not a world that ever was, nor ever will be, but it is a world worth living toward.11

Law and music, of course, are not uniquely alike. The things I've mentioned—interactions with the public and with one's colleagues; a sense of vision transcending one's own narrow circumstances; and working from deep convictions—are probably what make any profession worth practicing, and, indeed, what make life worth living. I have been lucky to enjoy these things in my own life, and I hope that you have in yours, as well.

GREETINGS FROM THE
U.S. GENERAL SERVICES ADMINISTRATION

STEPHEN A. PERRY
INTRODUCTION BY JUDGE CARLOS T. BEA

If you want to avoid having the police called, it is always a good idea when one throws a party to invite the landlord. Here is our landlord: Mr. Steven Perry, the 17th administrator of the General Services Administration, the GSA, appointed in 2001.

Mr. Perry graduated from both the University of Akron and Stanford University Business School.

Before he was appointed to head GSA, Mr. Perry was the senior vice president for human resources, purchasing and communications at the Timken Roller-Bearing Company in Canton, Ohio.

Mr. Steven Perry.

THE HONORABLE STEVEN A. PERRY
ADMINISTRATOR, U.S. GENERAL SERVICES ADMINISTRATION

Thank you very much, Judge Bea. Good afternoon, ladies and gentlemen. It’s an honor for me to be here to represent the Bush administration, to represent the U.S. General Services Administration. Certainly it is an honor also for me to be here at this naming of this building for Judge Jim R. Browning.

Senator Baucus, Congresswoman Pelosi, Chief Judge Schroeder, other members of the judiciary who are here and to all of the distinguished individuals who have gathered for this very important occasion, I’m honored that I have several members of our General Services Administration here with me. As was pointed out, we are sometimes referred to as the “landlord” in that we are responsible for the managing and the upkeep of buildings which house federal workers. We don’t think “landlord” is a complimentary enough name for us. What we try to do is make sure that we provide appropriate workspace for the people’s work to be completed.
I'm joined here today by a number of associates of mine
from GSA, and I want to just mention them briefly: Peter
Stamison of the Pacific Rim Region, who's based here in San
Francisco; John Kvistad of the Northwest/Arctic Region, based
in Seattle; and Larry Trujillo of the Rocky Mountain Region,
based in Denver.

Also I want to point out that Jeff Neely is here. He is the
public building service person in San Francisco responsible for
projects such as this one. And Rob Graf, who has a similar
responsibility in the Northwest Region. One of their responsi-
bilities is to meet the needs and to make sure that they me-
ticulously make every request of the Ninth Circuit become a
reality. And I think they do a reasonably good job of that.

This is, as has been pointed out, truly a historic building,
and today is truly a historic day. I think it is striking, as we
saw in the reenactment by both Judge Morrow and President
Roosevelt, that some of the observations made in 1905 with
respect to the aspirations for the kind of work that would go
on in this building are still the aspirations that we have today.

President Roosevelt pointed out that we would provide
equal justice for all, whether they are people from a palace or
people from a hovel. And it is an awesome task that our
members of the judiciary carry out, and we have the greatest
respect for the work they do.

We all know that, precisely 100 years ago today, this U.S.
federal courthouse building was completed under the guidance
of James Knox Taylor, the then-supervising architect of the
U.S. Treasury. We also know that when the dust cleared from
the great San Francisco earthquake of 1906, most of the other
nearby structures had fallen. But this great structure, this
federal courthouse, was still standing.

We know that this building played a very instrumental role
in San Francisco's economic revival after that earthquake. And
we know that in the years that followed, many critical issues
of the day were decided in these hallowed halls.

As we celebrate this building and its triumph over adver-
sity, we are reminded of our fellow Americans who this hour
are contending with the storms in Louisiana and other states.
That's the kind of thing certainly that the people of the San
Francisco community had to deal with 100 years ago, and
we're dealing with those sorts of catastrophes yet today.

This courthouse building also survived the devastating
earthquake of 1989. It was at that time that the U.S. General
Services Administration received authorization from the
United States Congress, which appropriated $112 million for
the renovation that took until 1996 to complete. That renova-
tion included a number of things. For example, a new heating,
President Theodore Roosevelt, portrayed by actor Keith McGough, addressed the guests at the August event.

ventilating, and air-conditioning system and a new computerized network for access to legal data; and seismic isolation bearings were placed at the base of each of the building's columns so that if in fact lightning were to strike yet a third time, this building might sway, but it would not buckle.

I'd like to take this opportunity to thank all of those at GSA and others who have been involved in recent years and in some distant past years to ensure that this 100-year-old historic landmark has been maintained and preserved not only for this generation but, importantly, for future generations.

All of us at GSA want to thank the members of Congress for their support in providing the funding, and we particularly want to thank Congresswoman Nancy Pelosi who sponsored the legislation naming this courthouse for Judge Browning. I might mention that on another occasion I was together with Congresswoman Pelosi when we broke ground just across the
street for the federal building which is rising out of the ground as we speak. And that will be a wonderful neighbor for us.

For all of us at GSA, and I think for all of the people in this room, it's really comforting to know that the investment that was made in restoring this building after the 1989 earthquake and the continued maintenance and care that's being provided to this building will enable it to be here for future generations, to provide the space and amenities that the court will need to continue carrying out its rich tradition of administering the principles of justice and democracy.

Again, on behalf of all of us at the Bush administration and at GSA and most importantly on behalf of the American people, congratulations to you, Judge Browning, on having this magnificent United States courthouse named in your honor, an honor that I'm sure you very, very richly deserve.

And I want to express, of course, best wishes to all of those who will administer justice within this wonderful building in the years to come.

Thank you all very much.
A SENSE OF THE TIME

WILLIAM DEVERELL

INTRODUCTION BY JUDGE CARLOS T. BEA

To give us a feel for 1905, when this courthouse was dedicated, we are lucky indeed to have with us a distinguished historian from the University of Southern California, Professor of History William Deverell.

Professor Deverell graduated with honors and distinction from Stanford and then went on to take an M.A. and Ph.D. at Princeton. He has taught at the University of California at San Diego and the California Institute of Technology in Pasadena, and is the director of the Huntington Library-USC Institute on California and the West as well as professor of history at the University of Southern California.

He has written several books concentrating on the history of Los Angeles, the railroads, the Progressive Movement, and the West in general. Among his most recent works is a text for eighth graders, Call to Freedom, and Land of Sunshine: Environmental History of Metropolitan Los Angeles.

Professor Deverell.

Thank you, Judge. I'd like to offer my warm thanks to you and to your colleagues for the invitation to speak here this afternoon at this very important commemorative event. As we learned outside earlier, exactly a century ago, about where we're gathered today, a distinguished California jurist and politician, Judge William W. Morrow, stood before a similarly constituted crowd and gave a brief address marking the opening of this remarkably beautiful building. In his speech Judge Morrow spent some time with the particulars of the construction of what was at that time both a courthouse and a post office.
The site upon which the building was erected had been purchased way back in the spring of 1887 under the authority of a congressional act at a cost of slightly over $1,000,000 paid in gold to the undoubtedly very pleased property owner. At that time this parcel of empty, sandy land, very far from the city's central business district, sat in a working-class district of mostly Irish and German immigrants. It took a while to gather up enough federal dollars to build the type of structure Californians wanted here. Eight years after the end of the century, end-of-the-century groundbreaking, this building was complete. It cost two-and-a-half million dollars.

Designed by James Knox Taylor, the supervising architect of the United States Treasury, the courthouse and post office, complete with its sumptuous interiors, was and is one of the finest examples of American Renaissance architecture ever constructed. Its classical forms, typifying the federal buildings constructed in the era, were drawn from the American refructions of the Italian Renaissance by way of the École des Beaux-Arts. Its interior craftsmanship was every bit as dazzling as its exterior ornamentation. Graced by exquisite marble throughout, the building is a treasure box of tiled mosaic, stained glass, mahogany, redwood, oak, delicate plaster work.

Except for a few fairly mundane references to the building's beauty, the judge's speech was hardly exuberant. One might even suggest that it was slightly dull, especially coming from a man who had long since made his mark as an orator at other civic events. Years earlier, called upon to commemorate the Fourth of July, Judge Morrow had thundered on about American citizenship, noting bitterly that the newest arrivals to America's eastern and western shores did not seem to come up to the mark, like their northern European forebears.

There's nothing so fiery or provocative in Judge Morrow's dedicatory address here exactly one hundred years ago, but there are perhaps opportunities for us to read between the lines. Judge Morrow's extended history of the legislation that resulted in the courthouse construction wound a long, rhetorical path. He visited the important role he played in proposing the initial bill in the House. And Senator Leland Stanford then took up the cause next door in the Senate. Initial tightfistedness on the part of the federal government was overcome by the political skills and sheer tenacity of the California delegation, which rallied to the cause and lobbied the government to put up money enough to match the architectural ambitions of this place.

Here, ever so slightly tucked beneath the political give-and-take of the judge's remarks, is his most important point, hinted at by tone as much as laid out in words. It was time
Classically styled plaster caryatids adorn the wall of Courtroom One above the judge's bench.
that the federal government, that the East, that America, take the West seriously. The American West was no longer the frontier. The historian Frederick Jackson Turner had announced as much a decade earlier in his famed "Significance of the Frontier in American History" address.

On the contrary, the West was by then the nation's most urban region, and its urban ambitions were real and important. If the frontier had ended, as Turner insisted, and if that frontier and its attendant processes of conquest and settlement had been generative of American democracy, as he theorized, then the nation had better make certain that its cities inspired civic allegiance and adherence to the highest ideals of the republic. If the frontier had been the engine of democracy, then perhaps the city could take that role or must take that role in the new century. Public buildings of grandeur and enduring beauty, a building like this one, hailed by many in 1905 as the most beautiful federal building in the nation, might be part of a new American equation of keeping democracy vibrant.

We hear, too, the judge's insistence that the West was no longer simply the colonial outpost of the East. Nothing had so exemplified that colonial reach into the purse of western resources than the Gold Rush, an era, of course, forever branded into the history of this city. That was then, the judge implied, this was now. Colonialism and imperial reach would be redefined in the twentieth century. The West and especially its cities, and most especially this city, were now the critical sites of an American imperial stretch across the Pacific.

No city on the coast imbibed this vision with more gusto than turn-of-the-century San Francisco. Whereas the Far West had once been the fabled home of the mythical Northwest Passage—recall what Thomas Jefferson implored Lewis and Clark to find on their adventurous journey—its cities a mere century after Jefferson now inherited the pathway to Asia and its myriad promises. Here the West told the East, here San Francisco told Washington, here is your imperial jumping off point. Your chance to straddle the Pacific in imperial hubris and design, a sentiment so deliberately and so beautifully encapsulated in interior spaces of the courthouse and post office commemorating the United States conquest and control of Hawaii, Puerto Rico, and the Philippines.

San Francisco, Judge Morrow declared, was no longer an isolated city. It had passed through its days of frontier rowdiness. The city's economy had diversified, and San Francisco now existed at the center of concentric circles of both metropolitan and hinterland relations. Industrial might, agricultural bounty, Pacific Rim trade—San Francisco had it all. So too had the city's culture arrived. The adolescent
bawdiness of bygone days, while not exactly a thing of the past, was now at least but part of the cultural patrimony of a city that took its European pretensions very seriously. San Francisco cannot be ignored, the judge insisted a century ago, adding that in the proud example of this building, as we heard outside, our Uncle Samuel is taking notice of us.

That was true. And from that recognition the judge rightly drew optimism, if perhaps tinged by a dash of regional insecurity. We are fond in our day of characterizing earlier periods of our history as simpler, less cynical, or more optimistic. But at least insofar as optimism is concerned, the characterization holds, or at least holds somewhat, for the early twentieth century.

In 1905 San Francisco and its citizens had reasons to be both optimistic and proud, although we need not accept that pride necessarily at face value. Problems, even grandiose problems, are never difficult to find in almost any site or situation, past or present. And San Francisco a century ago surely had its share. The lid was about to be blown off in more ways than one. Graft, corruption, and influence-pedaling threatened at this very moment of 1905 to topple the municipal government in San Francisco just as a self-styled reform movement arose which, rhetoric notwithstanding, could often and would often play politics every bit as dirty and venal.

Without minimizing these challenges, the scale of which 1905 San Franciscans had yet to fully grasp, we might see the construction of the courthouse and post office building as part of the city's tremendously optimistic revisioning of its civic self—lock, stock, and barrel.

In the very same year that this building was dedicated, the great city planner and architect Daniel Hudson Burnham had published his plan called "On the Improvement and Adornment of San Francisco." Rightly considered an heir to the visionary genius Frederick Law Olmsted, who had died just two years earlier, Burnham approached San Francisco unwilling to think in other than big ideas. His vision, inspired by Haussman's Paris, was beholden to grand boulevards and radical street alignments, inspired correctives to what he called the "embarrassments of the city's topographically blind layout."

His plan included a healthy complement of park and recreational planning, an imaginative rethinking of cemeteries as what he called "cities of the dead" that required careful planning, and the eventual replacement of the city's Victorian structures both meek and grand with more ornate, more classical, and far bigger structures. Burnham's plan, and more aptly Burnham's mere presence here in this city, bespoke an urban optimism and somewhat precocious faith in planning emanating from the same locale as Judge
Morrow’s proud insistence that “San Francisco can no longer be ignored.”

A half-century removed from its Gold Rush roots, San Francisco gathered itself for a potential leap into the twentieth century through this act of concerted cosmopolitanism. While prudence holds up a warning finger, Burnham himself observed, we must not forget what San Francisco has become in fifty years and what it is still further destined to become.

The promise of that moment and of that leap is yet poignant today, a century later. It was, of course, a leap yanked immediately to earth by apocalypse. Brought low by the earthquake and fire, San Francisco and San Franciscans exhibited their can-do spirit and regenerative courage by rebuilding but not redesigning. Granted, through tragedy, a virtual tabula rasa canvas upon which to construct a city beholden to planning, design, and greenbelt leisure, San Franciscans nonetheless opted to fill their spaces mostly using the ghostly outlines of what had just recently been there. It was as if the imagination of Burnham’s moment had been replaced by a concomitant lack of confidence, a hurried rejoinder to Nature’s anger that said only “We’ll bounce back just as we were before.”

The disaster is, of course, at the center of our historical vision of early twentieth-century San Francisco. As it should, it dominates our view back in time. But of course we need to be careful about chronology here. We see it, but those who gathered here to open this building most certainly did not. We must remember that part of the horror of the conflagration of the spring of 1906 was the sheer surprise of the event. This kind of destruction was supposed to be an artifact of the past. San Francisco could talk of natural disaster and did, as Judge Morrow himself said in the remarks, but that was to be reserved for the old days. The destructive earthquake of 1868 was, in 1905, a long, long time ago, a different age. And Judge Morrow said as much in his remarks. Much like frontiersing Americans continued to believe astonishingly that indeed rain follows the plow, coastal Americans, faultline Americans, continued and yet continue to believe that earthquakes are more the province of then than now.

But it was not to be, of course. The fall of 1905 became the winter; the winter gave way to the spring of 1906. And then early in the morning of April 18, an earthquake felt as far south as Los Angeles and as far north as Oregon ruptured nearly five hundred miles of the San Andreas Fault. The earth shook, the sky soon burned, and the world fell down.

This building was spared, at least at first, standing like an ornate sentinel amidst the destruction all around it. New,
strong, and well braced, it withstood the seismic shock, offering refuge to the scared, the hurt, and the homeless on its back lawn. But the fire crept near. Soldiers ordered the workers inside to evacuate the building. A handful of postal workers remained, soaking their mail sacks in order to challenge the encroaching flames.

Only days later, having been saved by the heroism of these brave few, the building nearly suffered the fate of so many in the apocalypse when nearby dynamiting shook the building to its studs. As Philip Fradkin has written in his magisterial new history of the earthquake and fire, this flurry blasted every remaining pane of glass from the building, shook loose its marble cornices, blew the doors from their hinges, and added 20 percent to the structure's eventual repair bill. But repaired it was. And we ought to note and honor that repair here just as we ought to note and honor the even more impressive repairs made in the much more recent wake of Loma Prieta.

We see the earthquake waiting to happen when we remember the commemoration that took place right here a century ago. We see a San Francisco in 1905 about to be remade by earthquake and fire. We see, too, from our vantage point of a century, other changes, some momentous, some not, some that stand out, some that may not.

In 1905 a young postal worker named Albert Einstein burst onto the scientific scene with the publication of three paradigm-breaking physics papers. These three astonishing papers catapulted Einstein before the world's imagination, and we are still captivated by him.


The National Audubon Society began in 1905. So did the Rotary Club and the Industrial Workers of the World, known as the IWW, or in the argot of its exasperated opponents, the I Trouble You Trouble You. The African-American intellectual and civil rights leader W.E.B. Dubois founded the Niagara Movement in 1905, the immediate and critical institutional precursor to the NAACP.

The whirl of progress, of cultural change, and of picking up the pieces after the earthquake could only do so much, though, to restore a city's shattered confidence. We see a far
greater conflagration lurking just off center stage in 1905. The world of then was about to be remade by war, and it would never be the same again. How ironic, then, that the century began awash in assurances, many of them coming from here on the West Coast and from this very city, that warfare might no longer be a feature of international relations. Pacifists and others insisted that the world of the twentieth century could learn to do without war.

The Russo-Japanese war offered at least some caution to that thinking. Russia was unsuccessfully battling the Chinese, a cauldron into which would jump the irrepressible Teddy Roosevelt brokering the peace that would garner him the Nobel Peace Prize in 1906.

But nothing prepared anyone or anyplace for what was just around the corner in 1905. Less than a decade later, a grim assassination in Sarajevo would plunge the world into global war. A horrific clash that would end with the United States drawn firmly, if somewhat reluctantly, into world affairs. And just as that moment forever changed America, it did so for the West, for California, and for San Francisco. Our time today is a product of those times. Our world is the grandchild of that world. Our America is inextricably linked and tied to that America and we must be students of then to be students of now.

As he stood here a century ago in, yes, simpler times, Judge William Morrow rose to the oratorical occasion only at the conclusion of his remarks. “It is the duty of the courts,” he said, “to administer justice to all alike, whether rich or poor, great or small. The building cannot determine with what success this duty will be performed. Injustice and wrong may emanate from a palace while right and justice may come from a hovel.” He closed by wishing that justice would prevail in this building and that it would be a credit to the republic. Here, a century later, let us wish the very same for our time, encouraged in that wish by the examples of those who stood here before us, those who designed and built this building, those who brought and yet bring their lives and their labor here, and those who, even in the very recent past, provided us with their remarkable gifts of restoration and repair.

Let us also not forget that in civic rituals such as these and such as those that yet echo from a nearly forgotten past of a century ago we can both see and become those critical fibers that gird this nation and its people in times both optimistic and not, in times of confidence and of fear, and in times of peace and of war.

Thank you.
SIGNIFICANT EVENTS FROM THE NORTHERN DISTRICT OF CALIFORNIA

CHIEF JUDGE VAUGHN R. WALKER
INTRODUCTION BY JUDGE CARLOS T. BEA

Next, I am going to introduce a man who has a long and distinguished career in San Francisco as an able advocate and as an outstanding judge.

Judge Walker is a graduate of Michigan and spent some time at Chicago Law School, but more importantly, he graduated from the Stanford Law School. He practiced as an associate and then as a partner at Pillsbury, Madison and Sutro, today Pillsbury Winthrop, but not so far back so that he tried district court cases in this building, unlike some of us here.

Judge Walker was appointed to the bench in 1990, and became Chief Judge of U.S. District Court for the Northern District of California in 2004.

Judge Vaughn R. Walker.

THE HONORABLE VAUGHN R. WALKER
CHIEF JUDGE, U.S. DISTRICT COURT, NORTHERN CALIFORNIA

Thank you, Judge Bea. It's a pleasure for me to be here and to represent my colleagues on the Northern District of California bench. And it's appropriate that the Northern District should have representation here, because when this courthouse went into service in 1905, Courtroom No. 1 and Courtroom No. 3 were for the district court. As you know who know these buildings, those are the palatial courtrooms. The comparatively more modest Courtroom No. 2 was for the Court of Appeals. Plainly, President Roosevelt in 1905 had the priorities just right.

In 1934, two additional district courtrooms were added, and then another in 1948. Four years later, in 1952, two more district courtrooms were added. The district judges in those days talked of those additional district courtrooms as "low-ceilinged rooms, formerly offices, inadequate for jury trials, naturalization ceremonies, and incapable of handling multi-defendant cases and master
calendars and unable to accommodate the principals, witnesses, or lawyers in those proceedings." And eventually, of course, that led to the construction of our present facility.

But during the time that the district court sat in their increasingly cramped quarters in this courthouse, there were twenty-four district judges who had their chambers in courtrooms in this building. The first of these was John Jefferson DeHaven, who had been appointed by President McKinley, who obviously also selected President Roosevelt. Judge DeHaven was joined two years later by William Van Fleet, who had been nominated by President Roosevelt. The last district judge to assume duties as a district judge in this courthouse was the late Stanley A. Weigel, a Kennedy appointee, in 1962.

Now let me mention two others. One of the twenty-four district judges who held court in this building, Monroe Friedman, was a recess appointee in 1952 by President Truman. Following the 1952 elections, President Truman nominated Friedman to a permanent position on the court. But the Democrats, President Truman's party, of course, lost power in 1952. Both the White House and the Senate went to the other party, so Friedman was not confirmed to his permanent post on the district court. Imagine that. Politics in judicial appointments.

The only judge in the Northern District of California to be impeached sat in this courthouse. Harold Louderback was sitting here at the time of his impeachment in 1933. Judge Louderback was charged with favoritism and conspiracy in connection with the appointment of bankruptcy receivers. He was not convicted, although a majority of the Senate, but shy of the two-thirds majority required, voted to convict on one count. Judge Louderback, after that rather unhappy episode, returned here and continued to sit until his death in 1941.

By the 1960s, as I said, the district court had outgrown the space available in this building and a move to new quarters was inevitable. So from this magnificent building with its marbled hallways, its ornate courtrooms, its sumptuous chambers, the pink lion frieze around the exterior of the building—somehow it's appropriate that the Ninth Circuit should sit in a courthouse with pink lions decorating it, all built in the glorious days of Theodore Roosevelt—we move to a building built during the Kennedy administration by a Boston contractor.

But while we were here we gave a lot of excitement to this courthouse. Let me mention just a few. In 1913, Maury Diggs and Drew Caminetti, the nephew and son, respectively, of two California state senators, were prosecuted. The defendants, both married men, were convicted for taking two young
Judge Vaughn Walker, Chief Judge of the Northern District of California, recounted his court's history in the courthouse building.

women—not their wives—to Reno, “For the purpose of debauchery and for immoral purpose.” The first prosecution in the country under the misnamed Mann Act.

In 1917, the Hindu Conspiracy Trial was conducted in this courthouse. The defendants were Indian nationalists who were indicted for conspiring with Germany, with which, of course, the United States was at war in 1917. One defendant, Ram Singh, shot the other defendant, Ram Chadra, in the back at point-blank range, two feet away.

The United States marshal, Juan Holohan, was in the courtroom at the time, and he shot Ram Singh through the heart. Now there's courtroom security for you. And to this very day a bullet hole remains in the bench of Courtroom No. 1. Notably, the assistant United States attorney in that case was Annette Abbott Adams, the first woman ever to serve in that capacity in the United States.

In 1926, Colonel Ned Green, the prohibition administrator for northern California and Nevada, was tried for embezzlement of liquor that had been confiscated from bootleggers. Allegedly
the colonel used the hooch to host parties in his office. The jury took twenty-one minutes to reach a verdict of not guilty on all eight counts. In the courtroom the jurors and the spectators crowded around Green and congratulated him and his lawyers. The judge, A.F. St. Sure, restored order by admonishing, "We must not have any reception committees here."

In 1949, on the direct orders of Attorney General Tom Clark, later a Supreme Court justice, Iva Toguri was tried for treason. The prosecution followed a press campaign by the columnist Walter Winchell and the Hearst newspapers to find and to bring to justice Tokyo Rose for propaganda broadcasts to American military personnel during World War II. Toguri, an American of Japanese ancestry, had gone to Japan to care for an elderly aunt. She was stranded there at the time of Pearl Harbor and unable to return to the United States. To support herself she took a job with Nippon Broadcasting Service, a clerical job. The evidence was very thin, but she was convicted nonetheless.

Many years later, largely through the efforts of Senator S.I. Hayakawa, President Gerald Ford pardoned Toguri, restoring her to United States citizenship. So occasionally justice has to come from other quarters besides the courthouse.

But 1949 proved to be a banner year for excitement in this courthouse. There was a prosecution that year of the controversial labor leader Harry Bridges, the head of the Longshoremen and Warehouse Workers Union. Bridges, an Australian citizen, was tried for immigration violation. Bridges' lawyers were James Martin McGinnis and Vincent Hallinan. The judge was George Harris, who throughout the trial clashed repeatedly with Hallinan.

Bridges' conviction eventually was set aside by the United States Supreme Court. But at the end of the trial, Harris found Hallinan in contempt, thus producing the perfect outcome of a criminal case: the defendant goes free, the defendant's lawyer goes to jail. Hallinan himself was tried in this courthouse a couple of years later for income tax evasion. He was convicted and sent to do eighteen months in federal prison. Does the prosecution of a prominent criminal defense lawyer sound familiar? Well, whatever his difficulties with the Internal Revenue code, Hallinan contributed at least one bit of wisdom that every experienced trial lawyer recognizes. Said Hallinan, "When you go into a law case, you must remember difficulties do not come from your opponent. The greatest danger is your own client."

And Hallinan's co-counsel, James Martin McGinnis, recounts an episode in the 1950s, during the heat of the Red Scare, before longtime chief judge of the district court Louis Goodman. When called upon to enter her plea, the defendant
in that case wheeled around to her supporters in the spectators' section and cried, "Workers, I call upon you to arise and overthrow this corrupt court."

Naturally, an uproar ensued. The crier attempted to intervene, but the defendant kicked him in the shins and plopped him on the head with her purse. "Unhand me, you cossack," the transcript records. McGinnis attempted to intervene but to no avail. "Get away from me, you phony liberal. You're a capitalist just like all the others," the defendant said.

Eventually order was restored and Judge Goodman ordered the defendant sent for a psychiatric examination. His order minced no technical, legal, or medical terms. He said, "This woman is nuts."

In 1963 we decamped these wonderful facilities in this courthouse for much more plebeian surroundings at 450 Golden Gate Avenue. But I must say we have the pleasure of nonetheless taking with us the excitement, the pleasures, the thrill, the high adventures of the trial court.
THE HONORABLE JAMES R. BROWNING: 
AN ENDURING LEGACY

INTRODUCTIONS BY JUDGE CARLOS T. BEA

It is my honor and pleasure to present a woman who, in the trite phrase, needs no introduction, but will get one anyway because there are things in her career which particularly bear on this courthouse.

We all know that she was first elected to the House in 1987 and was overwhelmingly elected by her party in 2002 as the Minority Leader of the House of Representatives in Congress. Nancy is the first woman ever to lead a party in the House, after the House Minority Whip.

As concerns this building, she was the senior member of the House Appropriations Committee and played a decisive role in securing funding for the refurbishing and restoration of this courthouse after the Loma Prieta earthquake. In fact, she spoke at the dedication of this courthouse when it reopened seven years after the earthquake.

Recently, she introduced the bill that renamed this courthouse for Judge James Browning. It is a pleasure to present to you San Francisco's own, Congresswoman Nancy Pelosi.

THE HONORABLE NANCY PELOSI 
UNITED STATES REPRESENTATIVE, CALIFORNIA, 8TH DISTRICT

Judge Bea—at least I thought that’s who you were in costume there—thank you so much for your kind introduction.

It’s an honor to be here with each and every one of you on this very special occasion to celebrate the centennial of this magnificent building and to honor Judge Browning, our very special friend. And what a great honor for all of us that we’re joined by Senator Baucus from Montana, your home state. Thank you, Senator Baucus, for honoring us with your presence, for your extraordinary leadership in the United
States Senate, and most recently being a champion for saving Social Security for the American people. Thank you, Senator Baucus.

You know, on occasions like the rededication that Judge Bea mentioned today and other occasions, like when Judge Schroeder was sworn in as presiding judge, we had visitors from Arizona who took great pride in her leadership, as do all of us.

So we've become in this Ninth Circuit just a very all-American court, where people come from all over the country to observe important occasions in the life of this court.

Presiding Judge Schroeder, thank you for your leadership. And to all of the judges here, Judge Walker, Judge Schroeder, of course Judge Nelson, Judge Hug, Judge Patel, Judge Berzon. I think I've caught them all.

To all of you and especially to Judge Browning, it's a distinct honor to participate in this centennial occasion. Judge Browning, we're all so delighted today that we can call this magnificent courthouse the James R. Browning United States Courthouse. To quote a friend of yours, Mike Traynor, "A great and sturdy courthouse needs the name of a great and sturdy judge." That would be you.

It was an honor to be able to help name this courthouse after one of America's great jurists. I was pleased to join in the House to present the bill. Senator Boxer worked with Senator Reid, the minority leader now, and Senator Baucus in making sure that the legislation passed the Senate. And in doing so, to make sure everyone knew of your distinguished service to our country, that you served admirably as an appellate judge for forty years and brought great innovation as presiding judge.

So is that lei from Guam? From Hawaii? What part of this great Ninth Circuit is that lei from? Just another manifestation of the great diversity in this court.

Although the earthquake that was mentioned shook this building, it did bend it a bit, but it did not break it. And I know that earlier you had a reenactment and words from the original congressperson who got the $2 million appropriation many years ago, 100 years. It took over $100 million to rehab it back after the earthquake. But wasn't it worth it? It's so beautiful. We worked to strengthen its foundation, and to restore its beauty and make it one of the first both historic and technologically smart buildings in the country, to have respect for the past with an eye on the future.

I remember, too, Carlos, the day it opened, what a source of pride its resplendent architecture was and continues to be in our community. We celebrate the 100th anniversary of this building, now the James R. Browning Courthouse, but we also
note that the world is quite a different place since then. Then, of course, women did not have the right to vote; the legal profession did not have the wonderful diversity that it has today. We see remarkable and unmistakable progress, how far we have come as a society in that 100 years.

And the one constant that has made this progress possible has been our constitutional framework, the rule of law and the protection of individual rights under the Constitution secured by an independent judiciary, a mark of checks and balances and three co-equal branches of government. That is a commitment that I'm sure all of us in this room have. It is not the commitment that all of the people in the building that I serve in in Washington, D.C. have, however. And I think it bears noting because we have a challenge. It is the independence of the judiciary and the judges with the uncommon courage that gives meaning to the Constitution, especially in securing civil rights and equal protection under the law.

Imagine a world without Brown v. Board of Education and all of the civil rights and human rights that have ensued from then. However, as we gather here, it's a time of great challenge to this very independence. Earlier this month the policy-
setting body of the American Bar Association was compelled to unanimously resolve that it "deplores attacks on the independence of the judiciary that demean the judiciary as a separate and co-equal branch of government." And it declared that "a fair, impartial, and independent judiciary is fundamental to a free society."

Imagine that they felt compelled to make that statement: a free and independent judiciary. It's what we tell other countries is the sign of a free society and yet we have to reassert and reaffirm that principle in our own country. Some congressional leaders inexcusably seek to undermine the independence of the judiciary and our separation of powers. They give imprimatur to incendiary rhetoric, and in the Terri Schiavo case threaten to impeach judges for their judicial decisions. Some have even tried to cut funding for the Supreme Court in response to the Kelo decision, which they did not like. These actions reflect a profound disregard for constitutional order.

I know today is a day of celebration, but what we're celebrating is not only the bricks and mortar of this building and not only the magnificent contribution of Judge Browning; we're celebrating what this is all about: our Constitution, our country.

Especially troubling are court-stripping proposals. You haven't had them yet, I don't think, in the Senate. Senator Baucus—oh, you have? So it has spread. We have them regularly in the House. Imagine that they would pass a bill that would have provisions in it that are unconstitutional. By simple majority, though, they can amend the Constitution, because within the same bill they will have provisions stripping the courts, including the Supreme Court, of any judicial review. And in their arguments and in the committee and on the floor they say that Marbury v. Madison was wrongly decided. They say this. This is a matter of public record. And that the independence of the judiciary is not clearly defined in the Constitution of the United States.

So we have a lot of work to do. On a day like today, when we're engaged in the ritual of honoring those who serve so well and celebrating what this wonderful edifice has stood for and continues to, in that spirit I congratulate Judge Browning for his exceptional service to our country, saying that we will fight those who do not understand that checks and balances means three, not two, co-equal branches of government and that the independence of the judiciary is essential to our free society. It bears repeating, I think.

This courthouse, appropriately named for Judge Browning, contains the hopes and aspirations of a just society and a free
people. Let us express gratitude to all of the judges serving in this courthouse now and in the future for their courage, for your courage and your dedication. Let us honor our independent judiciary that nobly serves as our guardians, protects our Constitution and our liberties, and renders equal justice under the law.

In honoring Judge Browning over and over again, let us protect and defend the Constitution of the United States, which is the oath of office that we all take.

Congratulations, Judge Browning.

Thank you all.

Our next speaker, who will talk about our beloved Judge Jim Browning, is Senator Max S. Baucus of Montana. This is the first opportunity I have to thank him for his 2003 vote on my nomination.

Senator Baucus was born and raised on a ranch near Helena, Montana. He showed his good taste by attending and graduating from the Stanford Law School.

Senator Baucus was first elected to the House of Representatives in 1974 and was elected to the Senate in 1978. At present, he is the ranking member of the Senate Finance Committee.

THE HONORABLE MAX S. BAUCUS
UNITED STATES SENATOR, MONTANA

President Roosevelt, Leader Nancy Pelosi, members of the Ninth Circuit, Chief Judge Schroeder, landlord Steve Perry, friends. First I want to commend Nancy Pelosi for her words of admonition and warning about the assaults on the independence of the judiciary. Her words are very well chosen, words that I agree with, I find in the Senate. And I know that all of us will dedicate ourselves to make sure that we stand up for the independence of the federal judiciary. Thank you, Nancy Pelosi, for those words.

And thank you, Judge Bea. Very kind introduction. And you’re very welcome for the vote.

We observe today a celebration of freedom symbolizing an end as well as a beginning, signifying renewal as well as change. That is what President John F. Kennedy said just after noon on January 20, 1961. Seconds before, Chief Justice Earl Warren had administered the oath of office to President
Kennedy. Holding the Kennedy family Bible, standing between the chief justice and the president-elect, with eyes fixed on the new leader of our nation was the clerk of the Supreme Court of the United States, James R. Browning.

The newly sworn forty-three-year-old president, one year older than you, Mr. President, said, “So help me God.” A smiling, forty-two-year-old clerk stepped back, paused briefly, and turned to take a seat two rows behind Vice President Johnson. The previous clerk had scowled during President Eisenhower’s inauguration. He heard about it, Judge Browning later recounted, “So I tried to appear pleasant.”

“And so my fellow Americans,” said President Kennedy, “ask not what your country can do for you, ask what you can do for your country.” Later that same year, President Kennedy asked Mr. Browning to serve his country on the Ninth Circuit Court of Appeals. And in the forty-four years since, Judge Browning has served his country.

With this courthouse centennial celebration and with this rededication of it as the James R. Browning United States Courthouse, in the words of that January afternoon we observe today a beginning signifying renewal as well as change.

Judge Browning’s career has been, in the words of the day, a celebration of freedom, a celebration of excellence. Judge Browning is the longest-serving judge in the court’s history. Some call the United States Senate an exclusive club, but the Ninth Circuit has been more exclusive still. Only ninety judges have served on the Ninth Circuit. In his more than four decades on the court, Judge Browning has served with three-quarters of them. And as Judge Browning served as chief judge, he’s a member of a more exclusive club still. Only nine judges have served as chief justice of the Ninth Circuit. Judge Browning held that position longer than any other chief in the circuit’s history.

In a very real sense, Judge Browning has shaped the Ninth Circuit Court of Appeals. He has shaped the law of the West. He has brought so many innovations to the court in terms of communications and coordination, suggesting the voluntary bankruptcy appeals court. Many, many new innovations. And because of the Ninth Circuit’s important role in American jurisprudence as the nation’s largest appeals court and legal innovator, Judge Browning has helped to shape the law of America.

When I think of Judge Browning I think of his continually upbeat, irrepressible, positive, smiling, optimistic, can-do approach. I think of his razor-sharp legal skills, and I think of his sense of humor, his wonderful perception and understanding of people. And that smile. Judge Browning is the perfect
embodiment of intellect and mind on the one hand and heart and soul and spirit on the other. I know of no one who has that combination better than Judge Browning.

I am particularly proud of Judge Browning because Judge Browning is a Montanan. The number of circuit court judges from Montana is even more darned exclusive. I want to acknowledge the presence here today of Judge Sid Thomas, another circuit court judge from Montana. I was very pleased to recommend Judge Thomas to President Clinton. Judge Thomas is another Montanan of whom I am particularly proud.

Judge Browning was born in Great Falls, the son of a blacksmith. He grew up near Belt. Now for those of you from San Francisco, Belt is a town of a little more than 600 people, a bit east of Great Falls. Judge Browning has said in a quote that is so typical of his optimism, "I just can't imagine a better place to grow up."

Judge Browning married his high school sweetheart, Marie Rose. Never have I seen such love and devotion in a couple. They're always together, constant companions, reinforcing each other. It's a wonderful, inspirational sight to see the two
of them not only here together now but that’s my memory. It will always be the two of them together.

In 1941, the year I was born, Judge Browning graduated at the top of his class at the University of Montana Law School. Judge Browning worked in the Justice Department under Presidents Roosevelt, Truman, and Eisenhower. He served as an attorney at the antitrust division. First lieutenant Army Intelligence, executive assistant to the attorney general.

Although I chose to remain in the Senate, I do believe it would have been a great honor and a treat to be able to serve with such a brilliant and wonderful person. Judge Browning is a passionate defender of the Ninth Circuit. I want to acknowledge that Chief Judge Schroeder, Chief Judge Hug, Chief Judge Wallace, all share that view. More than one observer has said what the dean of the University of Montana Law School, Ed Eck, has said: "Judge Browning saved the Ninth Circuit." Over Judge Browning's opposition, there’s no way that Congress would split the circuit.

The massive circuit stretches from Guam to Glendive, Judge Browning has said. Then he adds, "Don’t recommend that drive to anybody." For those of you from San Francisco, Glendive is a town of a little more than 4,600 people, a bit west of North Dakota. I am told that in all of her travels and all of her efforts to keep the circuit together, Chief Judge Schroeder is probably the only person in the world who can tell you what it’s like to try to drive from Guam to Glendive.

In September 2000, Judge Browning took senior status. But Judge Browning has never quit. "I never think about my age," Judge Browning once said in an interview. "It never occurs to me. If you quit, you die." And when you speak to Judge Browning about the law, he still smiles with that same smile that he had in that inauguration forty-four years ago.

Mosaics of tile ornament the floors of this fine building. Granite adorns its walls. Stained glass colors its skylights. But the things that most grace this building are Judge Browning's chambers, Judge Browning's presence, Judge Browning's smile, his optimism, his can-do attitude. And so Leader Nancy Pelosi and I and others in Congress thought it altogether appropriate to rename the halls of justice here for the man from Belt, Montana. Leader Pelosi led the effort in the House of Representatives. I can tell you she worked very hard.

When I was talking to Ted Stevens, chairman of the appropriations committee, in conference with the House in the last couple, three days, I mentioned to Senator Stevens how we have to get this bill passed, get it part of the Congress report. He said, "Nancy Pelosi's taught me all about that." And I said, "Well, you do whatever she says because she is right."
On January 20, 1961, President Kennedy said, "The world is very different now." Today it is more different still by far. And yet, said President Kennedy, the same revolutionary beliefs for which our forebears fought are still at issue around the globe, the belief that the rights of man come not from the generosity of the state but from the hand of God. On that cold afternoon forty-four years ago, President Kennedy said, "I do not believe that any of us would exchange places with any other people or any other generation. The energy, the faith, the devotion which we bring to this endeavor will light our country and all of us who serve it, and the glow from that fire can truly light the world."

Judge Browning truly brought energy, faith, and devotion to the bench. Judge Browning's work has lit and will light our country and all who serve it. And he took that torch, President Roosevelt. He fanned it, he made sure it lit the courthouse here and all those who were with him. And many others have followed him and will continue to take up that torch and will pass it on to all whom they work with. And the glow from that fire that Judge Browning has lit will, in fact, truly light the world.

Thank you very much.

Next it is a great pleasure to present one of our most distinguished colleagues on the court, Judge Dorothy Nelson. Judge Nelson received her law degree from UCLA Law School and her Masters in Law from USC Law School. From 1969 to 1980, she was a professor of law and later the Dean of the law school at USC. She was appointed to the court in 1979 and took senior status in 1995. But she didn't slow down.

Among her many accomplishments has been her recognition as a leader in the field of dispute resolution, when in 2000 she received the ABA Dispute Resolution Award. She is the founder and chair of the Board of Directors of the Western Justice Center in Pasadena.

Judge Dorothy Nelson.

THE HONORABLE DOROTHY W. NELSON
U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

Thank you very much, Judge Bea. They say a good lawyer should know when to sit down. But I will not sit down even after that wonderful talk by Senator Baucus about Judge
Browning, because I think we could never say enough about Judge and Marie Rose Browning. Senator Baucus, Congressman Pelosi, Chief Judge Schroeder, and all our honored guests, it is a tremendous honor for me to participate in these ceremonies for a man and woman I not only admire but love dearly and will love for the rest of my life.

Now, you know he hailed from Belt, Montana. And he was head of his class, valedictorian, editor-in-chief. But true to his self-effacing personality, Judge Browning quipped when that was mentioned before, “Well, the whole law school only had 90 people.” After he graduated from law school, as Senator Baucus said, he toiled as an antitrust lawyer in the Department of Justice, about which I shall say more a little bit later. He went into the military. And then after ten years of outstanding work in the Department of Justice Antitrust Division, he went into private practice.

But what a distinguished private practice he had. Chief Judge Walker mentioned the Mann Act. Well, Judge Browning had a client who was charged with transporting two women across state lines for illicit purposes—let’s just say that. And the prosecutors brought two counts. Judge Browning went all the way to the Supreme Court and had a smashing victory because, as Justice Harlan said, it is clear that his client should have been charged with only one count, although he transported two women. Judge Browning had made that very clear in the court.

In fact, the justices were so impressed that in 1958, as Senator Baucus mentioned, they appointed him clerk of the United States Supreme Court. But according to the most humble Judge Browning, the folks back in Montana remained skeptical of his abilities until they watched him holding the Bible during the swearing-in ceremony for President John F. Kennedy, who was later to appoint him to the court.

What I think many people don’t realize is that Judge Browning was a pioneer in antitrust law. There he was tutored in the populous New Deal tradition of trust busting. His work then is relevant today in the computer industry. Hamilton Loeb, a former law clerk and a commercial litigator in New York, once said, and I quote, “You can trace the justice department’s Microsoft anti-bundling complaints to much of the antitrust law Browning laid down in the formative years of Silicon Valley. He is as important to antitrust law as any single judge of the modern era.

Judge Browning became chief judge in 1976 and remained in that position for the next twelve years. It was a great joy for me to join the court in 1980, as my specialty as a law professor had been judicial administration. In fact, when I was con-
cerned about coming on the court or whether I should just become a good old law professor again, my husband said, "You've been criticizing the court for years. Why don't you see what it's like to really be a judge?"

I was lucky to be a judge under Chief Judge Browning because he is the greatest innovator in judicial administration of the past 100 years, or forever in the court system, as far as I'm concerned. He took up the challenge to prove that a large circuit could function effectively. Many of his innovations were adopted by other circuits. But the success of the model that he led persuaded Congress to adopt many of his innovations.

For instance, our court, the Ninth Circuit, used to be ruled by the Court of Appeals judges. Judge Browning said, "Let's put some district judges on the judicial council." He even added a bankruptcy judge and a magistrate judge as nonvoting members. This was unheard of. The success of this model led Congress to later mandate equal representation of district and court of appeals judges.

Judge Browning established an executive committee for our court. He established a model rule for bankruptcy courts that was already mentioned. Bankruptcy appellate panel, state/federal judicial councils, and the like, all of these innovations were adopted either by Congress or by the judicial conference of the United States.

Now, opposition to the splitting of the Ninth Circuit. President Roosevelt spoke about our court being a model for the twenty-first century, and I think under Jim Browning's leadership we have become that model. He submitted three elaborate reports summarizing emerging evidence that the Ninth Circuit could function as effectively as other circuits a fraction of its size. In fact, as we are in this twenty-first century, we might well be thinking of larger circuits rather than small circuits. The answer to the question of whether we could do it was "yes." Judge Stephen Reinhardt of our court was quoted in the Los Angeles Times article of June 26, 1988: "I think Judge Browning saved the Ninth Circuit. It probably wouldn't exist if it weren't for him." And because of Judge Browning we have the model on which the federal courts of the future will be built.

The reforms led to a detailed study by fourteen distinguished scholars, resulting in a book edited by Professor Arthur Hellman titled Restructuring Justice: The Innovations of the Ninth Circuit and the Future of the Federal Courts. Of course, it's required reading in all my seminars on judicial administration.

There are other achievements which we could mention, but the one nearest and dearest to my heart is his support of the
Circuit Judge Dorothy Nelson, far right, stands with, left to right, Chief Judge Mary Schroeder, Chief Judge Emeritus James Browning, and Representative Nancy Pelosi, at the centennial celebration.

Western Justice Center Foundation. When the government was going to sell off all excess property, there were some bungalows nextdoor to our Pasadena courthouse. Judge Browning called in Judge Kennedy—now Justice Kennedy—and me and said, "Think of something. We don't want undesirable neighbors." Thus the idea of the Western Justice Center Foundation was formed to foster collaboration to promote the peaceful resolution of conflict among children in the schools, in the courts, in the government, and in international affairs. He has served on the board of directors since its beginning.

A few weeks ago when he was recovering in the hospital, he called me up and said, "Dorothy, there's an executive board meeting tomorrow. If you need me, I'll get out of bed and come." That is the kind of support we get, and I thank him so much for it.

Now, many honors have been bestowed upon Judge Browning for his contributions toward improving the judicial system. In 1991 he was awarded the prestigious Edward J. Devitt Award for distinguished service to justice, which is presented annually to a federal judge.

Listen to this. Justice John Paul Stevens of the United States Supreme Court, who served on the selection panel, said there were a number of reasons why Judge Browning was selected for
this award. But the first reason was his wife Rose Marie Shappell Browning, who he said was "absolutely indispensable."

The period of Judge Browning's chief judgeship is aptly named "The Browning Years" because Mrs. Browning made many important contributions in her own right to the successful operation of the Court of Appeals and to the circuit as a whole. She was a member of the executive committee of the Ninth Circuit judicial conference. As Judge Hug once wrote, she added class and style to our court and our circuit. She originated the idea of substantive programs with the spouses at the annual conferences, dealt with such issues as the Constitution, the environment, human rights, management techniques, the media, science, high tech, and biotech. Mrs. Browning's intense personal attention to every single detail produced an atmosphere which led to collegiality, lasting friendships, and new interests.

Among Judge Browning's many other awards are honorary LL.B. degrees from Santa Clara and the University of Montana. And for his leadership in bringing the court into the electronic age and devising a new system to administer circuit courts, he received the Herbert Harley Award from the American Judicature Society in 1984.

Just how did Judge Browning get judges to work together in a circuit as large as ours? Judge Alfred T. Goodwin, who succeeded Judge Browning as chief judge, summed it up very nicely when he said, "The thing that marks his regime most significantly from the point of view of the judges is he runs a happy court. I guess he has the art of making people who disagree on professional legal questions behave in a way that's impersonal, professional, and collegial."

Another former chief judge, Procter Hug, put it this way: "When I think about it, I have never seen Judge Browning irate or unpleasant. He has always maintained his cheerful, optimistic approach to issues and to life."

Other judges have commented on the fact that Judge Browning played the role of peacemaker on this court. Judge Marsha Berzon was fortunate enough to be one of Judge Browning's law clerks, and of course one of my colleagues. She wrote in 2002, "Judge Browning is the gentlest and kindest of men, never abrupt and never convinced that he knows the answers before he hears out the other's concern."

Those of us who have had the good fortune to work with him, whether as clerks or as colleagues, have learned that Judge Browning imparts his wisdom quietly and kindly, with confidence and conviction but only after absorbing and accounting for opposing views.
Toward the end of the nineteenth century, a sage by the name of Baha'u'llah wrote that we as human beings should strive to be generous in prosperity and thankful in adversity, to be worthy of the trust of our neighbors and look upon them with a bright and friendly face, to be a treasure to the poor, an admonisher to the rich, an answerer to the cry of the needy, to be unjust to no man and show all meekness to all men. Let integrity and uprightness distinguish all our acts.

Such people are the Honorable James R. Browning and his lovely wife Marie Rose Browning. This is why their legacy will endure.

Thank you.

I want to acknowledge the presence of Judge Browning's family: Gene and Scott Sumner, Mark, Greg, and Lauren. Will you rise and let us greet you? Thank you. And Karen Sumner. And then a varied group of special friends all came together to honor him today. I wonder if they would all stand so that we can acknowledge Judge Browning's special friends who all came together to honor Judge Browning.
OF EARTHQUAKES, FIRES, AND LAWSUITS: A 1906 TRIAL IN SAN FRANCISCO

EDITOR’S INTRODUCTION

On April 18, 1906, at 5:12 in the morning, San Francisco shook horribly for some forty-five seconds. Its residents were jolted awake as the buildings around them rattled from side to side, slipped off their foundations, or collapsed outright. At the new federal building at Seventh and Mission Streets, mosaic tiles fell from the ceiling, and the granite façade cracked as the sidewalk outside buckled and sank nearly three feet. Not long afterward, fires broke out around the city, some fueled by broken natural gas lines, some started by evacuees’ uncontrolled campfires, some by arsonists. The U.S. Army’s attempt to control the fires by dynamiting damaged buildings added to the conflagration as the city burned for four days and nights.¹

In the end, the devastation was staggering. According to historian Philip L. Fradkin, more than five hundred city blocks—nearly three thousand acres—were flattened. Major civic buildings were destroyed or damaged, including the new City Hall, the Hall of Justice, the county jail, five police stations, twenty-seven fire stations, and thirty-one schools. The new home of the U.S. Post Office, the U.S. Court of Appeals, and the District Court for the Northern District of California, heavily damaged by the quake, was saved from being gutted by fire only by the quick action of postal workers who beat out the flames with water-soaked mail sacks. More than twenty-eight thousand structures were burned, including forty-two that had been deemed “fire-proof.” Following the disaster, thirty-five insurance companies formed a committee to assess the damage, which it estimated at $1 billion,

although it also concluded that the actual figure could probably never be known. Of course, a vast number of insurance claims were filed not long after the quake, as were lawsuits over disputed claims. In one such case, the Levi Strauss Realty Company, a subsidiary of the clothing manufacturer, sued the Transatlantic Fire Insurance Company of Hamburg, Germany, for damage to its building on Battery Street.

A reenactment of this trial was staged at the courthouse during the Centennial Celebration by members of the U.S. District Court for the Northern District of California, including District Judge Marilyn Hall Patel, Magistrate Judge Edward M. Chen, and Magistrate Judge Bernard Zimmerman. Also participating were members of the District Court Historical Society's board of directors.

The following is an edited transcript of the original trial as recorded by Clement Bennett, the official court reporter for the U.S. Circuit Court for the Northern District of California. The trial was held from September 11 through September 14, 1906. The presiding judge was the Honorable Edward Whitson, a judge from the Eastern District of Washington, who was sitting in the Northern District by designation. Representing the Levi Strauss Realty Company was Henry Ach. The defendants were represented by Henry Eickhoff of the firm Lindley & Eickhoff. Assisting him was his associate, a Mr. Lee.

3Ibid.
4The U.S. Circuit Courts should not be confused with the U.S. Court of Appeals, which was established by Congress in 1891. The U.S. Circuit Courts date to the beginning of the republic and were intended to serve as trial courts for most federal crimes, for diversity cases, and for civil suits initiated by the federal government. Congress altered the circuit courts' jurisdiction over time, and the Evarts Act of 1891 ended its appellate jurisdiction. The U.S. Circuit Courts continued, however, as trial courts alongside the district courts until they were abolished under the Judicial Code of 1911.
5Henry Ach was born in San Francisco in 1857. He read law with the Portland firm of Whalley & Fechheimer and was admitted to the Oregon bar in 1878. He developed a significant practice representing large companies and corporations, counting among his clients the American Tobacco Company and the Associated Oil Company, as well as Levi Strauss. See Pacific Art Company, San Francisco: The Distributing Point for Both Hemispheres (San Francisco, 1904–1905), 92.
6Henry Eickhoff was born in New York in 1856 and earned his law degree from Columbia University in 1875. He clerked in the office of San Francisco attorney Paul Neumann beginning in 1876, and then partnered with him for five years. In 1890, Eickhoff formed a partnership with Judge Curtis H. Lindley. The editor has been unable to identify their associate, Mr. Lee. See The National Cyclopedia of American Biography (New York, 1936), 25:383.
Jury selection took up the first day and part of the second. Opening statements began in the afternoon of September 12.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California
Hon. Edward Whitson, Judge.
Levi Strauss Realty Company, a corporation, Complainant,
vs
The Transatlantic Fire Insurance Company Ltd., of Hamburg, Germany, Respondent.

Reporter's Transcript
Clement Bennett,
U.S. Official Reporter,
New P.O. Building.

Tuesday, September 11th, 1906
Appearances
Henry Ach, Esq., for the Plaintiff.
Messrs. Lindley & Eickhoff, for the Defendant.

Wednesday, September 12th, 1906, 2 P.M.

Mr. Ach. It is admitted that the plaintiff in this case is domiciled within this State. It is admitted that the defendant is a corporation organized under the laws of Germany. It is admitted that at all times involved in this litigation that the Transatlantic Fire Insurance Company Ltd., of Hamburg, Germany, was engaged, and still is engaged in the business of an insurance company in San Francisco, California. It is admitted that on the 30th day of April, 1905, the Transatlantic Fire Insurance Company, in consideration of $46.50 premium to it paid by the Levi Strauss Realty Company, did insure the Levi Strauss Realty Company against all direct loss or damage by fire in an amount not exceeding $5,000, for a period of one year from that date, on that certain brick building then

Spelled Eickhoff in some places, and Eickoff in others in original document. For consistency, the spelling that first appears in the original is used throughout this version of the document.
in the City and County of San Francisco known as numbers 10 to 24 Battery Street. It is also admitted that other insurance was permitted and permissible, and the insurance company did grant them permission to insure the building for such sum as they saw fit in other companies. It is also admitted that the assured should maintain eight boxes of the Pacific Auxiliary Fire Alarm upon the premises, not being denied. It is admitted that the assured complied with that requirement of the policy, and maintained those boxes. It is also admitted that at the time of the fire, which we allege destroyed this building, there was other insurance upon this building to the extent of $65,000, and the value of the building as it then stood, we will say prior to the fire and the earthquake, is admitted to be over $100,000.

Mr. Eickhoff. Yes.

Mr. Ach. That on the night of the 17th, and the morning of the 18th day of April, 1906, this particular building was worth in excess of $100,000 as alleged. We maintain, and shall endeavor to show to you, that that building was worth that amount of money, or in excess of the amount of the insurance on the building after the earthquake, and before the fire. The value, therefore, of the building, for the purposes of this case, is admitted. It is admitted that the insurance company has not paid the Levi Strauss Realty Company any money by reason of the destruction alleged, or at all, and that it has repudiated and refused to pay any money on this claim, and denies all liability under the terms of this policy.

Mr. Eickhoff. Upon the policy.

Mr. Ach. That is correct; basing that denial on the Answer, and the facts stated in the Answer. It is also admitted that the Levi Strauss Realty Company was the owner of the building situated on the corner of Union Square Avenue and Kearney Street at the time of the fire. That is directly opposite, or diagonally opposite from the old Chronicle Building on Kearney and Market. It is also admitted that on the 30th of January, 1906, the Transatlantic Fire Insurance Company did issue to the Levi Strauss Realty Company its policy of insurance for the sum of $5,000, insuring the plaintiff in the case for that amount against direct loss or damage by fire to the brick building which was then on those premises. The total amount of insurance on that building was $30,000, of which amount $5,000 was in the Transatlantic Fire Insurance Company, and it is admitted for the purposes of this case that up to the happening of the earthquake and the fire, that the building was worth in excess of the amount of insurance upon it.

* * * * *
Levi Strauss & Company on Battery Street near Pine, c. 1880. [Courtesy of San Francisco History Center, San Francisco Public Library]
Mr. Eickhoff. Won't you refer to the denials? We deny that this building was destroyed by fire.

Mr. Ach. I am coming to that. I said, we will now come to the issues. It is also alleged that a general conflagration occurred or commenced in the City and County of San Francisco on the 18th day of April, 1906, before noon of that day. The conflagration lasted until the 21st day of April, 1906. That is admitted, and not denied. We allege that during that conflagration the entire building now referred to, Nos. 10 to 24 Battery Street, the building insured by this company, and all the additions and improvements thereto which were insured, were completely and totally destroyed by fire. The Answer in the case denies that that building was completely and totally destroyed by fire, or by this conflagration, or as I understand it, was at all destroyed by and as a result of the conflagration. (Addressing counsel) Am I correct?

Mr. Eickhoff. That, of course, must be taken with the exposition that will be given in the course of the proceedings as to what is intended to be meant by destruction by fire.

Mr. Ach. I will state that.

We shall show you, gentlemen of the jury, that the defendant issued a policy to the plaintiff in each of the cases involved herein, referring now to the separate pieces of property, and that it was provided in that policy, and it is claimed by the defendant, that the company should not be liable for loss caused directly or indirectly by invasion, insurrection, riot, civil war, or commotion, or military or usurped power, or by order of any civil authority, or by theft, etc. It is not claimed by the insurance company in this case that there was any insurrection, or that there was any riot, or that there was any civil war, but they claim that this property was destroyed from some act of providence, some cause that was not contemplated at the time the property was insured, and because a fire subsequently came along and destroyed these premises, that because there was something which they did not contemplate, which from their standpoint created this fire, or was the cause of the fire, that therefore, the insurance company is not liable in this risk, it being a risk that neither they, nor the insurance company so intended the insurance to take; in other words, that it was not in their mind at that particular time to assume a risk, that is of a fire which was occasioned, if you please, by an earthquake.

It is not contended by counsel for the defendant in this case, or the Transatlantic Fire Insurance Company, that there is any provision in this policy which exempts them, in so many words, from a loss by earthquake; that is, from a loss by fire.
which was occasioned by an earthquake, but they practically say the same thing, and ask this court to incorporate that into their language by saying that it was an act of God.

Following that, my learned friend sets up another matter which might be said to be a defense, or claimed to be a defense by him, and that is this: He claims that on the morning of the 18th of April, 1906, the City of San Francisco was visited by an earthquake; that that earthquake was of sufficient strength, power and magnitude that it could, and it did destroy the integrity of the insured building, that is to say, that it weakened that particular building, that it knocked down the walls of that particular building, so that it became, or was placed in a condition which made it more accessible to the fire when the fire reached it, and that therefore, they are not liable.

You will find, gentlemen of the jury, and we will show you by the introduction of the policy, that it is also provided in the policy that if a building, or any part thereof falls, except as a result of fire, all insurance by this policy on such building, or its contents, shall immediately cease. And now, I will frankly admit, that if counsel for the defense can show you, for the purposes of this particular case, that the walls of either one of these buildings—and the burden will be on him to show it—were knocked down, separated entirely from the rest of the building, so that it became, or was put into a condition that it would burn more readily, would not have burned but for that fact, that we would not be entitled to recover if that fall was occasioned by any other thing than a fire itself.

Testimony of Lester Ulfelder
Called for the Plaintiff, Sworn.

Mr. Ach. Q. Mr. Ulfelder, where do you live?
A. I live in Alameda at present.
Q. Where did you live on the 17th and 18th days of April, 1906?
A. At 1625 Buchanan Street.
Q. What was your business on the 17th of April, 1906?
A. Manufacturing curled hair.
Q. Did you have an office in San Francisco on the morning of the 18th of April, 1906?
A. Yes, sir, I had an office down town.
Q. Where?
A. With Pauson & Co., on the corner of Sutter and Kearney.
Q. Did you know the four-story brick building situated on the corner of Union Square Avenue and Kearney Street, owned by Levi Strauss & Co.?
A. Yes sir.
Q. Did you see that building after the earthquake on the morning of the 18th day of April, 1906, and before the destruction by fire?
A. Yes sir.
Q. Did you see what the exterior condition of that building was?
A. I saw the general appearance of the building.
Q. Did you see whether any portion of it had fallen or not?
A. There was none of it fallen, no.
Q. Do you know what destroyed the building?
Mr. Eickhoff. One moment. That is preliminary, I suppose.
A. Positively, no. I could not tell you what destroyed the building.
Mr. Ach. Q. You do not know when it was burned?
A. No sir. I was not there when it was burned. I was down on Kearny Street up to about five o'clock that afternoon.

Cross Examination

Mr. Eickhoff. *
Q. Did the earthquake awaken you?
A. Yes, it knocked me out of bed.
Q. Did you immediately go down town?
A. No sir, I did not go down until about quarter past six.

Q. How did you get down town?

A. I walked down from Post and Buchanan.

Mr. Eickhoff. *
Q. You have told us you went down Kearney Street, but you have not told me yet how you came to look at this building you testified about, what you saw and what you did about that.
A. I went all along that street from Sutter to Geary.
Q. And you passed by the building on Kearney Street?
A. I certainly had to if I wanted to get to Geary and Kearney from Sutter and Kearney. I had to pass by that building.
Q. You went on that side of the street where the building stands?

A. Perhaps I went down on one side and came up on the other.
Q. Did you have any special interest in this building?
A. No sir.
Q. Did you do anything more than look at it as you went by?
A. No. I certainly looked at it. I had a special interest in looking at all the buildings to see whether they were damaged or not upon that occasion. It was an occasion where buildings were damaged in town all over.

Q. Can you swear positively that you did or did not look at the Kearney Street side?
A. I certainly did.
Q. To any particular extent?
A. I looked at it to see whether it was damaged.
Q. What part of the building did you look at to see whether it was damaged?
A. I looked at the whole building.
Q. Do you mean the frontage?
A. When I say that, I mean the Kearney Street frontage.
Q. You did not go into the building?
A. No sir.

Q. What you mean is merely that in the course of a wayfarer you came by this building and looked at it, and that is all?
A. The same as I looked at other buildings, to see what other buildings were injured that morning.

Re-direct Examination

Mr. Ach. Q. I understood you to say, in response to counsel, Mr. Ulfelder, that you were on Kearney Street all of the day of April 18th until about half past four o'clock in the evening?
A. All of the day except about as I stated before from about half past seven to half past eight, I wandered down past the Palace Hotel, and took a walk down Market Street. The fire was coming up Market Street and I went down to look at it.
Q. And this earthquake that you speak about, what time did that occur?
A. Well, my clock stopped about quarter past five the morning of the 18th.
Q. When you left Kearney Street that afternoon at about half past four o'clock, was the building which was occupied by Raphael's, which is the building in question—{addressing counsel} and that is admitted, is it not?
Mr. Eickhoff. Yes.
Mr. Ach. Q. Was the building which was occupied by Raphael's still standing, apparently, not on fire?
A. Yes.

*****

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Q. I show you this photograph which is marked " Plaintiff's Exhibit 3," which is not yet in evidence—.

The Court. [Intg] It ought to be marked for identification.

Mr. Ach. [Contg] And ask you whether you can identify the corner which you speak of as Roos Brothers' corner on that photograph.

A. This is the building that Roos Brothers occupied.

Q. And the lighter building, the white building, is the Levi Strauss Realty Company's building, which was occupied by Raphael's, on that photograph?

A. Yes.

The Court. Mark that photograph for identification.

Re-cross Examination

Mr. Eickhoff. *******

Q. When did you first see the fire down town that morning?

A. The first time I saw the fire that morning was about eight o'clock.

Q. Where was it then, where did you see it at that time?

A. Below Battery Street on Market, I think it was, on Sansome and California.

Q. Tell the jury as near as you can, and describe the course of your observation during that day, at what point at various times, from time to time, you observed the fire raging.

A. I went down Kearney Street after I left Pauson & Co.'s corner, and at seven o'clock after standing around there—I walked down Kearney Street to Geary. I walked casually along and I went down as far as the Palace Hotel, and as I stated before, the opera singers were out there—two or three of them, of the tenors—and were very much excited, and I was watching them on New Montgomery Street—two of them were hauling their trunks down as far as New Montgomery and Mission.

Q. What was the fire doing then?

A. There was a fire raging then in the building on the corner of 3rd and Mission in the Aronson Building, at about eight o'clock that morning. I then walked down Mission to Second, and down Second to Market, and down Market to the Donohue Fountain and in that immediate vicinity. As I stated before, the fire was then raging—to the best of my eyesight, it was raging down on Battery Street, and coming up towards Market Street around Battery and California.

Q. That is to say, it was forging ahead?
The Donahue Memorial Fountain, built in 1901, survived the earthquake and fire and still stands at the intersection of Market, Bush, and Battery Streets. (Courtesy of the San Francisco History Center, San Francisco Public Library)

A. It was working up towards Market Street from Battery and California, and there was [sic] some buildings burning on the left-hand side of Market going down, around where the Board of Trade Building was—on the corner of Pine and Market, I think that is—there was a fire there.

Q. During the rest of the day did you observe the fires?
A. Yes, I then went up Market Street to Geary and around the Chronicle Building, and down Kearney to Sutter again. The reason I stayed around there was we had an idea that perhaps if the fire would get up there we would have a chance to take out some of the stock, and we were trying to get wagons.

Q. Was the fire approaching?
A. The fire was working up Market Street; about eleven or twelve o'clock you could stand at the corner of Sutter and Kearney and look down and see D. N. & E. Walters' building burning—between eleven and twelve o'clock that day. Wells Fargo's old building on the other corner was burning about the same time.

Mr. Eickhoff. ********

Q. What was the last time of that day when you saw the front elevation of that building, which you testified to?
A. Well, now, I won't say that I took particular note of the front elevation on that day, when I went home at half past four—between half past four and five.

Q. My question is, when did you during that day make this observation that you testified about?

A. Well, I made that observation when I went down in the morning. When I went from Pauson's over towards the Palace Hotel to see what was going on down the street.

Q. You are not a builder?

A. No sir.

Q. You have been all your life in the mercantile trade, have you not?

A. Yes.

Q. And your observation was the best that a man in your line of business could make?

A. Casual observation.

[With the usual statutory admonition to the jury, an adjournment was here taken until tomorrow at 10 A.M.]

Thursday, September 13th, 1906

Testimony of E.A. Peterson
Called for the Plaintiff, Sworn.

Mr. Ach. Q. You live in San Francisco, Mr. Peterson?

A. Yes sir.

Q. How long have you lived here?

A. Two years and a half.

Q. During that time what has been your business?

A. General Manager of Raphael's Incorporated.

Q. Raphael's Incorporated was a clothing department store in San Francisco, was it?

A. Yes sir.

Q. Where was the business of Raphael's Incorporated situated or carried on prior to the 18th day of April, and on the 17th and 18th of April, 1906?

A. Nos. 9 to 15 Kearney Street.

Q. Where is that? Is that on the corner of Union Square Avenue and Kearney Street?

A. The corner of Union Square Avenue and Kearney Street.

Q. Were you at the premises known as the Levi Strauss Building on the corner of Union Square Avenue and Kearney Streets on the morning of the 18th day of April, 1906?

A. I was.

Q. What time did you go there?
A. I arrived about 8:30 in the morning.
Q. And were you familiar with those premises before that morning?
A. Yes sir.
Q. With the building?
A. Every inch of it.
Q. Now, when you got there on the morning of the 18th day of April, 1906, what did you do relative to going into the building?
A. Why, I met Mr. Raphael there very excited, and we walked all through the whole building.
Q. You went in the building?
A. I entered the building.
Q. Were you on the Kearney Street side of the building?
A. Yes sir.
Q. Were you on the Union Square Avenue side of the building?
A. Yes sir, I went to every floor.
Q. How long did you remain at or in, or about that building that day?

A. I was in and out of the building during that day.
Q. Do you know whether that building was destroyed at any time during that day or night?
A. It was not; the building was intact.
Q. When?
A. All during the time that I was there until it started to burn.
Q. Did you see it burn?
A. From a distance I saw it burn.
Q. About when?
A. I should judge between the hours of two and four o'clock; somewhere along there; between half past two and four.
Q. That afternoon or the next morning?
A. No, the next morning.
Q. Were there any of the walls down, or any of the building down, at the time you went there on the morning of April 18th, 1906?
A. No sir, everything was intact.
Q. I show you a photograph which is marked Plaintiff's Exhibit 3 for identification, or what purports to be a photograph.

A. I do.

Q. You may state whether or not that is a correct representation of the exterior of that building on the morning of the 18th
day of April, 1906, and after eight o'clock in the morning of that day.

*****
You say it is a correct representation?
A. Yes sir.

Mr. Ach. *****
Mr. Peterson, what became of that building after the morning of the 18th of April, after you were there, after you saw it on fire?
A. Well, about two days afterwards, that is the nearest that I saw the building.
Q. What had become of it?
A. It was then burned down, and the walls were still standing.

Cross Examination

Mr. Eickhoff. Q. To what extent did you examine that building on the day that you went to look at it?
A. We walked through every room and every floor.
Q. Did you go onto the roof?
A. I did not go onto the roof.

*****

Mr. Eickhoff. Q. Do you know of your own knowledge whether the chimneys were standing?
*****
A. Yes sir.

Mr. Eickhoff. Q. What is your knowledge upon the subject?
A. I saw those from the outside.
Q. Could you see all the chimneys on the house from the outside?
A. Yes sir.
Q. How many chimneys were there in that place?
A. Two.
Q. Only two in the entire store?
A. That is all.
Q. What was the frontage of that store on Kearney Street?
*****
A. Approximately about, I should judge, sixty or sixty-five feet, something of that kind.
Q. What was the frontage on Morton Street, or Union Square Avenue?
A. I should judge 150.
Q. You say that in that building there are only two chimneys. Is that your surmise, or a statement of the fact within your observation?
*****
A. I cannot say that I know absolutely how many there were. Two is all I ever saw.

Q. From what point of view did you see them?
A. From the street. You could see them very easily. They could be easily seen.

Q. Could you see the entire roof of that building from the street?
A. No sir.
Q. Do you know anything about the fire walls of that building?
A. No sir.
Q. Do you know any part of that building that projected above the roof?
A. Only what you could see.
Q. What you could see—you mean from the street?
A. Yes sir.

Q. You do not undertake to say what was the condition of the roof on that building on this day after the earthquake, and before the fire attacked it, do you?
A. I never was on the roof, so I cannot say anything about the roof. The building itself was intact on all four floors.

Q. When you say everything was intact, give us that with a little bit more detail. Any cracks in the walls at all?
A. No cracks except little cracks. I don't know whether they were there before or not. No large cracks, or any cracks of any kind. I call the building intact.
Q. What do you call a large crack?
A. Nothing except a natural little cracking of the plaster.
Q. Any cracks in the arches?
A. No cracks in the arches.
Q. Any settling of the floors?
A. No sir.
Q. Did you go into the cellar of that building?
A. Yes sir.
Q. There were no visible marks of injury at all?
A. No sir.
Q. It stood just as it did before the earthquake?
A. Yes sir.
Q. So far as your observation went?
A. Yes sir, I looked through it carefully.
Q. You were employed at that time by the Raphael Company Incorporated?
A. Yes sir.
Q. Where are you employed now?

*****
A. It is Raphael's—J.W. Raphael.

*****
Testimony of Adam Propst
Called for the Plaintiff, Sworn.

The Court. I suggest to counsel that I do not know what ruling may be had on the question of rebuttal, the way you are going into your case at this time.

Mr. Ach. I appreciate the position, if your Honor please. I have to show the destruction of these premises by fire. Counsel would not admit it, or it would have saved a great deal of time.

Q. What is your business, sir?
A. Porter of Levi Strauss.

Q. Were you the porter of Levi Strauss and Co. at their business place Nos. 10 to 24 Battery Street, in the City and County of San Francisco, on the 18th day of April, 1906?
A. Yes sir.

Q. Do you know the building 10 to 24 Battery Street?
A. Yes sir.

Q. Do you know whether or not that building was consumed by fire on the 18th day of April, 1906?
A. As far as I can remember, there was no fire in that building until about half past ten or eleven o'clock.

Q. Was that burned about that time?
A. Well, the building on the corner of Battery and Pine, the stationery building, and the cannery building, both were on fire, and they fell, and that set the other corner on fire. Then it began to smoke. When that commenced to smoke we were driven out there—that is, I was ordered out.

Q. As a result the place was completely destroyed by fire?
A. The fire was from that as far as I seen [sic].

*****

Cross Examination

Mr. Eickhoff. Q. Where did the fire come from that attacked the Levi Strauss Building?
A. As far as I know, from Battery and Pine, from Payot Upham's, and the Canning Company—both those buildings were on fire.

*****

Mr. Eickhoff. Q. When do you say it was destroyed, what time in the morning?
A. As near as I can remember—I had no watch—but I thought between half past eleven and twelve.

Q. On the morning of the 18th?

A. Yes sir.

Mr. Ach. The plaintiff rests.

Opening Statement for the Defendant

Mr. Lee. May it please the court, and gentlemen of the jury, the defense in this matter, it is proper, I should state to you at this time. It is simply a question, as we take it, whether or not there is a legal liability.

It is admitted that an insurance policy was issued. It is in evidence, and will not be controverted, that the building upon which the policy existed was destroyed by fire on or about the 18th day of April, and it is admitted that the necessary proofs of loss were made. If this had been a normal or ordinary fire there would be no question of the liability of the company. The defense in this case will be that the destruction which visited San Francisco on the 18th day of April, which swept out practically the whole of the City, including the building in controversy in this suit, was the direct natural and inevitable result of the earthquake; that it was the result of that thing which is described in law as the act of God, meaning by the act of God the inevitable result of an overwhelming catastrophe, such a catastrophe as human foresight could not prevent nor guard against.

We shall seek to show that this earthquake occurred on the morning of the 18th; that almost instantly the City became ringed with flames; that the fire spread as the result of this overwhelming and overpowering disaster. We shall show, or seek to show, that the same earthquake, the same overwhelming disaster destroyed the means of fighting fire, broke the water mains, disorganized the telephone system, and means of communication, impaired the Municipal facilities for fighting fire—those facilities which were taken into account in the making of the contract of insurance; and we shall try to show the overwhelming character of the disaster, such a one as perhaps the modern world has never seen.

We shall contend, gentlemen, that if we establish these things, and show that the fire was not an ordinary fire, was not the fire that is ordinarily contemplated in contracts of insurance, but the natural and inevitable result of an overwhelming disaster such as the act of God we speak of, that we shall be entitled to a verdict for the defendant.

Mr. Ach. Upon the opening statement made by counsel, I now ask your Honor to direct the jury to find a verdict for the plaintiff for the amount sought to be recovered. ·······
There is no exemption in this policy exonerating the insurance company from liability by reason of the happening of any act of God. The only exceptions were read to your Honor from the policy itself, and therefore there would be no savor to the insurance company by reason of any provision that they seek now to introduce by way of construction of that particular instrument. This matter has been before the Supreme Court. Your Honor will remember the policy. I do not think I have misstated Counsel's Opening Statement?

Mr. Lee. Not at all.
Mr. Ach. The policy provides that the Transatlantic Fire Insurance Company shall be liable for all direct loss or damage by fire, except as hereinafter provided, to an amount not exceeding $5,000, on these various pieces of property or buildings. Then the policy provides that the company shall not be liable for loss caused directly or indirectly by invasion, insurrection, riot, civil war or commotion. Counsel has not contended in his opening statement that he expects to prove either one of these things.

Mr. Eickhoff. Yes, he has.
Mr. Ach. No.
Mr. Eickhoff. Civil commotion.
Mr. Ach. He stated nothing was done by civil commotion. If he did, I will withdraw my motion. I do not understand he made any such contention.

The Court. I do not either.
Mr. Ach. He simply said he would show there was an earthquake that was overwhelming; that it was an act of God; that water mains were broken, and fire destroyed this property. He has not stated that he was going to contend anything else. I am not going to hold him to it if he desires to add anything to his statement.

Mr. Eickhoff. We propose to show that the loss claimed to be sustained by the plaintiff was due to an overwhelming catastrophe; due to a visitation of Providence because on the 17th day of April, 1906, there was an overwhelming catastrophe, namely an earthquake, "Which was unforeseen, unforeseeable, and providential, visited the City of San Francisco, in the State of California, in which city the property, to wit: the buildings specified in plaintiff's complaint were then situated and said earthquake being irresistible in its violence and grievously disastrous in its effects, was the sole, entire and only cause of the destruction of the property aforesaid.

That before said buildings were attacked by fire said earthquake destroyed the integrity of the said buildings, broke the
walls and other parts thereof; rendered the said buildings unfit
to resist fire, and predisposed to succumb to the attacks of fire
thereon, and rendered said buildings more liable to destruction
by fire thereon than they ever theretofore had been. That
thereby, and before said buildings were attacked by fire, the
hazard and risk of loss by fire, of said buildings were vastly
increased and augmented to the knowledge of the assured.

That said buildings were thereupon, and before they were
attacked by fire, reduced to such a condition that they consti-
tuted a risk and hazard not contemplated by the parties to the
policy aforesaid, and never intended to be covered thereby.

That said earthquake caused great civil commotion to
immediately ensue, which prevailed throughout said city of
San Francisco before the buildings aforesaid were destroyed
by fire and thereafter, until after said buildings were de-
stroyed, and thereby the hazard and risk of loss by fire of said
buildings were vastly increased and augmented within the
knowledge of the assured. That said buildings were there-
upon, and before they were attacked by fire, left in such a
condition that they constituted a risk and hazard not con-
templated by the parties to the policy aforesaid, and never
intended to be covered thereby.

That defendant is informed and believes, and accordingly
alleges upon his information and belief, that after said earth-
quake, and before said buildings were attacked by fire, certain
persons to defendant unknown caused high explosives to be
exploded near to the buildings aforesaid; that thereby said
buildings were shattered and broken, and the hazard and risk
of loss by fire of said buildings were vastly increased and
augmented within the knowledge of the assured. That said
buildings were thereby, and before they were attacked by fire,
left in such a condition that they constituted a risk and
hazard, not contemplated by the parties to the policy aforesaid
and never intended to be covered thereby.

That said earthquake also, before the buildings aforesaid
were attacked by fire, destroyed some parts, and impaired
other parts, of the facilities theretofore constantly and regu-
larly established, maintained, used, and employed throughout
said City of San Francisco, for the protection and preservation
of property therein, against and from loss by fire, and thereby
the hazard and risk of loss by fire of said buildings were vastly
increased and augmented to the knowledge of the assured.
That said buildings were thereby, and before they were at-
tacked by fire, left in such a condition that they constituted a
risk and hazard not contemplated by the parties to the policy
aforesaid and never intended to be covered thereby.
That immediately after the occurrence of said earthquake, certain persons, who are to this defendant unknown, assumed the control, and usurped the power of managing the municipal affairs and the government of said City of San Francisco, and in so doing greatly increased and augmented the disorganization and commotion which then prevailed in said city. That said persons ordered and consummated the destruction by dynamite and other explosives, of buildings in the vicinity of the buildings described in the complaint herein, and thereby caused said buildings to be shattered and broken, and the risk and hazard of destruction thereof by fire to be greatly augmented and increased within the knowledge of the assured.

That said buildings were thereby, and before they were attacked by fire, left in such a condition that they constituted a risk and hazard not contemplated by the parties to the policy aforesaid and never intended to be covered thereby.

That before said buildings were attacked by fire said earthquake caused parts of the same to fall, and parts of said building did fall before the same were attacked by fire, by reason whereof the hazard and risk of loss thereof by fire was vastly increased and augmented within the knowledge of the assured. That said buildings were thereby, and before they were attacked by fire, left in such a condition that they constituted a risk and hazard not contemplated by the parties to the policy aforesaid and never intended to be covered thereby.

That the earthquake aforesaid, before the buildings aforesaid were attacked by fire, destroyed the mains through which water had theretofore been regularly and constantly supplied throughout said City of San Francisco for the extinguishment of fires therein, so that no water could be or was thereafter, during the conflagration which followed said earthquake, delivered for said purpose during said conflagration, and said earthquake also destroyed the means of intercommunication and transportation in said City of San Francisco, which had theretofore been regularly and constantly therein established, maintained, used and employed by the inhabitants thereof, for the conduct of their affairs and the protection and preservation of their property against and from loss by fire by reason whereof the hazard and risk of loss of the buildings aforesaid by fire were vastly augmented and increased within the knowledge of the assured.

That said buildings were thereby, and before they were attacked by fire, left in such a condition that they constituted a risk and hazard not contemplated by the parties to the policy aforesaid, and never intended to be covered thereby.

That said earthquake wrecked and injuriously affected said City of San Francisco to such an extent and made conditions
therein so abnormal, that immediately after the occurrence of the same the hazard and risk of loss by fire of all property in said city, including the buildings aforesaid, were vastly increased and augmented within the knowledge of the assured, and the buildings aforesaid were reduced to such a condition and so circumstanced that they constituted a hazard and risk not contemplated by the parties to the policy aforesaid, and never intended to be covered by said policy.

That said earthquake caused a great and unprecedented conflagration to ensue which destroyed the property upon a large portion of the area constituting the City of San Francisco, including that upon which the buildings aforesaid were situated. That said conflagration was of an irresistible and superhuman character and could not have been prevented by the exercise of prudence, diligence, care, skill, foresight, human intervention or agency."

That is the defense which we propose to prove to the extent that lies within our power. We have received a lot of information about the merits of this case, and we are going to endeavor to prove to the best of our ability these allegations. I candidly state, in some instances we find our information has not been as reliable as we would like. That is inherent in the very nature of it. Lots of these things must be proved by the inherent conditions as they existed at the time; an overwhelming great disaster; all normal conditions were wiped out. There is probably nothing in the recorded history of jurisprudence, of which any record can be found of a case which is the parallel of this.

We must be guided, I shall contend in this case, by the greater landmarks in the law which are always beacon lights, and must proceed along general principles. Those are the things that I offer to prove for the sake of making the record complete, and that I take it can stand as our opening statement.

Testimony of Eugene Schmitz
Called for the Defendant, Sworn.

Mr. Eickhoff. Q. You lived in this city on the 18th day of April, did you not?
A. I did.
Q. What was your official station at that time?
A. Mayor of the City and County of San Francisco.

7Eugene Schmitz [1864–1928] was San Francisco mayor from 1902 to 1907, backed by political boss Abe Ruef. In the reform movement that swept the city after the earthquake, Schmitz was tried and convicted of accepting bribes, and served time in San Quentin. His conviction was subsequently overturned, and he was elected to the San Francisco Board of Supervisors. See James D. Hart, A Companion to California, rev. ed. (Berkeley, 1987), 459–60.
Q. Do you remember the earthquake that occurred at that time?
A. Very vividly.
Q. Do you remember approximately what time of day it occurred?

A. It occurred at 14 minutes past 5.
Q. You were awake immediately after it occurred?
A. Yes sir, I was awake during the time.
Q. As Executive Officer of the City did you have occasion to observe what the conditions were in the City that arose immediately after, and in consequence of this earthquake?
A. I did.

Q. As regards the executive control of the city, was there any change occasioned because of the earthquake?

A. As regards the executive control of the city, no, no change.
Q. Was there any change in the condition of the city with reference to orderly or disorganized state of affairs among the inhabitants?

A. I can probably best answer that by stating—
Mr. Eickhoff. Q. Explain the state of affairs.
A. —that so far as those arms of the municipal government that were needed in the protection of life and property, such as the Police Department and Fire Department were concerned, there was absolutely no change, so far as their efficiency. I found them all on duty, ready to perform their duty, and I found them when I arrived at the Hall of Justice, performing their duty as they had performed it prior to the earthquake that morning.

Mr. Eickhoff. Q. Did you supplement them in any manner?

A. I did supplement them.
Mr. Eickhoff. Q. In what manner, to what extent?
A. To the extent of using the United States troops which had been placed at my disposal by General Funston. If you will allow me to dilate on that—
Q. [Intg] Certainly.

A. I used the United States troops because I appreciated that it would be necessary if the city were to be, as it looked at that time, half destroyed, or entirely destroyed, that it would be
necessary to augment the police force, and also those who were doing the fire fighting.

Mr. Eickhoff. Q. To what extent did you augment those departments of the government?

A. I think to the number of 1500.
Q. 1500 regular soldiers?
A. Regular soldiers.
Q. And how about the militia?
A. I had no knowledge that the militia was in the city, or were doing any work whatsoever.
Q. You have the knowledge now that they were at work, have you not?
A. I have the knowledge now. At that time I had no knowledge, nor did I direct their movements.

Q. When did you gain knowledge that they were in the city?
A. Some three or four days after.

Mr. Eickhoff. Q. On the 18th or 19th?
A. I did not see them on those dates.
Q. Do I understand you correctly that they came without your direction, or control, or sanction?
A. They did. I will not say sanction. They came without my knowledge or my control. I do not want to say now I would not have sanctioned them had I known they were there.

Q. You did not before their coming call for the aid of the militia?
A. I did not.
Q. Nor did you know they were coming, or had arrived, until three days after?
A. I did not.
Q. Do you know what was the condition of the means of transportation in this city immediately following the earthquake?

A. The transportation facilities, such as street car service, were stopped entirely.

Q. Do you know what the condition of the streets was?
Mr. Ach. As to what?
Mr. Eickhoff. Passability; whether they were in a practicable condition.

A. I think they were in very good condition. I came down from my home in my automobile to view the City Hall, down Green Street to Van Ness Avenue, down Van Ness to Market, along Market to Kearney, Kearney to Washington, to the Hall of Justice.
Cross Examination

Mr. Ach. Q. Mr. Mayor, on the 18th day of April, 1906, and after the earthquake, did you go down into the Hall of Justice section of the city?
A. Yes sir.
Q. Kearney Street?
A. Yes sir.
Q. Were the officers on guard?
A. They were.

Q. Was any civil commotion existing in the city of San Francisco on the 18th or 19th days of April?
A. There was not.
Q. Was there any usurpation of any of the powers of civil government by the Federal troops that you say you borrowed?
A. The Federal troops were placed absolutely under my control, as I stated, by General Funston. They were directed by me, and carried out the orders that I gave them.

Q. Relative to the militia, to which counsel referred, had they taken possession of the city, or usurped the civil powers of the city, or was the government of the city going on in the usual way?
A. The government of the city was going on in the usual way.

Re-direct Examination

Mr. Eickhoff. Q. Was there any commotion in the city?

A. Naturally, there was a commotion that would exist under those conditions. There is commotion always when we have a fire of any kind.

Mr. Eickhoff. Q. This was a very extraordinary fire?
A. Yes sir.
Q. And a very remarkable earthquake?

A. Compared with anything I have known before, it was remarkable.

Mr. Eickhoff. Q. Was there any looting going on at that time?

A. There was no looting to any extent.
Mr. Eickhoff. Q. Did you or not issue a proclamation with reference to the matter of looting?
A. I did.

Q. What was the occasion of issuing that proclamation?
A. The proclamation was issued with a view of anticipating the possibility of looting under the conditions that existed at that time, and also issued to prevent a possibility of any breaches of the law.

Mr. Eickhoff. Q. Was there at any time any conditions which you thought justified that proclamation?
A. The proclamation was not issued because conditions required it at that time, but from the experience of other cities—not our own—that I had read of under like conditions, I took time by the forelock, and issued the proclamation so that if conditions had arisen in San Francisco like those that had arisen under similar conditions in other cities, we would have been prepared for them.

Q. Did you appoint any special policemen during that time?
A. I did.

Q. Why did you appoint special policemen, Mr. Mayor?
A. For the same reason that I used the Federal troops, as a precautionary measure.

Mr. Eickhoff. Q. What was the condition of the Fire Department?
A. The Fire Department was up to its usual standard efficiency. All the reserves had been called out, and everything done possible.

Mr. Eickhoff. Q. Was there a Chief of the Fire Department at that time?
A. The Chief had been injured.

Q. And died from his injuries?
A. And died from his injuries.
Q. Did you employ or appoint any assistants to the Fire Department?

*A.* When the Chief was injured the next in authority took command. That was Assistant Chief Dougherty.

*Re-cross Examination*

**Mr. Ach.** Q. How long have you resided in the City and County of San Francisco?
*A.* All my life.

Q. And what is your age?
*A.* 42.

Q. You may state whether or not the happening of earthquakes in the City and County of San Francisco is an ordinary matter, a matter that occurs every now and again each year, to your personal recollection?
*A.* It is not, to my personal recollection.

Q. Have you experienced many earthquakes in San Francisco?
*A.* I have experienced all that there have been here.

*Testimony of M.H. De Young*§

Called for the Defendant, Sworn.

**Mr. Eickhoff.** Q. You are the proprietor and editor of the "Chronicle"?
*A.* Yes sir.

Q. And have been for a number of years?
*A.* Yes sir.

Q. You were in this city on the 18th of April?
*A.* Yes sir.

Q. Did you experience the earthquake on that day?
*A.* I did.

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§M.H. De Young (1849–1925) was the editor and publisher of the *San Francisco Chronicle* newspaper and a leader in the Republican Party and civic affairs. He was a major force in creating 1894's Midwinter Fair and used its profits to establish an art museum. In 1916, he donated money to the museum for a new building, which was named in his honor. See Hart, *A Companion to California*, p. 131.
Michel Henry De Young was the proprietor, editor, and publisher of the *San Francisco Chronicle*. (Courtesy of the San Francisco History Center, San Francisco Public Library)

Q. Did you of your own motion go to work immediately?
A. I did in connection with my own property.
Q. In connection with the care of your own property, did you have occasion to see the physical condition of the city brought about by the earthquake?

* * * * *
A. Yes sir, a part of the city.
Q. What part of the city was it?
A. The main part.
Q. What was the condition of it?
A. Market Street, Geary Street, Kearny Street, Van Ness Avenue; coming down in my automobile, and going backwards and forwards during the day all over the town, I had an opportunity to see the center of the town pretty thoroughly.
Q. What was the condition?

A. There was very little damage except to certain buildings where the fire walls were down. In some few instances chimneys were down. The larger commercial houses were not injured at all. My own building was not injured. The elevator was running after the earthquake. The building was occupied by the entire force of my men. I saw the buildings opposite, the Palace Hotel, and other buildings, exteriorly were not damaged or injured at all.

Q. Did you see any soldiers?
A. Yes sir.
Q. What were they doing?
A. Late in the afternoon of the 18th there were two companies of regulars marched down Kearny Street, crossed over to 3rd, and by and by they were distributed as guardians of the peace; separately and individually put on street crossings, etc., to keep the people away from the fire, or interfering with the Fire Department. Otherwise there was nothing going on. Everything was perfectly quiet, even more quiet than on an ordinary day.
Q. You saw no excitement among the people?

A. Not a bit. I never saw anything so quiet.
Q. Did you have occasion to go through Market Street, say from Kearney to 6th or 7th?
A. Yes sir.

Mr. Ach. When?

Mr. Eickhoff. On April 18th or 19th?
A. Yes sir.
Q. You found no excitement there?
A. None. People were standing looking at the fire.
Q. Crowds of people?
A. No sir. I was surprised at that. Everyone was around their own homes, I suppose.
Cross Examination

**Mr. Ach.** Q. The building you speak of as your own is known as the Chronicle Building?
A. Yes sir.
Q. I show you a photograph, Plaintiff's Exhibit 3. Is the Chronicle Building in the vicinity of the buildings that are exposed to view on that photograph?
A. Yes sir, directly opposite.
Q. I call your attention to the building upon which is a sign or board "Raphael's."
A. Yes sir, I know the building very well.
Q. Were you around in that vicinity on the 18th day of April 1906, after the earthquake?
A. Yes sir, all during the day and night.
Q. Did you notice whether or not either of these buildings, or that particular building, was intact?
A. Absolutely intact.
Q. How long have you lived in San Francisco, Mr. De Young?
A. About 50 years—longer.
Q. What is the fact as to whether or not a large number of earthquakes have occurred in San Francisco in the last 50 years?
A. There have been a great many.
Q. They are of annual occurrence practically, are they not?
A. Pretty near.

* * *

Q. And sometimes quite a number in one year?
A. Yes sir.

Re-direct Examination

**Mr. Eickhoff.** Q. Mr. De Young, can you mention any earthquakes in San Francisco within your experience, that had any serious consequences?
A. Yes sir.
Q. Which is that?
A. 1868.
Q. How did that compare with this one?

* * *

A. Every bit as strong as this one, in my judgment. I experienced both.
Q. How old were you at that time?
A. I was able to run the "Chronicle" at that time.
Q. 1868. In 1868?
A. I think I was about 22 years of age at that time. I had been proprietor of the "Chronicle" four or five years.
Q. When you say it was just as mischievous as this one, what do you mean? Did it do the same damage?
A. The power and strength of the earthquake I think was every bit as great as this one. I experienced both.

Q. Did it set up any fire?

A. No sir, I don’t think there was any fire that time. There may have been small ones, not to amount to anything. The damage proportionately, I think, was more distributed than this one.

Q. But it did shake down buildings?

A. It shook down all the old traps on made ground, and filled in, like the waterfront. I know I got out an extra, and kept getting out one during every hour of the day, and employed a large force of men, who went from house to house—made a house-to-house canvas to get the damage to each house, personally.


Q. Were there any electric light or power facilities in the city at that time?

A. You are asking my judgment on something which is a good many years ago.

Q. I do not think there were. There was not any electricity in the city at that time.

Mr. Ach. Q. There was telegraph?

A. Telegraph wires were here, and the telephone, I know, was here.

Mr. Eickhoff. Q. The telephone was here in 1868?

A. Yes sir.

Testimony of John Dougherty

Called for the Defendant, Sworn.

Mr. Eickhoff. Q. Chief, what is your occupation now?

A. I am on the retired list of the Fire Department.

Q. Do you remember the 18th day of April?

A. Yes sir.

Q. Were you in charge of the Fire Department of the City on that day?

A. I was the Acting Chief.

Q. The Chief was stricken that day, and you succeeded him as Acting Chief?

9John Dougherty was first assistant chief engineer with the San Francisco Fire Department before succeeding Chief Sullivan. He was active in Democratic politics, and left the fire department in 1883 to serve as a state senator. After three terms, he returned to the fire department. See Exempt Fire Company, The Exempt Firemen of San Francisco: Their Unique and Gallant Record (San Francisco, 1900), pp. 141–42.
A. Yes sir.
Q. What time did you go on duty that day?
A. Immediately after the earthquake. I was on duty during the earthquake.

Q. Do you know what effect the earthquake had on the fire extinguishing and protecting plant of this city?
A. Very serious.
Q. How soon did it effect [ sic] the plant?
A. Immediately.

Mr. Eickhoff. Q. What did it do to the plant?

A. It broke the mains—telescoped them.

Mr. Eickhoff. Q. The water mains?
A. Yes sir.
Q. How about the electric system of signals, and things of that kind?
A. All out.

Q. How many men had you in the department ordinarily?
A. Over 500.
Q. You had that many that day?
A. Yes sir.
Q. Are there a great number of extra men?
A. No sir.

Q. You say the mains were telescoped. What was the condition in that district of the city, which includes Battery, Market and Kearney Streets, from Post to Geary?
A. I left my home shortly after the shake, proceeded up Fifth Street—I live on Minna Street above Fifth. After the shake, not having any fire alarm, of course, I came to the conclusion there was a good deal of damage. My quarters were in Mint Avenue. The wagon did not come, and I thought there must be something up.

A. I proceeded down Market to the lower end of the city, having the smoke to go by only.
Q. Where?
A. South of Market down below the front.

Mr. Eickhoff. Q. Do you know of your own knowledge whether there was any water?
A. There was no water.
Q. You know that?
A. Excepting what came from the bay.

Q. In what districts was there no water?
A. South of Market and in the lower end of the city.
Q. Take that section where Battery and Market is, was there any water there?
A. They were bringing water from the bay, and from cisterns.
Q. Was the usual supply there?
A. No sir.
Q. Take the district on Kearney Street, or on Post to Geary, was there any supply of water there?
A. I could not positively state whether there was nor not.

Mr. Eickhoff. Q. You were the Acting Chief during April 18th, 19th, and 20th?
A. Yes sir.
Q. What happened to your men in that time out of the ordinary?
Mr. Ach. Are you referring now prior to the burning of these two places?
Mr. Eickhoff. Yes, on the 18th and 19th.

A. There was not anything happened to the men, that I know of. They did the best they could under the circumstances.
Mr. Eickhoff. Q. Were they all on watch for two days continuously?
A. To the best of my knowledge, principally all. I was on three days and three nights myself.
Q. They had no relief?
A. The citizens relieved them off and on.

Q. You did have to call on citizens for relief?

A. It was not exactly calling on them. They volunteered their services. They were trying to save their homes.
Q. Was it necessary?
A. The men wore out.
Cross Examination

Mr. Ach. Q. At the time of the happening of the earthquake, that counsel speaks about, were you in bed?
A. Yes sir.

Q. Did you get up immediately on the happening of the earthquake?
A. I did.
Q. You went out?
A. Yes sir.
Q. In an automobile or horse and buggy?
A. Horse and buggy.

Q. Where did you drive to?
A. Drove down Market.
Q. How far down Market did you go?
A. To Front.

Q. You had no difficulty in driving down?
A. None.
Q. Where did you go when you got down there? Did you stay down there?

A. To the engine companies—to the fire companies.
Q. To their house?
A. No, they were on the ground.
Q. You were working with your men on the waterfront?
A. No sir, I did not work with them. I went to give instructions, and find out what the difficulties were.
Q. Did you stay down there?
A. No sir.
Q. Where did you go?
A. After finding out what the trouble was I went to the Front and put all the tugs, State and private, to work.
Q. Pumping water?
A. Pumping water from the bay.
Q. Trying to put out the fire at the waterfront?
A. Yes sir.
Q. How long did you remain down there?
A. I then proceeded to the water company's yard on Bryant Street.
Q. You drove up Market Street, did you?
A. No sir, I drove right round the Front; that was the nearest road.

Q. Did you examine any mains anywhere?
A. No sir, I did not examine them. The reports came from the Captain—.

Q. Then, all you know about mains being broken or telescoped, is what somebody told you?
A. Mr. Schussler, the engineer.
Q. He told you so?
A. And a man connected with the Fire Department. That was his line of business.

Q. Did you test the signals?
A. I pulled box No. 299 at the corner of 5th and Mission, and there was no reply, and I came to the conclusion that maybe the system was out.

Q. And that is the only attempt you made to ascertain whether the system of fire alarm[s] was out or not?
A. That and the information I got from the men in the house.
Q. Don't you know there were a number of alarms signaled that morning?
A. No sir.

Mr. Eickhoff. Q. Did you investigate the condition yourself?

The Witness. The officers report to us the condition of things in their districts. There is no necessity of my making an investigation.

[A recess was here taken until 2 p.m.]
Afternoon Session

Testimony of William R. Hewitt
William R. Hewitt, Called for the Defendant, Sworn.

Mr. Eickhoff. Q. Mr. Hewitt, what is your occupation?
A. Chief of the Department of Electricity.
Q. Was that your business on the 18th of last April?
A. Yes sir.
Q. As the holder of that station or office, did you have occasion to notice what was the effect of the earthquake?

Mr. Ach. On what?

Mr. Eickhoff. Q. On the apparatus under your supervision and control.

A. Yes sir.

Mr. Eickhoff. Q. Please explain to the jury what the effect was.

A. At the time of the shake, immediately following the shake, I went to the central office. I noticed there the office was pretty well shaken up, that the apparatus was shaken down so far as the battery was concerned, and it was generally disabled.

Mr. Eickhoff. Q. How about the different circuits throughout the town?

A. The circuits themselves, we were not in a position to know whether the trouble was altogether on the outside or on the inside. We knew on the inside that the batteries were generally shaken down and destroyed. Of course, they being in direct connection with the circuit, they affected the circuit.

Mr. Eickhoff. Q. Were the means of intercommunication over your system interrupted?

A. Yes.

Cross Examination

Mr. Ach. Q. What do you mean by in charge of the Department of Electricity, Mr. Hewitt?

A. The Department of Electricity is charged with the supervision of construction and maintenance of the fire and police telephone system.

Q. You are a city employee, then?

A. Yes.

Q. And you were at that time?

A. Yes.

Q. Where was this central office?

A. 9 Brannan Place.

Q. What time did you get down there?

A. I reached there about 5:45; somewhere along there.

Q. On the morning of the 18th?

A. Yes sir.
Q. Where were you—where did you come from?
A. The Knickerbocker Hotel, California and Van Ness.
Q. You walked down to this particular place, about half a mile or more?
A. I should say a little more than that.

Q. And there you say you saw the batteries had fallen down?
A. Yes sir.
Q. What do you mean by the batteries?
A. The batteries or the plant that gives us the electric motor force for the different circuits.
Q. Go on and describe it so that the jury and myself will understand what you mean fell down. Were they bottles or jars?
A. Jars; the elements that constitute a battery; called a blue stone battery.

Q. On a shelf?
A. On a series of shelves.

Q. And they fell down from the shelf?
A. Yes sir.
Q. And that put your system so to speak out of service?
A. Yes sir.

Q. Was that the system over which all alarms were sent in from the boxes to the Fire Department?
A. Yes sir.
Q. Have you made an investigation to ascertain whether or not, as a matter of fact, alarms were not sent in to fire headquarters?
A. No sir.

Testimony of Frank H. Norman
Called for the Defendant, Sworn.

Mr. Eickhoff. Q. What is your occupation?
A. Clerk of the Chief of Police.
Q. Were you in that office on the 18th of last April?
A. I was.
Q. Do you recollect the earthquake?
A. I do.
Q. Where was the office of the Chief of Police at the time?
A. The Hall of Justice, Kearney and Washington.
Q. Did you have occasion to observe the effect of the earthquake at that time throughout the city?
A. Only coming from home down to the office.

Mr. Eickhoff. Q. In your observation, did the earthquake have any influence on the police department of the City and County?

A. It gave us considerable extra work.

Mr. Eickhoff. Q. Was there any increase made in the police force of the City and County of San Francisco?

A. There were a number of gentlemen came to the office of the Chief of Police and volunteered to be appointed special officers to assist the Mayor and Department.

Mr. Eickhoff. Q. Were there many appointed?

A. Quite a number.

Mr. Eickhoff. Q. Do you recollect how many?
A. Not positively. I should judge about a couple of hundred.
Q. They were sworn in as special officers?
A. They were not really sworn in. They were given stars by the orders of the Mayor and the Chief. Not actually sworn in as special officers.

Q. Was that done by the private order of the Mayor and Chief of Police?
A. Yes sir. There was also a citizens' police afterwards formed.

Mr. Eickhoff. Q. When was this first batch given, the shields?
A. Early on the morning of the 18th, the first lot.

Q. Do you know what these special men did after they got their badges and things?

A. I know that they started principally that they wanted them so that they could get through the lines, and assist in anything that might turn up.

Q. Act as policemen?
A. Yes sir.
Testimony of John F.O. Comstock
Called for the Defendant, Sworn.

Mr. Eickhoff. Q. What is your occupation, please?
A. Superintendent of the Underwriters Fire Patrol.
Q. Were you here on the 18th of April?
A. I was, sir.
Q. Do you remember the earthquake?
A. Yes sir.
Q. Where were you when the earthquake occurred?
A. At 120 Stanley Place, near Harrison, my residence.
Q. Did you come downtown then?
A. About ten or fifteen minutes afterwards.
Q. Did you have the occasion to observe what the effect of the earthquake was upon the city on the 18th and 19th of April, with reference to the firefighting apparatus?

A. In some parts of it, yes.

Q. Do you know what the condition of the water mains in the city was at that time after the earthquake?
A. In the lower part of the city there was no water at all.
Q. You know that?
A. I know that.

Q. How about the other part of the city east of Kearney and north of Market?
A. On Market and California, there was not any water there.
Q. You know that personally?
A. Well, there was an engine company standing there and they did not have any water.

Cross Examination

Mr. Ach. Q. * * * * *
Q. What is the Underwriters Fire Patrol?
A. It is an institution supported by the Underwriters to protect goods from being damaged by water.
Q. The Underwriters are the insurance companies?
A. Yes.
Q. The Transatlantic Fire Insurance Company among others?
A. Yes sir.

10John F.O. Comstock was appointed to succeed Russel White in 1893 as superintendent. Exempt Fire Company, The Exempt Firemen of San Francisco, p. 255.
Mr. Eickhoff. I should like to ask the witness one or two more questions.
Mr. Ach. Very well.

Direct Examination Resumed

Mr. Eickhoff. Q. Did you notice whether upon the happening of the earthquake fires ensued in the city?
A. Yes.
Q. Were there many, or a number of them?
A. Quite a number.
Q. How many did you personally observe immediately after the earthquake?

A. As near as I can judge about ten or twelve.
Mr. Eickhoff. How soon after the earthquake was that?
A. Immediately after the earthquake.

Q. Did you notice at what point in this city those fires originated?
A. Yes; there was one burning out on the block bounded by Pine, California, Sansome and Battery; at J.J. Mack's; I don't know the number of it; on Fremont Street between Market and Mission.
Q. Is that the drugstore?
A. Yes; there was a fire burning on Fremont between Mission and Howard; I don't know the exact location. Another burning on Howard and Third, and one burning on 7th and Howard and Mission, and through there.
Q. All those in the lower part of the city, were they in dwelling houses or mercantile establishments? J.J. Mack is a wholesale druggist.
A. Yes, they were office buildings.
Q. None of them dwelling houses?
A. None of those. I think those on 7th and Howard were dwelling houses principally.

Q. Take it first or last within the first hour after the earthquake, how many fires had you information of?

A. I should judge ten or twelve.

Cross Examination Resumed

Mr. Ach. * * * * *
Q. How long have you been employed by the insurance companies?
A. 31 years.
Q. How long have you lived here?
A. All my life.
Q. What is your age?
A. 53.
Q. Your employment by the insurance companies has continued right along, has it, since the fire?
A. Since the fire.

Q. Where was your shed, I suppose you could call it—you had an engine too, or a truck, in connection with that fire patrol?
A. We had a wagon.
Q. Where was that kept on April 18th before the fire?
A. We have four stations.

Q. Where was it you were living?
A. 120 Stanley Place.

Q. How far away is that from the nearest patrol station, or was it at that time?
A. About three blocks; three and a half, or four.
Q. You were in bed when the earthquake came?
A. Yes sir.

Q. The earthquake awakened you?
A. It did, yes.

Q. Now, when you got outside, after you were aroused by the earthquake, and after you had dressed yourself, did you take a general view of the city then from where you were living?
A. Yes sir.

Q. Did you see any fires south?
A. Not from where I was.

Q. Did you see any fires north?
A. I could see the smoke of the fires.

Q. How far north?
A. I could not tell you that. It is pretty hard to judge the smoke from a distance, where it is.
Q. Do you know if there was a fire the night before or not?
A. Yes sir.
Q. Where was it?
A. The corner of Mason and North Point.

Q. Were you down there the night before?
A. Yes sir.
Q. What time was that fire?
A. As near as I could judge, it was about ten or eleven o'clock at night.

Q. How long did you stay at that fire?
A. I stayed there until about two o'clock.
Q. Two o'clock in the morning?
A. Yes sir.
Q. Was that fire entirely out when you left there?
A. No sir.

Q. You were pretty tired when this earthquake came. You had only been in bed a little while. Is not that true?
A. I had been in bed about three hours and a quarter.

Q. What streets did you take in or traverse, in going from your house to the patrol house?
A. Down Harrison to 1st, and 1st to Natoma.

Q. How many men were in your patrol house at the time you got there, belonging to your underwriters' patrol?
A. The force was comprised of fifteen men.

Q. You had no trouble in going down to the patrol house, had you?
A. No sir.
Q. Now then, on your way down, did you see any fire anywhere?
A. From a distance, yes.
Q. Fire or smoke?
A. Smoke.
Q. Where did you see any smoke on your way down to your patrol house after leaving home that morning?, on your way down, I mean. Tell me where.
A. Across Market; on the other side of Market.
Q. Where was the first smoke that you saw, what locality?
A. North of Market.

Mr. Eickhoff. Market runs east and west there.

Mr. Ach. Q. The first smoke you noticed on the morning of the 18th day of April, after the earthquake, was north of Market Street?
A. North of Market Street.

Q. When you noticed that smoke did you order the men at once to mount the wagon?
A. We generally answer on the alarm that is received in the houses.

Q. When you got to the patrol house you noticed the first smoke that you saw, and that was north of Market Street, and your men were there. I want to know now whether you ordered them on the wagon and went on with them yourself, and drove down towards that smoke?
A. Yes sir.

Q. How close did you go?

I am asking you whether you drove on with your wagon to the place that you saw the smoke?
A. No sir, I stopped at Beale and Market.

Q. When you got to Beale and Market, was that smoke east or west of you?
A. It was about northwest.

Mr. Ach. Q. I show you a map of San Francisco. You are familiar with it, I suppose.
A. I am familiar with the city but not with the map.
Q. Will you please indicate on that map where you lived?
A. Here. [Pointing.]

Q. Now, from that locality where you were, will you please indicate about where it was that you saw the first smoke that you say you saw that morning, which was at the time that you arrived at your patrol house?
A. As I said before, it was north of that.
Q. You walked over to the patrol house?
A. Yes sir.

Q. When did you first see smoke?
A. From the top of the hill.
Q. Was that before or after you went down to your patrol house?
A. Before.

Q. Indicate to us where it was that you saw that smoke that morning.
A. North of Market.

Mr. Ach. Q. * * * * *
Can you tell me within an area of any number of blocks where that fire was that you saw on the morning of the 18th, after you had been aroused by the earthquake, and dressed, and went out?
A. I could tell you where it was afterwards because I went there.

Q. Now then, where was it?
A. It was bounded by Pine, California, Sansome and Battery.
Q. How long afterwards did you go to the block that was bounded by Pine and California, Sansome and Battery?
A. I should judge about half an hour.

Q. In going to that block how did you get there?
A. In an automobile.
Q. Then, you left your patrol wagon, did you?
A. I put it in the house.

Q. You crossed over and went to the north side of Market Street?
A. Not that way. I went down around Howard, and through that way.

Q. Then, did you come down Market?
A. No sir, I went to No. 2 house, situate on City Hall Avenue.

City Hall Avenue is between—well, it is off Market; it runs around the City Hall.
Q. How long did you stay there?
A. Just a minute or two.
Q. Then, where did you go?
A. I came right downtown.

Q. Did you see any other fire anywhere?
A. Yes sir.
Q. Where did you see a fire?
A. I should judge it was about between 7th and 8th, on Howard and Mission.

Q. How close were you to that?

A. A quarter of a block.
Q. What was burning there?
A. Dwellings, principally.

Q. Mr. Comstock, you know where the fire broke out in the block bounded by Sansome and Battery, California and Pine?
A. Yes sir.
Q. It broke out on the Daniel Meyer Building, didn’t it?
A. That is what they say.
Q. Don't you know, as a matter of fact, that that fire in that block broke out long after there were other fires in San Francisco on the morning of April 18th, 1906?

A. That block was very nearly burned up when I got there.
Q. What time did you get there?
A. I don't know exactly. Early in the morning.

Q. Can you tell within an hour?
A. No sir; it possibly might have been along seven o'clock, shortly afterwards.
Q. Seven o'clock. And that block was nearly all gone at that time?
A. Yes sir.
Q. The Anglo California Bank was on one side, on the corner of Pine and Sansome?
A. Yes sir.

Q. What was on the corner of Pine and Battery?
A. The Phoenix of London Insurance Company.

Q. You know where Levi Strauss & Co.'s place was on Battery?
A. Yes sir.

Q. Did you see the Anglo Californian Bank when you got down there?
A. From the corner.

Q. On the corner of California and Sansome Streets, one corner was occupied by the Mutual Life Insurance Company, was it not—known as the Mutual Life Insurance Company Building?
A. Yes sir.
Q. You say that was on fire at seven o'clock?
A. The fire was up to that.
Q. All the rest of the block gone?
A. That side of it. I did not know as regards to the lower side. I did not see it.

Q. The first fire that you saw, to get this in rotation, was the fire north of Market, which you saw after you left your house?
A. The smoke that I saw.
Q. You saw no other fire until after you got down to your engine house, or truck house, came out of there and drove down trying to get to the north side of Market?
A. Yes sir.
Q. And on your way down you saw a fire on Fremont Street?
A. Yes sir.

Q. And then you drove on. When was it that you saw the third fire?
A. Soon after I left that fire that was on Fremont Street.
Q. You did not stop at that fire on Fremont Street?
A. Yes sir.

Q. How long did you stop there?
A. A minute or two.
Q. With wagon, truck, and men?
A. Yes sir.

Q. While looking at that fire, you did not see the fire at Mack's?
A. No sir, not until I got further along.

Q. Where did you see any fire at Mack & Co.'s store from?
A. Beale Street.

Q. At Fuller's you saw fire?
A. East of Fuller's.
Q. In some tenement house?
A. Not tenement houses; small wooden factories.

Q. You went on all the time with your mind and eye, so to speak, on this fire north of Market?
A. I went to Market Street and stopped there.
Q. Those were the only fires you saw on your way down?
A. Yes sir.
Q. You saw no smoke from any other portion of the city?
A. Yes sir, I did.
Q. Where from?
A. After I got out in the Western Addition I could see smoke.

Q. Where?
A. On the line of Grove Street.

Q. North of Market?
A. Yes sir.

Q. For whom have you been making investigations since this fire?
A. We make up a report every year of the fires, and number of fires, and causes.
Q. You have been specially detailed, haven’t you, to interview people, and ascertain what you could about this fire, and see what evidence could be obtained for earthquake companies?
A. For insurance companies?
Q. Yes.
A. Yes sir.
Q. For those that have earthquake provisions, particularly. For what companies have you been making these investigations?
A. I don’t know.
Q. Who told you to make the investigations?
A. I was told there was a committee appointed.
Q. Who told you to do it?

A. I received a communication in writing from them.

Q. What did it say?
A. It was to detail so many men to find out the condition of things before and after the earthquake.

Q. Who was on this committee that was commanding you, or requesting you to do these things?
A. I don’t remember that.

Q. You had to make some reports, didn’t you?
A. Yes sir.
Q. Who did you make them to?
A. Reports were made and typewritten, and sent to the Ferry Building.
Q. To whom?
A. To the Fire Underwriters of the Pacific, I believe they call themselves.

Q. Let me understand. Are you the Chief in control of the Fire Underwriters’ patrol?
A. Yes sir.
Q. How long have you been Chief over those men at those different stations?
A. Going on 14 years.
Q. Do they furnish you with a typewriter and a stenographer to get these reports out with since this big fire?
A. Yes sir.
Q. Who has been paying that typewriter and stenographer?
A. The insurance companies.
Q. Do you keep a manifold, or letter press copy, of these reports that you sent to the Ferry Building?
A. No sir.
Q. Have you had other communications, oral or written, from the committee in charge of the investigation of this fire, other than the first letter that you got?
A. No sir.

Mr. Ach. 
Q. Did you receive any written communications from any attorney of the Transatlantic Fire Insurance Company?
A. No sir.
Q. Have you had an interview with Mr. Eickhoff, or anyone connected with the Transatlantic Insurance Company, before you were put on the stand here?
A. No sir.

Testimony of Herbert E. Law
Called for the Defendant, Sworn.

Mr. Eickhoff. Q.
Herbert Law?
A. Yes sir.
Q. What is your occupation?
A. Chemist.
Q. Were you in this city during the recent earthquake and disaster?
A. Yes sir.
Q. What were you doing in this city at that time?
A. I was on the relief committee part of the time.
Q. Now, on the 18th or 19th of April, of this year, after the earthquake, did you have occasion to go about the city a great deal?
A. Yes sir.
Q. Did you observe personally what the effects of the earthquake were?

A. I did not have any particular object in hunting up that information, but I went about a great deal. I went down town in my automobile shortly after the earthquake, and passed this property in question.

Mr. Eickhoff. On Kearney Street?
A. Yes sir.

Q. Did you observe any fires that ensued after the earthquake?
A. There were no fires there.

Mr. Eickhoff. Q. At what time in the morning did you first experience this earthquake?
A. I think about 5:14.
Q. Did you immediately get up?
A. Yes sir.
Q. Then, did you go down town at once?
A. No sir, within an hour.
Q. How soon after you were aroused did you observe any fires in the town?
A. I was not conscious of any fire during that time I was in the city. I did not notice any fire.

Q. Were you not in the city on the 18th and 19th?
A. Yes sir.

Q. What was your route down town that morning?
A. I started from Van Ness and Vallejo and worked up to the top of the hill, Mason and California, and dropped over the hill down to Kearney, along Kearney to Market, Market to New Montgomery and in that section.

Q. When were you first conscious of fires on that day?
A. After my return; that is, after I got on top of the hill.
Q. Where were they then raging?
A. I think they were down on the waterfront, south of Market Street.
Q. About where on the waterfront would you locate the fires?
A. I was a long way from it. I do not think I could indicate it within several blocks. It might have been anywhere from the Sailors' Home to 4th Street.

Q. Did you notice any other fires?
A. I think I saw the smoke off of somewhere in the heart of the Mission, I should say, about 5th or 6th.
Q. Did you take any more than this one journey down town?
A. Yes sir, I was around a great deal.
Q. What was the condition of the city?
Mr. Ach. What do you mean by that?
Mr. Eickhoff. As to quietness or otherwise.
Mr. Ach. Objected to as immaterial, irrelevant and incompetent whether the city was quiet or not.
The Court. That would be one of the attendant circumstances of civil commotion. Counsel will have to show under the exception of civil commotion that there was an insurrection. That is the way I construe it.

A. The city was exceedingly quiet. It impressed me like being Sunday. I was very much astonished; there seemed to be a sense of awe existing everywhere. I remarked that to my brother who was with me, I was very much astonished at it. I thought we would see very large crowds down there as there were a great many people interested.
Q. You saw no large crowd?
A. No sir, very few people on the street.
Q. Neither on the 18th or 19th of April?
A. On the 19th of April I saw a great many people going to the Ferry, and a great many people going to Fort Point.

Testimony of Josiah R. Howell
Called for the Defendant, Sworn.

Mr. Eickhoff. Q. Mr. Howell, were you in this city on the 18th of April?
A. I was.
Q. Were you about the town on the 18th and early on the 19th of April?
A. On the 18th, I was around town.

Q. Did you go down town that day?
A. I went down later in the afternoon.
Q. Looked about the town?
A. Well, I was only in a limited area. I came down town to the corner of Sutter and Kearney Streets, and went to the Hall of Justice at four o'clock on the afternoon of the 18th.
Q. Were you a city official at that time?
A. I was not.
Q. Did you have occasion to notice what effect upon the city the earthquake had produced or was producing?
A. Only in a general way.

Mr. Eickhoff. Q. What was that?
A. From the parts of the city that I visited there did not seem to be a great deal of damage. The most serious damage that I saw was in the place that I reside, the St. Dunstan's, the cornice falling off the building.
Q. Were the street cars in operation?
A. They were not except the Geary Street line.

Q. Did you notice whether the Fire Department was at work?

A. I saw a fire apparatus on Market Street. Whether it was engaged in work or not I do not know.

Mr. Eickhoff. Did you notice whether there [were] any fires raging at that time?
A. I saw fires after I got down town.
Q. At what point?
A. The first fire that I observed was when I reached the corner of Post and Market Street at the lower end of Market, I should judge, on the south side between Fremont and Beale, I think, I am not positive of that.
Q. Enumerate what fires you recollect seeing on the 18th of April.
A. I had occasion, after leaving the Palace Hotel, to go to the Rialto Building, but on my way down there, at the corner of New Montgomery and Mission, I looked up and saw a fire in the neighborhood of the Grand Opera House, and the Aronson Building. That would be at the corner of 3rd and Mission. I think those were the only fires that I saw that I could definitely locate.
Q. You did not see the fire that consumed the Anglo Californian Bank?
A. I did not at any time see that fire or even the smoke from it to know it. I think I saw smoke in that direction. I saw smoke in other directions, but those two points are the only ones that I know to have been the location of fires.
Cross Examination

Mr. Ach. Q. You had no trouble coming down town, Mr. Howell, the morning of the 18th?
A. On the morning I had no trouble.
Q. Had no trouble going back with your family?
A. No, because I was fortunate enough to have some friends take me along.
Q. No fire burning along Kearney Street, or anywhere near you, when you went down that morning?
A. No sir.
Q. You know where Raphael’s store was, don’t you, on Kearney Street?
A. Kearney and Union Square Avenue, yes.
Q. No fire there, was there?
A. No sir.

Testimony of Thomas P. Woodward
Called for the Defendant, Sworn.

Mr. Eickhoff. Q. What was your occupation on the 18th of last April?
A. City Engineer.
Q. Are you still City Engineer?
A. I am.
Q. Do you know what effect the earthquake had upon the municipal plant of the City of San Francisco?
A. I do.

Q. What was the effect?
A. The telephone system was broken, the gas was shut off, and some of the distributing mains of the water system were broken. The main supply pipes from the supplying reservoirs were broken leading into the city, which however, did not have any immediate effect upon the supply of water that was then in the city, there being at that time some 80,000,000 gallons of water in reservoirs in the city. The trouble which arose was from the breaking of the distributing pipes in the city proper.

Q. Take the area bounded, say, on the west by Powell and 5th Street, on the south by Mission, on the north by Broadway, and by the Ferry Building on the east. Do you know anything
about the condition of the water supply there for extinguishing fire during the 18th of April?
A. There was water in that district.
Q. To what extent?
A. To a limited extent, I saw water used within those limits.
Q. Up to what time?
A. I saw a hose at the corner of Market and Sutter about eleven o'clock.
Q. Eleven o'clock that morning?
A. Eleven o'clock that morning, and at 3rd and Market Street, at the Call Building.

Q. Were they pumping from the mains or from a cistern?
A. I think from the mains.
Q. Are you certain as to that?
A. I know of no cistern there they could have drawn from.
Q. How about the means of transportation in the city; were they affected by the earthquake?
A. The railroads were all discontinued, so far as I know, by the earthquake.

Cross Examination

Mr. Ach. *******
Q. You talk about the street car traffic stopping that day. Do you know whether that was a result of fire, or whether it was a result of the earthquake, of your own knowledge?
A. The result of the earthquake in my opinion, because it stopped before the fire had started.

Mr. Ach. Q. As a matter of fact, you know there were passenger wagons running continuously from the western portion of the city to the eastern portion of the city, do you not, passenger wagons?
Mr. Eickhoff. Q. What time?
Mr. Ach. Q. During the entire conflagration, and until the cars were repaired, was there any communication between all parts of the city all the time?
A. Yes.

Re-direct Examination

Mr. Eickhoff. Q. To what extent? What were the means of communication to different parts of the city?
A. Most of it was on foot.

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Mr. Eickhoff. Q. ******
On the 18th was there any such thing as established means of transportation in the city?
A. There was not.

Re-cross Examination

Mr. Ach. Q. Mr. Woodward, don't you know that automobiles and carriages, and passenger wagons were running all over this city on the 18th and 19th of April?
A. I rode all over the City on the 18th in an automobile.
Q. And so were others?
A. Yes.
Q. The street cars had simply stopped?
A. Yes sir.
Q. Mr. Woodward, how long have you lived here?
A. 50 years.
Q. Did you ever experience any earthquakes prior to the earthquake of April 18, 1906, in San Francisco?
A. A good many of them.

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Further Re-direct Examination

Mr. Eickhoff. Q. How did the other earthquakes compare with this?
A. They did not compare with it.

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Mr. Ach. Q. How about 1868; were you here?
A. I was; I thought that was a pretty good one too, but it was not anything like this.
Q. There was not so much to be destroyed then as now?
A. There was enough to be destroyed.

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Testimony of C.J. Pulis
Called for the Defendant, Sworn.

Mr. Eickhoff. Q. What is your occupation?
A. I am Captain of Artillery in the United States Army.
Q. Were you here on the 18th of April?
A. Yes sir.
Q. You remember the earthquake?
A. Yes sir.
Q. At what time did it come within your observation?
A. The time recorded is 5:15; I did not observe it myself.
Q. Were you at the Presidio at the time?
A. I was.
Q. Did you come down town?
A. Yes sir.

Mr. Eickhoff. Q. On what errand did you come down?

A. We were ordered to proceed to the City Hall and report there to the Chief of Police.

Mr. Eickhoff. Did you do that?
A. Not in person. Before I got down there I was sent to 5th and Market. I did not stop at the City Hall at all.

Q. Who sent you to 5th and Market?
A. I cannot recall just who it was, but some officer met me and told me to proceed there, and report myself to Captain Avery.

Mr. Eickhoff. Q. What did you do after you reported to your commanding officer at 5th and Market?

A. I took what men I had with me, part of my company, and went down 5th Street to Jessie, came along Jessie on the North side of the Mint, and was directed to proceed to 6th Street, which I did, and took charge of the block between 6th—or on 6th between Jessie and Market Streets.

Mr. Eickhoff. Q. Just explain what you mean by taking charge of that block.
A. There were two or three policemen there and the crowd was down close to the fire which was burning on the south side of Jessie, and I directed my men to keep the crowd back, and as the fire seemed to be about to cross Jessie, under the direction of a Captain of Police, I had the crowd go back to Market Street. Do you wish me to go on?

Q. Yes.
A. Shortly after that, this Captain of Police—Captain Gleason, I think his name was—asked if there was not some way that some buildings could be blown down.

Mr. Eickhoff.

Q. What was the consequence of the explosion?

Mr. Ach. Objected to as immaterial and incompetent.
If you know it was for the purpose of stopping the conflagration, whatever the effect was, would be of no consequence.

Mr. Eickhoff. The position we take is this: If there had been a normal fire, and for the sake of arresting the spread of the fire the civil authorities had directed the explosion of dynamite then the position of counsel might be tenable. We say in no event under the circumstances can they hold us responsible when the fire originated from an earthquake and was superinduced by the further dynamiting of buildings. It was the paramount cause of the earthquake.

Mr. Ach. May I ask the witness a question?

Mr. Eickhoff. Yes.

Mr. Ach. Q. The issuing of powder for the purpose of blowing down those buildings, was that for the purpose of arresting or stopping the conflagration?

A. It was.

Mr. Eickhoff. Q. Do you know that to be the fact?

A. I know that was the purpose for which it was undertaken.
The Court. If the fire would have gone on anyway, and it started originally from the earthquake, it does not make any difference whether this building was blown down or not.

Mr. Eickhoff. The idea is to get a picture of the exceptional occurrences which transpired at that time, for which we have no parallel. Here we have the authorities demoralized. Here is a Captain of Police placed in charge of a lot of military officers.

The Court. On the ground that it will not strengthen your position I will sustain the objection.

Mr. Eickhoff. I will take an exception.

Q. What time of day was this when you began these operations?
A. This was some time between the hours of 7:30 and 9:30. I cannot put it closer than that.

Q. In coming towards town or into town, did you observe any fire?
A. None at all.

Q. Where was the first point at which you first saw a fire?
A. I think when we were coming—when I say none at all, perhaps I should have been more cautious than that—in coming down Van Ness Avenue we were able to see smoke looking beyond the City Hall.

Q. Out towards Mission?
A. In that general direction.

Q. When did you next see fire?
A. As we came out of Golden Gate Avenue, or coming down Golden Gate Avenue, and near the City Hall, we could more nearly distinguish that the smoke and fire was south of Market.

Q. Did you encounter the fire soon after?
A. Yes sir.

Q. Where was the fire raging?
A. My observation was limited. I saw it, I will say, from 3rd to 8th Streets, and below Mission.

Q. Was it extensive?
A. It appeared to be, yes.

Cross Examination

Mr. Ach. Q. 

Were you to report to the Hall of Justice or City Hall?
A. City Hall.

Q. You marched on down to the City Hall and there you received the instructions to go down and see Captain Gleason of the police force; is that right?
A. That was the result that followed.
Q. So that you got down around the vicinity of the fire, south of Market Street, after eight o'clock on the morning of the 18th of April?
A. Yes, I presume it was.

[With the usual statutory admonition to the jury, an adjournment was here taken until tomorrow morning at ten o'clock.]

Friday, September 14th, 1906.

Testimony of John F. Davis
Called for the Defendant, Sworn.

Mr. Eickhoff. Q. What is your occupation?
A. Master electrician in the United States Army.
Q. How long have you been in that occupation?
A. In that position, for two years; in the service fifteen years.
Q. Were you in this city on the 18th of last April?
A. I was.
Q. Did you experience the earthquake?
A. I did.
Q. At what time was it brought to your notice?
A. Somewhere about 5:15 or 5:14. According to my watch, it was about 5:15.
Q. Where were you when you were awakened by the earthquake?
A. I was awake when it occurred, in the Presidio.
Q. What did you do?
A. I immediately vacated my quarters, and got out in the road in front of my quarters.

Mr. Eickhoff. Q. Did you within a short time afterwards have occasion to see the entire city of San Francisco practically?
A. Well, I had a view—I went to a point where I could get a fairly good view of the city afterwards.

Q. Did you observe whether or not there were any fires raging at that time?
A. I noticed from my first observation that I seen [sic] smoke arising from different parts of the city. To the best of my judgment it was, I would think, north and south of Market Street. It seemed to be on the waterfront.
Q. At how many places did you observe fire or smoke?
A. It seemed to be quite a few. There were quite a few fires going at that time.
Q. What part of the city was covered with smoke practically?
A. In a line from our place, it would about cover the Ferry Building. It would, taken in a line, hit Kearney Street at about Clay, something like that, on a line with the Ferry Building, and to the right and left there seemed to be fires at that time—shortly afterwards, fifteen or twenty minutes or half an hour. I was more or less excited. It might be a period of half an hour.
Q. From the Ferry Building, extending out towards the Mission?
A. That is right.

Q. Did you count the number of fires?
A. I did not, I simply noticed that it seemed that the city was on fire.

Q. Do you know where Montgomery Street is, Sansome, Battery?
A. I know it was burning at twelve o'clock. The only thing I can say is I am positive I saw fires in that direction, but whether it would just cover that area or not at that particular time, early in the morning, I cannot say.
Q. Were you in that section of the city that day?
A. I was from about twelve o'clock to almost dark.

Mr. Ach. Q. Twelve o'clock noon?
A. Yes sir.

Mr. Eickhoff. Q. Just where were you during that time?
A. The principal part was in a little park. I had charge of the supplying of all the high explosives, dynamite and powder—in a small park in front of the Hall of Justice.
Q. Portsmouth Square?
A. I believe it is. It is right in front of the Hall of Justice.
Q. Did you notice this part of the city where the fire was raging about Clay Street?

A. Yes sir, I noticed that, to the best of my judgment, about twelve o'clock to almost six—I noticed fires all around in that vicinity.
Q. Do you know where they came from?
A. They were coming from the direction, more or less, from the Ferry Building, working up from the waterfront.
Q. From the Ferry Building towards Kearney?
A. Yes sir.
Q. From Market Street in any given direction?
A. From Market Street, in both directions—that the fire was spreading.
Mr. Ach. I understood that the witness was stationed at Portsmouth Square.

The Witness. Principally at Portsmouth Square. At other times I was delivering high explosives, dynamite and powder, to different parties for the demolition of the different buildings that was going on.

Mr. Eickhoff. Q. You supplied high explosives to demolish buildings?
A. Yes sir.
Q. Did you supply some down in that neighborhood?
A. I did.

Mr. Eickhoff. Q. Tell us where you delivered high explosives down in that vicinity.

A. The only thing I am absolutely positive of the high explosives, just where they were used, was on the corner of that square. If you had a diagram I could show you—what I seen [sic] blown up by the high explosives. The others I simply delivered to parties.

Q. You say it was on that little square immediately in front of the Hall of Justice, where your station was?
A. That is where the central part [i.e., point] of distribution was to supply the high explosives. The only building that I am positive that was destroyed by high explosives, or attempted to be destroyed, was a building across on the other side of Kearney Street, on the right-hand side, facing to the waterfront.

Mr. Eickhoff. Q. How much area did those fires cover?

A. It seemed to me to cover three or four blocks north, and quite a ways south of Market Street, to the Mission.
Q. Then, how far did it extend out towards the west?
A. Quite a ways out. I mean, it must have been 8 or 10 or 15 blocks—probably 10 blocks, I think. I perceived smoke right in that direction.

Cross Examination

Mr. Ach. Q. Do you occupy some official position?
A. Master electrician in the United States Army.
Q. Do you rank?
A. I am senior enlisted man in the service.
Q. How long had you been in San Francisco before the 18th of April?
A. About a year and eight months this last time. I had been here before.

Q. You say you were up and dressed at the time of the earthquake?
A. No sir, I was not dressed; I was awake though.
Q. You were in bed?
A. Yes sir, I was in bed.

Q. You got up and went out?
A. Yes sir.
Q. You remained outside without being dressed how long?
A. Probably a minute.
Q. Only a minute?
A. I don't think over that. I went back to dress, and we got another little shock, and I went out, and then I went back and finished up.

Q. Did you go to the top of the hill, the Jackson Street hill, or any of the hills, to take a view of the city before you got your breakfast?
A. I did, before I got my breakfast, but not from the top of a hill, but from a little view on our parade ground.

Q. When you got up there you saw some smoke?
A. I did.
Q. Where did you see smoke?
A. It seemed to be rising out from the waterfront, to the best of my judgment, on a line somewhat with the Ferry Building.
Q. You did not see any fire?
A. No sir, you could not. It was only a matter of smoke—.

(Contg) It was impossible in the daytime to distinguish a fire. You could not see the blaze.

Mr. Ach. ******
Q. Some hours afterwards you went up again and saw the general line of smoke. Is that right?
A. I observed it from time to time as to how it progressed.
Q. About twelve o'clock that day you went down to Portsmouth Square?
A. Yes sir.
Q. How many went with you?
A. I had three wagons of dynamite, and picked up three more. There were three other different wagons reported to me at Portsmouth Square.

Q. What time was it?
A. I think about a quarter after eleven, to the best of my knowledge.
Q. How long did it take you to go from the Presidio down to Portsmouth Square?
A. I think we made it easy in an hour.

Q. There were crowds looking at the fire, and you drove along and reported to the Phelan Building, which was standing?
A. Yes sir.
Q. That was on the corner of Market and O'Farrell?
A. That is right.

Q. Did you drive the teams in upon the ground that is known as Portsmouth Square?
A. We went down to Portsmouth Square—on the north side of Portsmouth Square—down to Kearney Street and then we unloaded our supplies. We supplied from there until the fire got close on to us late in the afternoon, and then had to move out.

Q. Did you see any dynamite used down there yourself?
A. No sir, the dynamite had run out. I saw black powder used down at the corner there, the building I stated.
Q. On the corner of Clay and Kearney?
A. Yes sir, the dynamite supply had given out.
Q. You had given out some dynamite to some different persons?
A. Yes sir.
Q. By whose direction?
A. Captain Coleman.
Q. Captain Coleman of the police force?
A. Captain Coleman of the United States Army, who was working under the Mayor's orders I believe. That is only hearsay, that it was by his orders.

Testimony of John Christianson
Called for the Defendant, Sworn.

Mr. Eickhoff. Q. What is your business?
A. Seaman.
Q. Were you in this city on the 18th of April last?
A. Yes sir.
Q. Did you feel the earthquake?
A. Yes sir.

Q. Where were you when it happened?
A. I was in bed.

Q. Where?
A. I live on the southeast corner of Drumm and Commercial.

Q. Did you get up?
A. Yes sir.

Q. Do you know whether any fire started after the earthquake, right away?

A. Yes sir, one block between Drumm and Commercial, on the corner of Davis and Commercial.

Q. Did you see it when it began?
A. Yes sir.

Q. Did you stay there any length of time?
A. About fifteen minutes or so.

Mr. Eickhoff. Q. Did you see any other fire at or about the same time?
A. There was a fire at the same time between California and the south side—between Drumm and Davis—on California.

Cross Examination

Mr. Ach. ******
Q. What do you mean by a seaman—a sailor?
A. Yes sir.

Q. How long have you lived here?
A. I have been here off and on for about three years in San Francisco.

Q. Who told you to come here?
A. Well, I was down on the waterfront yesterday, and a gentleman there came down, and he started talking with me yesterday, and he asked me some questions, and I told him, and he had me to come up here and give some information.

Q. Who was that gentleman?
A. He is sitting down there. (Pointing.)

******

Mr. Eickhoff. Mr. Platt. He went down with the Marshal.

Mr. Ach. Q. Did you know Mr. Platt?
A. No sir.
Q. What were you doing on the waterfront yesterday, working?
A. Yes sir.

Q. Had you told anybody before that you had seen a fire break out on Commercial and Drumm?
A. No sir.

Q. How did they know that you knew it, do you know?
A. He got it out of me somehow or another; he just talked to me, and asked me some questions, and I told him.

Q. You say you were living in a lodging house on the corner of Commercial and Drumm?
A. Yes sir.

Q. And you were in bed when the earthquake came?
A. Yes sir.

Q. You run [sic] out?
A. Yes sir.

Q. Then, of course, you went upstairs to get on some clothes?
A. Yes sir.

Q. During the five minutes you were outside you did not see any fire?
A. When I came out again I saw fire.

Q. When you got downstairs, where did you go?

The Witness. I stayed outside for a little while.

Mr. Ach. Q. Outside, in front of your hotel for a little while?
A. Yes sir.

Q. Where was that fire that you saw when you were standing there, after you came down with your clothes on?
A. It was in the middle of the block between Drumm and Davis and Commercial.

Q. What was the house that was on fire? What was it occupied as?
A. I am not certain. It used to be some hide salting place.

Q. At that time that was the only fire that you saw?
A. One down on California Street.

Q. You say you saw another on California Street?
A. Yes sir.
Q. How long after you saw the fire on Commercial?
A. I went from there right down there. I saw the smoke and went down there about five minutes afterwards.
Q. Where on California Street did you see a fire?
A. On the same place between Drumm and Davis on the south side.

Mr. Eickhoff. That concludes the testimony upon the part of the defendant, if your Honor please. I have under subpoena some other witnesses whose testimony would be cumulative to that already introduced, but I prefer not to take up the time of the court or the jury with it, because it is all to the same effect. We make no contention that we have proven any part of the defense alleged in the Answer except that which sets up that the municipal plant, and the municipal administrative agencies were rendered inefficient by the earthquake, and that the earthquake was the proximate cause of the conflagration, through which this property was destroyed, the relevancy of which is under advisement by the court now.

Mr. Ach. So far as the plaintiff is concerned, we rest. I have submitted some questions, which I will ask your Honor to put to the jury.

The Court. Do you want this case to go to the jury?
Mr. Ach. Yes. Your Honor is aware that the Transatlantic Fire Insurance Company is a corporation which was engaged in business here, and operates in Germany; that is, its home is in Germany. There is some contention that if we obtain judgment in this court it will be of no effect, and we would have to sue again on the facts over there. Under the case of Hilton vs. Guyot that contention is made, and I understand that under the civil law, which is administered in Germany, it may be claimed that they did not recognize our judgments as final. I am submitting this matter, and particularly the questions, for such effect as they might have if it becomes necessary to sue on the judgment. That is the object fairly stated. The record goes over there, and the trial having occurred on the issues presented by counsel—.

Mr. Eickhoff. [Intg] That is apparent from the record.

Mr. Ach. I want a direct answer by the jury to the issues I have submitted, for their effect abroad, for as a matter of common knowledge and notoriety, which I think the court can take judicial notice of, the Transatlantic Fire Insurance Company—.

Mr. Eickhoff. [Intg] I do not think anything should be stated that is not any part of the record. In the eyes of the court this is not an exceptional case, but a case that comes up on its merits. If it is the judicial sense of this court that the defense
we attempt to establish, mainly, that the disaster occurred in consequence of the earthquake, and that this was the dominant cause and the demoralization of the community brought about such a state of affairs as was not in contemplation of the parties to the contract, that the court should rule that those two defenses are not admissible for the reason that they are not within some express exception stated in the policy, then we are entitled to have that ruling appear of record.

Mr. Ach. That is exactly what I do not propose to do. If your Honor will glance over the instructions I have prepared, your Honor will see that I have preserved all the plaintiff's rights. Under Section 625 of the Code of Civil Procedure, as amended in 1905 by our State Legislature, the court must submit the questions to the jury if the request is made in writing.

Mr. Eickhoff. Read that Section.

Mr. Ach. The Section provides as follows:

"In an action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases the court may direct the jury to find a special verdict in writing, upon all, or any of the issues, and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon. The special verdict or finding must be filed with the clerk and entered upon the minutes."

In 1905 our Legislature passed an amendment to that Section which made it imperative on the court, if a request was made, to submit special issues to the jury. I understand that practice governs in the federal courts in the trial of an action at law.

The Court. Suppose the court should conclude there was not anything to go to the jury, would you then have these special findings submitted?

Mr. Ach. I understand that your Honor stated that it was not your practice to discant on the facts in submitting a case to the jury. Counsel has submitted his defense, and the jury have [sic] not yet been instructed as to the law governing the defense. Certain evidence has been permitted to go before this jury—

Mr. Eickhoff. (Intg) Subject to the ruling of the court to strike it out at the conclusion of the case.

Mr. Ach. I have not made any motion to strike it out.

Mr. Eickhoff. We ask for a ruling of the court upon that.

The Court. As to the points involved and the sufficiency of the defenses interposed and the proof offered to sustain them, I will announce my views at this time:

Section 1511 of the Civil Code provides that when an act is prevented or delayed by an irresistible superhuman cause—
commonly designated in the books as the act of God—the party upon whom is cast the duty to perform it, is excused therefrom.

As to the applicability of this section, I hold that it does not apply to a case involving the payment of money only, where the acts have all been done from which that payment would naturally result as a matter of law. The legislature evidently had in contemplation the failure of a person who had entered into a contract to perform that contract by virtue of some overwhelming disaster, and not to relieve one from payment for like cause.

As to the question whether the earthquake itself was the proximate cause of the fire, I think there is enough to go to the jury, and it would be submitted upon that issue but for the fact that the exceptions contained in the policy do not include a loss by that means. The policy, insofar as the exceptions need be noted here as having been pleaded, only relieves the company of liability where the loss is caused by invasion, insurrection, riot, civil war or commotion, or military or usurped power, or by order of any civil authority. Loss by earthquake or other overwhelming disaster is not excepted. Applying the rule that the courts ought to adhere to the letter and spirit of a contract as the parties have made it, it must be held that the insurance company undertook to guarantee against loss by fire from whatever cause, unless expressly excepted by the policy itself. This result is reached by applying the rule which insurance companies usually insist on when contesting a loss. I am not in sympathy with those decisions which bring over and incorporate into insurance policies, on one pretext and another, a condition or provision which the parties did not see fit to put in when the contract was made. Invoking in this case the ordinary rules which govern in the construction of contracts, the conclusion must be that those exceptions which were inserted in this policy constitute all the exemptions from liability upon which the defendant can rely. I am the more impressed by this view because “the Act of God” is a common exception inserted in insurance policies, and it may be that this company, in seeking business, was willing to hold out to those desiring indemnity against loss by fire, the inducement that the loss would be paid where it occurred by any other means than those expressly excepted in the policy itself—at least it must be held to liability for its failure to insert all the exceptions for which it intended to claim immunity.

It follows from these views that there is no evidence before the jury which could bring the case within the exceptions contained in the policy, and, accordingly, there must be a verdict for the plaintiff.
Mr. Eickhoff. Will this formally appear on the record by the order to strike out the testimony?
The Court. I find under the testimony that there is nothing from which the jury can find that the fire occurred by any means embraced in the exceptions in the policy.
Mr. Eickhoff. Then the court rules that on the view that even though the fire was shown to have originated by an earthquake, the company would still be liable on the policy because that risk was not excepted.
The Court. That risk was not excepted, and the testimony which the defendant interposes has wholly failed.
Mr. Eickhoff. Your Honor will excuse my formulating it in that way. I should like to get it in the shape of a ruling.
The Court. That is the ruling.
Mr. Ach. That is what I endeavored to do in my submitted instructions to the jury, with the request for an answer to two or three issues raised by the defendant by its answer; first, whether the property was destroyed directly or indirectly by civil commotion or military usurpation of power; second, whether any part of the wall of the building fell from a cause other than as a result of the fire; and third, as to whether the integrity of the building had been destroyed by the earthquake before the fire.
Mr. Eickhoff. Your Honor will permit us to note an exception.
The Court. Yes. When a case is submitted to the jury, there must be something for the jury to try. There is nothing for the jury to try in this case.
Mr. Ach. I understand then, that your Honor will direct the jury to return a verdict in favor of the plaintiff in the sum of $10,000.
The Court. Do you claim interest?
Mr. Ach. Yes.
The Court. There is nothing here to show that any demand was made, or any liability accrued prior to the commencement of the action. Therefore, that will be the time from which the interest will be computed, in the absence of evidence to the contrary. If counsel will compute the interest, I will insert it in the verdict. I make the interest $58.33. Is that correct?
Mr. Ach. Yes sir, that is correct.
The Court. Gentlemen of the jury, there can be but one verdict in this case. If you should return a verdict for the defendant the court would be compelled to immediately set it aside. On the undisputed facts and admissions here the plaintiff is entitled to a verdict for the full amount of its claim, which is $10,000, which with $58.33 interest makes a total of $10,058.33. Therefore, it will be your duty, under the instructions of the court, to return this verdict. Let one of your number sign it as foreman.
Mr. Eickhoff. I note an exception to your Honor’s ruling.
The Clerk. Gentlemen of the jury, hearken to your verdict as it stands recorded: “We, the jury, find in favor of the plaintiff, and assess the damages against the defendant in the sum of $10,058.33.”
In the United States, the inevitable disharmony between civil liberties and national security has been seriously strained since September 11, 2001. Not for the first time: historically, laws that controlled political dissent, detained thousands of citizen and alien residents, denied detention challenges, interfered with free speech and free association, and endangered citizen privacy rights have been challenged by civil rights advocates.

More Secure Less Free?: Antiterrorism Policy & Civil Liberties after September 11, by Mark Sidel, a professor of law at the University of Iowa's College of Law, addresses this tension between civil liberties and national security. Sidel first discusses the USA Patriot Act enacted on October 26, 2001 and its perceived sudden expansion of new antiterrorism laws, rules, and regulations, including domestic terrorism. This law, which quickly followed the terrorists' attacks on the United States on September 11, 2001, alarmed civil liberties advocates. While Sidel notes that the Patriot Act may not have gone as far as its critics claimed, it did go far. Then Sidel expands his discussion beyond the Patriot Act, observing a possible "second wave" of even more restrictive antiterrorism law and policy, such as the rumored Patriot II legislation; however, this specific legislation never materialized.

In general, Sidel's book covers post-9/11 antiterrorism strategies developed at the federal and state level, the harmful effects of antiterrorism policy on academia and the American nonprofit sector, and international antiterror policy changes, comparing and contrasting security initiatives in Great Britain, Australia, and India with the American experience. The author provides numerous illustrations of federal, state, and foreign legislative maneuvers and describes the responses of civil liberties activists. He analyzes the resurgence of the state, but softens his analysis with pre-Patriot Act legislative discussions. He discloses that a number of the more contro-
versial institutions that he regards as dangerous existed long before 9/11—e.g., the Defense Advanced Research Projects Agency (DARPA) has been an independent research branch of the Department of Defense since the late 1950s and early 1960s.

Although his book is extensively researched, with a comprehensive review of legislation and policy occurring before and after 9/11, Sidel admits that it is a superficial review meant for the general public and not for in-depth scholarly analysis. The book also is limited to the time period within which he chose to write and publish. Much activity and change happened after the book's publication. For example, Sidel discusses at length one of the more threatening federal and state interstate information-sharing programs, the Multistate Anti-Terrorism Information Exchange (MATRIX), but this program was dismantled in April 2005.

Further, the rush to legislate the Patriot Act was not without pause. Congress' uncertainty was reflected in the Patriot Act Title II's sunset provisions, which allowed Congress to revisit this admittedly emotionally charged legislation to reevaluate and reauthorize (or not) the more controversial law enforcement and surveillance measures at a future date, no later than December 31, 2005.

It is significant that vigorous congressional debate and oversight continued long after Sidel's book went to print in 2004. Legislators recognized the potential for governmental abuse of law enforcement and surveillance measures, and they were aware of the public's concerns about threatened privacy intrusions. When Congress did reauthorize the Patriot Act's sunset clauses on March 9, 2006 (USA Patriot Act Improvement and Reauthorization Act of 2005), civil liberties safeguards had been added.

Changes are ongoing. As recently as January 9, 2007, the Senate Committee on Homeland Security and Government Affairs held a hearing in which, among other topics, members discussed civil liberty protections and solid support for the Privacy and Civil Liberties Board [established in 2004 to uphold privacy and civil liberties in the implementation of all laws].

Even though a number of Sidel's observations/arguments are now moot, his volume still has value. It educates at the same time that it illustrates the tension between national security and civil liberties. Fortunately, civil liberty protections are built into the American system, which provides for noisy dissenters, watchdogs, and civil liberty advocates.

National security, though less noisy, also is built into the American system. Stating the obvious, America needs both, with compromise. Mark Sidel's proposal to secure and main-
tain liberal-conservative coalitions to advocate on behalf of
the public's civil liberties is sensible. Perhaps, he will provide
us with a revised volume including the caveat that events are
always in flux.

E. Johanna Gibbon
Irvine, California

*Quest for Tribal Acknowledgment: California's Honey Lake
Maidus*, by Sara-Larus Tolley. Norman: University of
Oklahoma Press, 2006; 304 pp.; illustrations, notes,
bibliography, index; $29.95, cloth.

Sara-Larus Tolley has written a work that supports the
Honey Lake Maidus' petition for federal acknowledgment,
while attacking the acknowledgment process and the criteria
that must be met to achieve federal recognition.

Many groups of people with Native American cultural
heritage and genealogy are not recognized as tribes by the
United States government. After a number of court cases,
particularly *Mashpee Tribe v. New Seabury Corp. et al.*, and
divisive political disputes, in 1978 the Interior Department
finally published criteria designed to determine if a Native
American group constituted a tribe.

The seven criteria used by the Interior Department's
Office of Federal Acknowledgment (Tolley, pp. 227–32)
require that a tribe existed historically at the time of contact
with the United States and has continued to exist, both
politically and culturally, to the present day. For example, a
tribe must show that the "[t]ribes membership consists of
individuals who descend from a historical Indian tribe or
from historical Indian tribes which combined and functioned
as a single autonomous political entity." The tribe must also
show that it "has been identified as an American Indian
entity on a substantially continuous basis since 1900"; that
the "predominant portion of the petitioning group comprises
a distinct community and has existed as a community from
historical times until the present"; and that the "petitioner
has maintained political influence or authority over its
members as an autonomous entity from historical times
until the present."

The Honey Lake Maidus' petition was submitted in 2000 and
is listed currently by the Interior Department's 2005 "Status
Summary of Acknowledgment Cases" as petition number 223.
In that report the petition is shown as "incomplete."
Tolley criticizes the entire process of acknowledgment. Citing the work of Michel Foucault and Antonio Gramsci, she states that the acknowledgment criteria are “founded and limited by the racial biases of the majority, non-Indian culture . . .” (p. 13) and concludes that the process itself constitutes violence against tribes.

The history of the treatment of California tribes is, indeed, an account of racism, prejudice, and discrimination. Tolley argues that the record demonstrates “genocide.” The story does, in fact, chronicle an official effort to avoid recognition of California tribes by both the United States and the state of California in the last half of the twentieth century. Tolley concludes, “The non-recognition of two-thirds of California’s Indian peoples indicates that the legacy of genocide is alive and well on a national level too” (p. 34). According to the author, this genocide by the state and federal government extends to the Honey Lake Maidus.

Despite Tolley’s dismissal of the Department of Interior criteria, she makes a case for federal recognition of the Honey Lake Maidus. Historically, the Honey Lake Maidus were located in northeastern California, as depicted on Tolley’s map (from Handbook of North American Indians, vol. 8), and have continuously resided in their aboriginal territory and on the former sites of traditional villages. Tolley also provides details of the tribe’s cultural continuity, including their use of medicinal plants from the Honey Lake Valley.

The exercise of tribal political authority is, rightly or wrongly, an important aspect of the Interior Department’s acknowledgment criteria. Tolley provides an in-depth analysis of the Honey Lake Maidus’ Bear Dance. Relying on interviews and explaining both the Bear Dance and traditional narratives and other activities, the author explains how Honey Lake Maidu tribal leadership is exercised through organizing and hosting the Bear Dance. She adds that the Honey Lake Maidu petition showed how the “family-based political authority” of organizing and hosting the Bear Dance met criterion C, relative to the necessary twentieth-century tribal political authority.

Tolley also discusses research efforts to determine the necessary genealogy for tribal acknowledgment, and she questions, employing a basketball analogy, the relationship of the past to the present in the Interior Department’s decision-making process.

In the final chapter, Tolley explains how tribal political factionalism is evidence for tribalism, not against it; emphasizes the communal tribal struggle of the Honey Lake Maidus; and compares traditional stories to the struggle of the Honey Lake Maidu people today. The author describes possibilities
for healing if the Honey Lake Maidus finally receive a positive decision in the federal acknowledgment process.

E. Richard Hart
Winthrop, Washington


In January 1848, when gold was found near the American River in California, the settlement known to a handful as Yerba Buena had a population estimated at one thousand people. As word of the gold strike spread, the village grew to an estimated two thousand at the beginning of 1849, and by the end of that year, twenty thousand people were estimated to be living in the area that was to become known as San Francisco.

The newly arrived, mostly young men interested in making their way to the foothills to make their fortunes stayed only a few days in the settlement but did avail themselves of the opportunity to purchase supplies and to enjoy the urban pleasures of what would eventually be referred to as the Barbary Coast. As author Kevin Mullen points out, not all these sojourners went on to the gold fields; some stayed to participate in the colorful and violent beginnings of the city of San Francisco.

The rough and tumble world that was Gold Rush San Francisco was replicated in many other 1849-era settlements. It is probable that early San Francisco was no more or less violent than many other Gold Rush settlements, and the newcomers were no more violent than their peers in other locations. Indeed, as historian Hubert Bancroft wrote about Gold Rush San Francisco, “Except in the case of robbery, a man had little fear of being killed if he stayed out of saloons.” In his brief compilation of incidents involving criminal offenses, author Mullen declares that “forcible robbery was rare in nineteenth-century urban America.”

Still, Gold Rush-era San Francisco could be a dangerous place. Robbery and homicide were definitely causes for serious concern for most residents. Perhaps mistitled _Dangerous Strangers_ but correctly and aptly subtitled _Minority Newcomers and Criminal Violence in the Urban West, 1850–2000_, Mullen’s book provides interesting insights into the purported criminality of various immigrant groups in early San Francisco and its environs. A retired high-ranking San Francisco police
official, Mullen utilizes the extensive city records of San Francisco (those not destroyed in the 1906 earthquake/fire), newspaper accounts, and recordings of others to examine the violence, especially homicides, attributable to several immigrant groups in various periods of San Francisco's development. He also appends "Methods and Sources" separately as aids in understanding the difficulties of measuring and analyzing specific offenses in light of a scarcity of documentation and the admittedly problematic definitions of "crimes" of violence.

In his introductory remarks, the author describes the premise for his book: "By looking at a variety of groups and their different experiences at different times in the city's history, this study attempts to address the issue, to the extent possible, of how much of the violence by different groups can be attributed to their treatment by the host society and how much can be traced to traits found within their own community." Using standard sociological definitions, the author points out that minorities are defined as "any culturally or physically and self-conscious social aggregates." He uses the term "minority newcomer" to encompass "the successive waves of new arrivals in San Francisco over the last century and a half from wherever they originated." To this end, Mullen selects seven immigrant groups for analysis and comparison.

Beginning with Australians, the author demonstrates the worldwide effect the California Gold Rush had on a group of immigrants who came to be known as the "Sydney Ducks" and their impact on the level of violence in the settlement of Yerba Buena. The first Australians are believed to have arrived in April 1849. While most decamped to the gold fields, not a few remained behind to work in the area as boatmen and stevedores. Mullen cites an article in the June 16, 1851 issue of The California Courier that describes the tendency of Australians toward arson: "[I]mmigrants from Sydney have been able to burn the city over our heads four or five times. . . ."

No wonder, then, that homicides and other violent acts often were blamed on Australians! As the author points out, it is a small jump from suspicion to accusation. San Francisco did have its share of Australian offenders, and several incidents of robbery in 1849–50 were committed by persons known to have emigrated from Australia. Mullin cites statistics that show that 19 percent of the male Australian immigrants during the period late 1849 and early 1850 "had criminal records." And "simple statistical fact is that a group with no more than 6% of the population was responsible for over 50% of the forcible robberies in Gold Rush San Francisco." Mullen posits that "many of the Australians who answered
the call of gold from California definitely brought criminal propensities with them," and although they were not a substantial factor in the homicide rates listed elsewhere, these Australians "did in fact commit a disproportionate amount of violence in the form of street robberies."

Mullen then briefly compares Latino immigration, expressing concern over the expansive demographic implications attendant then (and now) with that classification. He points to the phrase "the fallacy of small numbers" (attributable in this work to noted sociologist Robert Dykstra) to warn the reader not to make too much of small numbers in a small sampling. In this context, Mullen goes into a detailed examination of immigrants from Mexico (ten thousand or more from the state of Sonora), as well as Spanish-speaking immigrants from Spain, Chile, and Peru.

As early as 1849, San Francisco "had a definite Latino flavor." Whether there was an abundance of discriminatory practice directed against Latinos and especially people of Mexican origin remains an issue. Racial and ethnic stereotypes existed both in the press and on the police blotter. However, in a discussion of a series of events from 1849 to 1854, Mullen argues that, despite prevailing biases, Latinos were not necessarily discriminated against.

Prior to assimilation, the mores and patterns of conduct extant in the immigrants' homeland may initially be carried into the new community. Each group of San Francisco's immigrants earned a reputation for violence in a different form. Mexicans from Sonora had among them a fair share of brigands from their homeland. But Latinos soon were displaced at the low end of the economic ladder by working-class Irish and Chinese newcomers. Many Chinese formed associations that later evolved into murderous gangs, and the Irish brought with them a reputation for fisticuffs and alcohol. In both the Chinese and Irish immigrant groups, however, the level of violence per capita was relatively low. And assimilation (and time) reduced those levels further through succeeding generations.

Early Gold Rush San Francisco had its share of immigrant Italians as well, but it wasn't until the beginning of the twentieth century that organized criminality formed the basis for violent offenses, especially homicide. Mullen notes that "Italians in San Francisco accounted for twice the homicide rate of non-Italian whites." Beginning in the 1890s, San Francisco newspapers reported on "Black Hand" operatives as responsible for a string of homicides and bombings that occurred in the city. "Old world culture" allegedly formed a basis for Black Hand criminality that took place after a large
wave of immigrants arrived from the relatively poor areas of southern Italy. Later, the crime rate steadily diminished as the newcomers settled into jobs, acculturation, and approval from the existing Italian community, to the point where, toward the middle of the twentieth century, the homicide rate among Italians was indistinguishable from that of other whites.

Mullen writes, "[The relationship of race and ethnicity to homicide can be a painful and sensitive topic." In a section about African Americans, he points out that while Irish, Italians, and Chinese have, to a large extent, assimilated into American society, this is not true of African Americans, whose level of violence "has not yet run its course, and the wounds remain raw." Obviously, involuntary "immigration" and enslavement made the African-American experience different both in scope and materiality from that of other groups.

The author discusses the rise of youthful gang culture in San Francisco and the use of firearms to achieve territorial dominance. Although San Francisco Police Department policies are asserted to have stemmed the tide of homicides in the community, crime rates only "rise again as the intensity of the police effort wanes." Much more interpretative and analytical work is required before the "book" on interactive police work is complete. Mullen believes that police intervention did effectively stem the San Francisco homicide rate in the mid-1990s, especially as it pertains to young African-American gang members.

Mullen concedes the difficulty of determining an immigrant group's makeup: country of origin, placement in first or succeeding generations, and accuracy of records and reporting in journals of the day are issues affecting the reliability of research. Mullen provides an enlightening, if sometimes confusing, "snapshot" of immigrant minorities in San Francisco, but the great majority of immigrants were not "dangerous strangers."

James P. Spellman
Long Beach, California
Below we list articles recently published in journals of history, law, political science, and other fields that we believe may be of interest to readers. Although comprehensive, the list is not definitive, and the editor would appreciate being informed of articles not included here.


Appier, Janis. “‘We’re Blocking Youth’s Path to Crime’: The Los Angeles Coordinating Councils During the Great Depression,” Journal of Urban History 31 (January 2005).


Cameron, James D. “Canada’s Struggle with Illegal Entry on Its West Coast: The Case of Fred Yoshy and Japanese Migrants before the Second World War,” BC Studies 146 (Summer 2005).
Chamberlain, Kathleen P. "In the Shadow of Billy the Kid: Susan McSween and the Lincoln County War," Montana 55 (Winter 2005).


Erickson, Lesley. "Constructed and Contested Truths: Aboriginal Suicide, Law and Colonialism in the Canadian West[s], 1823–1927," Canadian Historical Review 86 (December 2005).


Freeland, Kathleen B. "Examining the Politics of Reclamation: The 1944 Acreage Limitation Debate in Congress," Historian 67 (Summer 2005).


Jackson, David W. "Kansas Trails, Tall Grass, and the Trials, as Experienced in the California Gold Rush Letters and Diary of James and David Lee Campbell," *Overland Journal* 23:3 (Fall 2005).

*Journal of the West* 44:2 [Spring 2005]. Special Issue, “African Americans in the West.”

*Journal of the West* 44:3 [Summer 2005]. Special Issue, “Water in the Urban West.”


Oregon Historical Quarterly 106 (Fall 2005). Special Issue, "The Isaac I. Stevens and Joel Palmer Treaties 1855–2005."


Ramold, Steven J. "'Altogether a Horrible Spectacle:' Public Executions in Nebraska, 1891," *Nebraska History* 86 (Summer/Fall 2005).


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