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Cover photo: Resources old and new for researching legal history are explored in this twentieth anniversary issue.

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FOREWORD

With this issue, *Western Legal History* celebrates its twentieth anniversary. I thought it was appropriate to commemorate this occasion with a special, double issue that would both assess the state of western legal history as a field of study and encourage new research that would advance the field as the journal enters its third decade. To accomplish these objectives I invited friend and colleague Michael Griffith, an outstanding archivist, to be the guest editor for this special issue. He was working with western legal history archives before this journal was founded in 1988. Drawing upon his long experience, he has assembled articles from a wide variety of archivists who point the way for researchers to explore new and sometimes overlooked legal history resources. To review the accomplishments in western legal history, I called upon one of the most prolific scholars in the field and a member of the *WLH* Editorial Board, Gordon Morris Bakken. Readers will find the breadth of his essay, and thus the accomplishments in western legal history he describes, remarkable.

From its beginning, *Western Legal History* has been sustained and supported by the many members of the Ninth Judicial Circuit Historical Society. Their generosity is and continues to be acknowledged in each issue's back pages. More recently, the journal has benefited enormously from grants made by the attorney admission fund committees of many of the courts in the Ninth Circuit. I deeply appreciate the annual support from the U.S. District Court for the Central District of California and the U.S. Court of Appeals for the Ninth Circuit, as well as from the U.S. District Court for Arizona, the U.S. District Court for Nevada, the U.S. District Court for Montana, the U.S. District Court for Alaska, the U.S. District Court for Idaho, and the U.S. District Court for the Northern Mariana Islands. As I hope this issue demonstrates, their support continues to advance our knowledge of the legal history of the Ninth Circuit courts and the North American West.

Finally, I want to acknowledge the dozens of authors who have shared their research and their book reviews with us for the past twenty years. They have contributed mightily to our better understanding of the judicial system. Without them, there would be no *Western Legal History*.

Bradley B. Williams
Editor

INTRODUCTION

MICHAEL GRIFFITH

The quality and depth of legal history ultimately depends on the sources available for research. This issue of *Western Legal History* highlights archival resources for scholarship, some made available recently and others, perhaps, located in unexpected places.

The opening article is Gordon Bakken's overview of the state of western legal history. In his far-ranging survey, Bakken explores the different paths taken by legal history in the West since the early 1990s, when John Phillip Reid challenged scholars to strike out in new directions and to investigate multiple levels of development and meaning. Bakken's essay sets the stage for the articles that follow.

In the next essay, Rebecca L. Wendt, an archivist with the California State Archives, explores records recently made available for research. She highlights mental health records and California Youth Authority and prison records opened for the first time due to changes in state law. She explores how these records will allow researchers to capture the operations of the law on a case-by-case basis.

Conor Michael Casey's essay, which follows, examines the legal history records available in an archives seemingly specializing in other material: the Labor Archives and Research Center of San Francisco State University. Casey, for many years a staff member of the labor archives and now an archivist with Pixar, illuminates the wide range of materials at the archives for research on labor law in the West.

In the next article, Gwen Granados turns to legal history sources on the federal level. Granados, an archivist with the National Archives regional branch in Laguna Niguel, Cali-

Guest editor Michael Griffith has been the Santa Clara County archivist since 2006. Previously he served as Kagel archivist at the Labor Archives and Research Center at San Francisco State University and as historian/archivist for the U.S. District Court for the Northern District of California.

fornia, focuses on less commonly used records that illuminate the legal history of citizenship. Her essay includes examinations of civil cases filed by Japanese Americans who lost their citizenship during World War II, naturalization forms filed by American women seeking to regain citizenship lost when they married alien husbands in the early twentieth century, and records documenting the struggle to define citizenship rights of Native Americans.

Complementing Granados' article is Bruce Ragsdale's outline of historical information available through the Federal Judicial Center. Head of the Judicial Center's History Office, Ragsdale presents the significant resources for federal judicial history that now can be viewed online.

Concluding this issue is Jeffrey Kintop's comprehensive examination of legal history resources available at the Nevada State Archives. Kintop, the archives' manager, describes in detail the many legal history sources available and their relations to one another. His article demonstrates the depth of material to be found in state archives in the West.

I hope this issue of *Western Legal History* will prove useful as an outline of the multitude of archival sources for western legal history and the many different sorts of repositories in which such material may be found.

WESTERN LEGAL HISTORY: THE STATE OF THE FIELD

GORDON MORRIS BAKKEN

Western legal history came of age with the work of John Phillip Reid and others, who guided a research agenda finding the familiar in American law in the West and identifying the unique flowing from water and mining law development. In addition, their agenda included multicultural legal analysis that illuminated the vitality of western legal history. In 1992, Reid suggested that there were numerous layers of western legal history, most only partially explored. These included the development of law during the westward expansion, the law of Indian Territory, the law of cattle drives and the open range, the law of the Mormons, mining law, water law, the law of American Indian nations, violence and the law, and transboundary law. His observations in "The Layers of Western Legal History"¹ clearly delineated a topical and conceptual agenda for research. The work in western legal history was extensive, but, as Reid suggested, a great deal of scholarly opportunity awaited researchers.

In addition to Reid's research agenda, the "New Western Historians" have offered some insights on law in the American West. Howard Lamar made the following observation in 1992 in "Westering in the Twenty-first Century: Speculations on the Future of the Western Past":

Bureaucracy thrives on rules. Rules suggest laws, and laws lead to litigation. In the past fifty years both citizens and the state and federal governments have hired armies

¹John McLaren, Harmar Foster, and Chet Orloff, eds., *Law for the Elephant, Law for the Beaver: Essays in the Legal History of North America* (Pasadena, CA, 1992), 23-73.

Gordon Morris Bakken is a professor of history at California State University, Fullerton. He received his B.S., M.S., Ph.D., and J.D. from the University of Wisconsin.

of lawyers to fight their battles in legislative halls or in courts. The current debate over water needs, pollution, the environment, and development has been cast in legal terms. In addition to studying the history of these endless litigations, we should ask why the debate has taken this form. Are we a legal-minded people, or, as one suspects, have Americans become so accustomed to using the law as a selfish manipulative tool—from the time of the first Indian treaty on through two centuries of abuse of public lands—that it is a fundamental part of our culture? The new bureaucracy itself now seems to be using the law, sometimes callously, to achieve its own ends. The point is not to condemn but to ask how we came to this litigiousness and why we continue it.²

Lamar's formulation was confrontational. Are the American people, particularly those who people the West, law-minded, as John Phillip Reid found on the overland trail, or is the law a tool of capitalistic oppression, as the critical legal studies school would have us believe?

Writing in the same volume, Patricia Nelson Limerick found the West a place of opportunity for legal history research. "Western history is full of . . . examples of words consulted and puzzled over as if they were Scripture. When mining law awarded ownership of all the 'angles, dips, spurs, and variations' of a vein to the person who claimed the 'apex' of that vein, lawyers took on the trying task of translating a verbal construction into a geological reality." Limerick also found lawyers representing "forests and rivers, antelope and coyotes." She offered that "when inarticulate nature found voice in legal proceedings, the world of words had reached its peak of inclusiveness." Further, "legal words provide abundant opportunities for cross-cultural comparisons." Finally, "written or oral, legal tradition is transmitted in words, by which power and influence flow toward the appointed custodians and interpreters of those words. The study of law and verbal behavior also provides important information on intergroup relations in the West."³ The research opportunities, according to Limerick and Reid, are abundant.

²William Cronon, George Miles, and Jay Gitlin, eds., *Under an Open Sky: Rethinking America's Western Past* (New York, 1992), 263–64.

³Patricia Nelson Limerick, "Making the Most of Words: Verbal Activity and Western America," in Cronon et al., *Under an Open Sky*, 181–82; see also Limerick, *Something in the Soil: Legacies and Reckonings in the New West* (New York, 2000).

The larger question within these issues is whether the West was different in some way from the East.⁴ Was the western lawyer more creative, more decoupled from the textualism of the East, more apt to innovate, more likely to create new institutions of justice in the face of gendered and institutional forces that limited access to justice and the practice of law?⁵ Peter Karsten termed western supreme courts innovative based on judicially crafted legal change and impressionistic evidence.⁶ Other scholars have focused on individual western judges who innovated for legal change.⁷ There was something in the soil in the West that made law different.

⁴The observations I am making in this paper about the field of western legal history are, in whole or in part, those published in the six-volume *The American West* (New York, 2000), coauthored and co-edited by Brenda Farrington and Gordon Morris Bakken, and in Bakken, "Lawyers in the American West, 1820–1920," *Nevada Law Journal* 1 (Spring 2001): 88–111. For elaboration of the legal history points raised in this essay, readers should see Bakken, ed., *Law in the Western United States* (Norman, OK, 2000). For a middle-ground approach to locating the West within the frontier concept, see Robert V. Hine and John Mack Faragher, *The American West* (New Haven, CT, 2000).

⁵This question is argued most extensively in Bakken, *Law in the Western United States*. See also Lew L. Callaway, *Montana Frontier Lawyer: A Memoir* (Helena, MT, 1991); John Anthony Moretta, *William Pitt Ballinger: Texas Lawyer, Southern Statesman, 1825–1888* (Austin, TX, 2000); Michael Lance Trope, *Once Upon a Time in Los Angeles: The Trials of Earl Rogers* (Spokane, WA, 2001); Daniel Tyler, *Silver Fox of the Rockies: Delphus E. Carpenter and Western Water Compacts* (Norman, OK, 2003); Jack L. August, Jr., *Dividing Western Waters: Mark Wilmer and Arizona v. California* (Fort Worth, TX, 2007).

⁶Peter Karsten, *Heart versus Head: Judge-Made Law in Nineteenth-Century America* (Chapel Hill, NC, 1997). See also John R. Wunder, *Inferior Courts, Superior Justice: A History of the Justices of the Peace on the Northwest Frontier, 1853–1889* (Westport, CT, 1979); Jeffrey Burton, *Indian Territory and the United States, 1866–1906: Courts, Government, and the Movement for Oklahoma Statehood* (Norman, OK, 1995); Charles H. Sheldon, *A Century of Judging: A Political History of the Washington Supreme Court* (Seattle, 1988); Carolyn M. Buan, ed., *The First Duty: A History of the U.S. District Court for Oregon* (Portland, OR, 1993); James W. Hewitt, *Slipping Backward: A History of the Nebraska Supreme Court* (Lincoln, NB, 2007); Charles L. Zelden, *Justice Lies in the District: The U.S. District Court, Southern District of Texas, 1902–1960* (College Station, TX, 1993); David C. Frederick, *Rugged Justice: The Ninth Circuit Court of Appeals and the American West, 1891–1941* (Berkeley, CA, 1994); Dennis C. Colson, *Idaho's Constitution: The Tie That Binds* (Moscow, ID, 1991), 57–70.

⁷Christian G. Fritz, *Federal Justice in California: The Court of Ogden Hoffman, 1850–1891* (Lincoln, NB, 1991); Michael J. Brodhead, *Isaac C. Parker: Federal Justice on the Frontier* (Norman, OK, 2003); Jace Weaver, *Then to the Rock Let Me Fly: Luther Bohanon and Judicial Activism* (Norman, OK, 1993); Harry H. Stein, *Gus J. Solomon: Liberal Politics, Jews, and the Federal Courts* (Portland, OR, 2006); Ann Carey McFeatters, *Sandra Day O'Connor: Justice in the Balance* (Albuquerque, 2005); Betty Roberts, *With Grit and By Grace: Breaking Trails in Politics and Law, A Memoir* (Corvallis, OR, 2008).

Frederick Jackson Turner's 1893 frontier thesis positing that the process of civilizing the West from the colonial period until 1890 produced American democracy and the American character started historians down the path to find evidence supporting or debunking Turner's thesis. The process continues.⁸ Books and articles offered proof on both sides until the New Western Historians arrived with publication of Patricia Nelson Limerick's *The Legacy of Conquest: The Unbroken Past of the American West* in 1987. Limerick shifted the debate by noting Turner's Eurocentric focus on an east to west process whose vision was strictly that of the pioneers, not those experiencing the process, and viewing the pioneers as conquerors from their perspective of looking to the East from the West.

Limerick's call for inclusion in western history was not the first, but clearly the most noticed. Most importantly, Limerick called for studies of place. Here the West as a region needed recognition and definition.

Scholars more easily accepted the concept of the West as place or region than they were able to identify exactly what made any geographic area the "West." The most ambitious attempt to do so was William E. Riebsame's *Atlas of the New West: Portrait of a Changing Region* (New York, 1997). This beautifully executed volume offers a variety of definitions of region, noting that the West keeps moving around in time and space, if not the mind. The West remains Turner's, but it is Ted rather than Frederick Jackson who now defines the present reality.

The atlas has its critics, because much of what many consider the West is hacked off, even the Pacific coast and the Dakotas. But there is little to replace it except alternative concepts of how to define the West and where to fix its boundaries.⁹

It is not difficult to start identifying regions and subregions. Leonard Arrington's *The Great Basin Kingdom: An Economic History of the Latter-day Saints, 1830–1900* (Cambridge, MA, 1958) centered religion in the economy of the Great Basin. For Limerick, Mormon history was very much a part of the history of the West, and today Mormon history has multiplied from

⁸Martin Ridge, "Frederick Jackson Turner, Ray Allen Billington, and American Frontier History," *Western Historical Quarterly* 19 (January 1988): 5–20; Donald J. Pisani, "Is There Life After Turner? The Continuing Search for the Grand Synthesis and the Autonomous West: A Review Essay," *New Mexico Historical Review* 67 (July 1992): 285–95; Michael Steiner, "From Frontier to Region: Frederick Jackson Turner and the New Western History," *Pacific Historical Review* 64 (November 1995): 479–501.

⁹Virginia Scharff, "Honey, I Shrunk the West," *Pacific Historical Review* 67 (August 1998): 409–20.

many scholarly parents.¹⁰ In particular, Sarah Barringer Gordon's *The Mormon Question: Polygamy and Constitutional Conflict in Nineteenth-Century America* (Chapel Hill, NC, 2002) moved Mormon history away from deliverance from Gentile oppression to a constitutional question of religious freedom. But is the Great Basin a region? If we look to the people who lived there, they thought so. If we look at it ecologically, it does have a hydraulic identity.

Are the Great Plains different and, if so, how? John R. Wunder's *Law and the Great Plains: Essays on the Legal History of the Heartland* (Westport, CT, 1996) offers nine essays that argue for a regional identity and legal history. These are the kinds of questions that flow from the issue of regional identity, and their exploration will continue into the next century.¹¹ Most importantly, Wunder noted that the "New Western History awaits a melding with the New Legal History defined primarily by James Willard Hurst and personified by John Phillip Reid."¹²

Interestingly, the region once dubbed "The Great American Desert" now blooms and offers images of gardens of Eden within hydraulic societies. Even within these hydraulic societies, cultural differences must be accounted for and local history given its substantial due. Donald J. Pisani's *To Reclaim a Divided West: Water, Law, and Public Policy, 1848–1902* (Albuquerque, 1992) convincingly demonstrates that the economic and environmental differences in the West, combined with the failure of the federal or state governments to give policy direction, resulted in a fragmented, parochial, and clearly shortsighted and wasteful use of water.

Beyond the question of "frontier" and the location of the West is a closer question of whether urbanization was a central force in legal change. Urbanization in the West also is a question that historians have struggled to analyze in broader terms. Remember that attorney pioneers Clara Foltz, Laura Gordon, and Lelia Robinson practiced law in cities large enough to pro-

¹⁰See B. Carmon Hardy, *The Solemn Covenant: The Mormon Polygamous Passage* (Urbana, IL, 1992); Dan Erickson, *As a Thief in the Night: The Mormon Quest for Millennial Deliverance* (Salt Lake City, 1998); and Jeffrey Nichols, *Prostitution, Polygamy, and Power: Salt Lake City, 1847–1918* (Urbana, IL, 2002). In more narrowly legal history, see Edwin Brown Firmage and Richard Collin Mangrum, *Zion in the Courts: A Legal History of the Church of Jesus Christ of Latter-day Saints, 1830–1900* (Urbana, IL, 1988).

¹¹David M. Wrobel, "The View from Philadelphia," *Pacific Historical Review* 67 (August 1998): 382–92; William Wyckoff, "Inside the New West: A View from Suburban Montana," *Pacific Historical Review* 67 (August 1998): 401–408.

¹²Wunder, *Law and the Great Plains*, 4–5.

duce clients and legal issues.¹³ Remember that Decius Wade lived in a Montana of instant cities. His *People ex. rel Boardman v. City of Butte* (1881) opinion concerned just such an instant city.¹⁴

Looking at the West in the first decade of the twenty-first century, we find the most urbanized region of America. More than 80 percent of the people live in cities, and if we exclude Texas and the Plains states, the West contains almost half the American Indian and Hispanic population and more than half of the Asian population. The West is urban and diverse. Some of these cities were instant cities; that is, they were created by a boom, grew from nothing to city size in months, and took on the trappings of urban America within a few years. San Francisco, Denver, and Butte fit into this category.

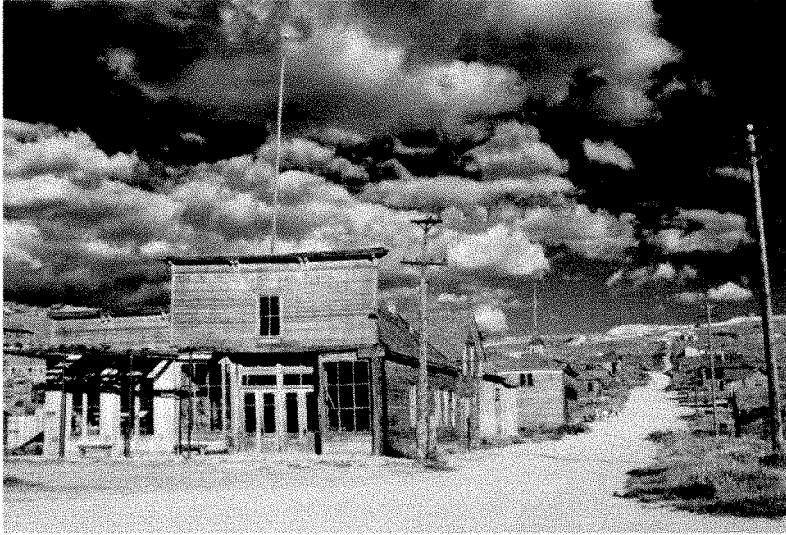
Many of the small cities and villages revolved around booms of another sort.¹⁵ Kathleen A. Brosnan's *Uniting Mountain & Plain: Cities, Law, and Environmental Change along the Front Range* (Albuquerque, 2002) convincingly demonstrates that Denver's entrepreneurs in Colorado's legal system used their own money and trade associations and impacted Colorado Springs and Pueblo economic health, but each had a different trajectory. The West also was a place for ghost towns like Bodie, California, now a tourist destination rather than a place of homes and families. The urban West has been many things over time and continues to change with population shifts and telecommuting.¹⁶

¹³Barbara Allen Babcock, "Women Defenders in the West," *Nevada Law Journal* 1 (Spring 2001): 1–18.

¹⁴Andrew P. Morriss, "Legal Argument in the Opinions of Montana Territorial Chief Justice Decius S. Wade," *Nevada Law Journal* 1 (Spring 2001): 38–87.

¹⁵One area historians have given attention to is crime in the urbanizing West. See Wunder, "Chinese in Trouble: Criminal Law and Race on the Trans-Mississippi Frontier," *Western Historical Quarterly* 17 (January 1986): 25–41; Stuart H. Traub, "Rewards, Bounty Hunting, and Criminal Justice in the West: 1865–1900," *Western Historical Quarterly* 19 (August 1988): 287–301; Wunder, "The Chinese and the Courts in the Pacific Northwest: Justice Denied?" *Pacific Historical Review* 52 (May 1983): 191–211; Ronald C. Woolsey, "Crime and Punishment: Los Angeles County, 1850–1856," *Southern California Quarterly* 61 (Spring 1979): 79–98; Robert H. Tillman, "The Prosecution of Homicide in Sacramento County, California, 1853–1900," *Southern California Quarterly* 68 (Summer 1986): 167–82; Lyle Dale, "Rough Justice: Felony Crime and the Superior Court in San Luis Obispo County, 1880–1910," *Southern California Quarterly* 76 (Summer 1994): 195–216; John J. Stanley, "Bearers of the Burden: Justices of the Peace, Their Courts and the Law in Orange County, California, 1870–1907," *Western Legal History* 5 (Winter/Spring 1992): 37–67.

¹⁶John M. Findlay, "Far Western Cityscapes and American Culture since 1940," *Western Historical Quarterly* 22 (February 1991): 19–43.



Bodie, California, once a ghost town, is now a tourist destination.
(Photograph by Dan Heller, used by permission)

San Francisco was a diverse community from its origins in the Gold Rush.¹⁷ The flood of humanity that docked there, left there, or stayed there produced a city with clear cultural and ethnic diversity. The Irish and the Chinese were the labor that built the Transcontinental Railroad and populated the city. The Irish moved into politics and the Chinese into Chinatown. Jews, Irish, and Italians moved into the imbedded mercantile elite. African-Americans formed a small but vibrant community. Chinese and blacks sought legal counsel when threatened within their communities and on the streets. Charlotte Brown's lawsuits would desegregate the San Francisco transit system in the 1860s. A lawsuit would desegregate the school system more than a decade later. Anti-Chinese zoning ordinances would be challenged in court and overturned by the United States Supreme Court. Accommodations were not without rough spots, but diversity and accommodation became

¹⁷See Robert M. Senkewicz, *Vigilantes in Gold Rush San Francisco* (Stanford, CA, 1985); Kevin J. Mullen, *Dangerous Strangers: Minority Newcomers and Criminal Violence in the Urban West, 1850–2000* (New York, 2005).

the mark of the city.¹⁸ Not so in Los Angeles and many other cities of the West. Remember that *Brown v. Board of Education* (1954) was a Kansas case. *Sweatt v. Painter* (1950) was a decision attacking segregation in a Texas state law school. *McLaurin v. Oklahoma State Regents* (1950) outlawed the denial of admission of blacks to graduate school but segregated them within classrooms and other facilities. The racial liberalism of San Francisco was not followed throughout the West.

On our southern borders, America has a clear Mexican-American West that is both very urban and very sparsely settled. Perhaps the most important work on Mexican-American struggle and the legal system is Laura E. Gómez's *Manifest Destinies: The Making of the Mexican American Race* (New York, 2007). Gómez demonstrates that Mexican Americans used the legal system to gain power in New Mexico Territory. First, on juries they had a special role in issuing indictments and deciding guilt or innocence. Here they checked the authority of Euro-American judges. Second, their most extensive power was in the territorial legislature. Finally, they enacted a slave code to maintain their interests in African and American Indian slaves. The fact of African and Indian slavery in the American West is one of the most interesting topics of research in the first decade of the twenty-first century.¹⁹

Cities in the West have strong relationships with each other. Carl Abbott's *The Metropolitan Frontier: Cities in the Modern American West* (Tucson, 1993) describes a nested hierarchy of smaller cities and towns with strong regional, economic linkages. Most large economic regions are subdivided, with one or more smaller cities controlling significant economic interests. Denver's junior economic partner is Salt Lake City. Stockton and Fresno serve the interests of San Francisco. Phoenix and El Paso share economic territory not gobbled up by Dallas on the east or Los Angeles on the west.

Much of this territoriality is historical. Dallas, for example, retains a long-term commitment to serve as a comprehensive trading and financial center, while its sister city, Fort Worth,

¹⁸Lucy Salyer, "Captives of Law: Judicial Enforcement of the Chinese Exclusion Laws, 1891–1905," *The Journal of American History* 76 (July 1989): 91–117; Frank W. Van Nuys, "A Progressive Confronts the Race Question: Chester Rowe, the California Alien Card Act of 1913, and the Contradiction of Early Twentieth-Century Racial Thought," *California History* 73 (Spring 1994): 2–13; Nayan Shah, *Contagious Divides: Epidemics and Race in San Francisco's Chinatown* (Berkeley, 2001), 120–157; Delores Nason McBroome, *Parallel Communities: African Americans in California's East Bay, 1850–1963* (New York, 1993), 7–23.

¹⁹See James F. Brooks, *Captives @ Cousins: Slavery, Kinship, and Community in the Southwest Borderlands* (Chapel Hill, NC, 2002).

concentrates on and continues to serve the West Texas cattle business. Beyond the reach of these trading and financial giants, smaller regional cities serve smaller markets. Lincoln, Nebraska; Bismarck, North Dakota; and Billings, Montana, are such centers of regional economic activity. William R. Childs' *The Texas Railroad Commission: Understanding Regulation in America to the Mid-Twentieth Century* (College Station, TX, 2005) is one of the few legal histories of regulation in the American West.²⁰

Other western cities rose and fell with industry. Butte, Montana, is perhaps the most colorful example. Anyone visiting the World Mining Museum or the M & M Bar knows they are not in Kansas anymore. Mary Murphy's *Mining Cultures: Men, Women, and Leisure in Butte, 1914–41* (Urbana, IL, 1997) is the most insightful book on the subject. Butte was another instant city, growing from a population of 3,000 in 1880 to 90,000 in 1916 on the wealth of its copper deposit, the mining and milling operations, and the diversity of its people. Copper mining was the lifeblood of the city, with three shifts of workers tramping from home to mine every eight hours and back again. Men went to the mines and women to clerical work by 1920. Unions protected the interests of both. The prosperity of Butte rode on copper wires and the demands of World War I. When the war ended, Butte's economic fortunes turned sour, and one-third of its population left by 1921. Prohibition and the crusade to save the world for democracy went hand in hand, but in Butte, the former opened new doors for women. In addition to jobs, the clandestine entertainment industry opened its doors to women. Nightclubs encouraged women to attend. Roadhouses welcomed women, and some women became owner/operators. Law enforcement institutions looked only on the violent enemy deviants, not the local entrepreneurs. Butte also was the site of bitter litigation over air and water pollution.²¹

Another avenue sometimes pursued in explaining change in the American West has been the environment. For historians, this path of inquiry has led to a variety of tentative conclu-

²⁰For the regulation of the oil industry, see Nicholas George Malavis, *Bless the Pure & Humble: Texas Lawyers and Oil Regulation, 1919–1936* (College Station, TX, 1996).

²¹See Donald MacMillan, *Smoke Wars: Anaconda Copper, Montana Air Pollution, and the Courts, 1890–1920* (Helena, MT, 2000). For a closer and far more scientifically detailed account, see Fredric L. Quivik, "Smoke and Tailings: An Environmental History of Copper Smelting Technologies in Montana, 1880–1930" (Ph.D. dissertation, University of Pennsylvania, 1998).

sions.²² Historians of the environment in the American West have adopted a variety of multidisciplinary methods as well as a variety of topical approaches. What emerges from the literature is a lack of agreement about what should be done to unify this new field. Rather the literature lays out a varied landscape, allowing scholars to adopt singular positions yet hold on to a central core of environmental focus.²³

The variety makes this field exciting. Some historians deal with ideas about the environment. What humans see in the landscape, how they create its image, and how they view its spiritual essence constitute some of their concerns in research. Other scholars look at the institutional and political movements that brought environmental protection and preservation. Still others look at public policy formation and how it finds its

²²Legal historians are not of one mind in this field. See Donald J. Pisani, "Enterprise and Equity: A Critique of Western Water Law in the Nineteenth Century," *Western Historical Quarterly* 18 (January 1987): 15–37; Douglas R. Littlefield, "Water Rights During the California Gold Rush: Conflicts over Economic Points of View," *Western Historical Quarterly* 14 (October 1983): 415–34; M. Catherine Miller, "Water Rights and the Bankruptcy of Judicial Action: The Case of *Herminghaus v. Southern California Edison*," *Pacific Historical Review* 58 (February 1989): 83–107; Malcolm Ebricht, "The San Joaquin Grant: Who Owned the Common Lands? A Historical-Legal Puzzle," *New Mexico Historical Review* 57 (January 1982): 5–26; Carl Abbott and Deborah Howe, "The Politics of Land-Use Law in Oregon: Senate Bill 100, Twenty Years After," *Oregon Historical Quarterly* 94 (Spring 1993): 3–35; John E. Lamborn and Charles S. Peterson, "The Substance of the Land: Agriculture v. Industry in the Smelter Cases of 1904 and 1906," *Utah Historical Quarterly* 53 (Fall 1985): 308–25; Allen Broussard, "Law, Order, and Water Policy on the Arizona Frontier: The Career of Joseph H. Kibbey," *Journal of Arizona History* 34 (Summer 1993): 155–76; Pisani, "The Origins of Western Water Law: Case Studies from Two California Mining Districts," *California History* 70 (Fall 1991): 242–58; Bakken, "American Mining Law and the Environment: The Western Experience," *Western Legal History* 1 (Summer/Fall 1988): 211–36; Ebricht, "Frontier Land Litigation in Colonial New Mexico: A Determinant of Spanish Custom and Law," *Western Legal History* 8 (Summer/Fall 1995): 199–226.

²³Randall Rohe, "Man and the Land: Mining Impact in the Far West," *Arizona and the West* 28 (Winter 1986): 299–338; Thomas G. Alexander, "From Rule of Thumb to Scientific Range Management: The Case of the Intermountain Region of the Forest Service," *Western Historical Quarterly* 18 (October 1987): 409–28; Norris Hundley, Jr., "Water and the West in Historical Imagination," *Western Historical Quarterly* 27 (Spring 1996): 5–31; Mark Harvey, "Echo Park, Glen Canyon and the Postwar Wilderness," *Pacific Historical Review* 60 (February 1991): 43–67.

way into law. Legal historians and policy scholars have barely scratched the surface of this field.²⁴

The common-law approach to environmental protection was through the law of nuisance. Common-law remedies did not look beyond market factors and contract issues unless a compelling case regarding public health could be raised.²⁵

Common-law liability rules further frustrated the victims of pollution. The theory of negligence is that there is a reasonable standard of conduct for every human situation. Conduct is negligent when there is proof of unreasonable risk of harm to others. Further, plaintiffs must prove that the defendant knew or should have known that the conduct was harmful. As a result, in bringing a lawsuit, the plaintiff had four elements to allege and prove: first, that a legal duty of care was owed the plaintiff; second, that there was a breach of that duty; third, that there was a causal relationship between the breach of duty and injury; and finally, that the plaintiff was damaged.

Beyond negligence, most jurisdictions provide for strict liability in tort for injury caused by abnormally dangerous activities. In the West, a smelter dumping arsenic into the air and water was sending a known poison onto the property of others.²⁶ As our research goes beyond the descriptive to the analytical, we will see that western lawyers were fashioning arguments to keep goldfish alive and return trout to their pristine habitat. One example of such analysis is David Stiller's *Wounding the West: Montana, Mining, and the Environment* (Lincoln, NE, 2000).²⁷

Beyond the common law, western legislatures were busy dealing with some of the same problems. In 1852, the California legislature passed an "Act to prevent certain public nuisances." This statute declared it a public nuisance and a

²⁴Thomas Dunlap, "American Wildlife Policy and Environmental Ideology: Poisoning Coyote, 1939–1972," *Pacific Historical Review* 55 (August 1986): 345–69; Christopher J. Huggard, "Mining and the Environment: The Clean Air Issues in New Mexico, 1960–1980," *New Mexico Historical Review* 69 (October 1994): 369–88; Bakken, "Was There Arsenic in the Air?" *Montana: The Magazine of Western History* 41 (Summer 1991): 30–41; Jared Orsi, "Restoring the Common to the Goose: Citizen Activism and the Protection of the California Coastline, 1964–1982," *Southern California Quarterly* 78 (Fall 1996): 257–84.

²⁵Bakken, "Was There Arsenic in the Air?" 30–41.

²⁶See Bakken, "An Inversion Layer in Western Legal History: Air Pollution in Butte, Montana," in Hendrik Hartog and William E. Nelson, eds., *Law as Culture and Culture as Law* (Madison, WI, 2000), 264–91.

²⁷See also Duane A. Smith, *Mining America: The Industry and the Environment, 1800–1980* (Lawrence, KS, 1988); Bakken, *The Mining Law of 1872: Past Politics, and Prospects* (Albuquerque, 2008).

misdeemeanor to pollute any creek, stream, pond, road, alley, or highway. The same session passed a law to protect salmon runs. In 1862, the solons regulated trout fishing. The next year they moved to protect seals and sea lions. In 1872, they banned the killing of mockingbirds. Six years later, they banned fishing on Lake Bigler (later renamed Lake Tahoe).

In 1877, the Montana Territorial Legislature outlawed the dumping of coal slack in the waters.²⁸ As early as *Nelson v. O'Neal*, the Montana Territorial Supreme Court would declare in a trespass case that there was "no right to fill the channel of a creek with tailings and debris."²⁹ California's high court would make a similar decision in *California v. Gold Run Ditch and Mining Company*.³⁰ As Robert Bunting points out in *The Pacific Raincoast: Environment and Culture in an American Eden, 1778–1900* (Lawrence, KS, 1997), Washington and Oregon passed laws to protect fish by forbidding the dumping of sawdust in streams. State lawmakers were busy providing piecemeal for environmental protection. Some of this legislation had environmental protection in mind to increase the profits of farmers. Mark Fiege's *Irrigated Eden: The Making of an Agricultural Landscape in the American West* (Seattle, 1999) surveys water law as well as Idaho's seed purity law finding that the reach of law was not always as intended.

The federal government got into the pollution control business late in the century. In 1899, Congress passed the Rivers and Harbors Appropriation Act, which came to be known as the Refuse Act of 1899.³¹

The biodiversity of the West was furthered by another federal statute, the Endangered Species Act of 1973. This legislation was in line with the Convention on International Trade in Endangered Species. The federal Fish and Wildlife Service and the Commerce Department's National Marine Fisheries Service administer the program. Arthur F. McEvoy's *The Fish-*

²⁸Pisani, "Conflict Over Conservation: The Reclamation Service and the Tahoe Contract," *Western Historical Quarterly* 10 (April 1979): 167–90; Clark C. Spence, "The Golden Age of Dredging: The Development of an Industry and Its Environmental Impact," *Western Historical Quarterly* 11 (October 1980): 401–11; Michael Black, "Tragic Remedies: A Century of Failed Fishery Policy on California's Sacramento River," *Pacific Historical Review* 64 (February 1995): 37–70; Thomas G. Smith, "John F. Kennedy, Stewart Udall, and New Frontier Conservation," *Pacific Historical Review* 64 (August 1995): 329–62.

²⁹1 Montana 284 (1871).

³⁰66 California 318 (1884).

³¹Albert W. Cowdrey, "Pioneering Environmental Law: The Army Corps of Engineers and the Refuse Act," *Pacific Historical Review* 44 (August 1975): 331–49; Michael Welsh, "Western Historians, The U.S. Army Corps of Engineers, and the Rivers of Empire," *North Dakota History* 59 (Summer 1992): 28–39.

erman's *Problem: Ecology and Law in the California Fisheries, 1850–1980* (Cambridge, UK, 1986) explored the intersections of law, fisheries, and management. Louis S. Warren's *The Hunter's Game: Poachers and Conservationists in Twentieth-Century America* (New Haven, CT, 1997) demonstrates that recreational hunters and the tourist industry caused legal change in state wildlife management. Karl Jacoby's *Crimes Against Nature: Squatters, Poachers, Thieves, and the Hidden History of American Conservation* (Berkeley, CA, 2001) focuses on Yellowstone and Grand Canyon National Parks and how law overcame custom and the state moved into wild game management. The field remains open for far more focused research, particularly into the evolution of state administrative law systems.

Although federal and state environmental law draws scholars to the public policy and politics aspects of history, other historians have found biodiversity and its science to be equally illuminating. Mark Fiege's *Irrigated Eden* (Seattle, 1999), Peter Boag's *Environment and Experience: Settlement Culture in Nineteenth-Century Oregon* (Berkeley, CA, 1992), and Robert Bunting's *Pacific Raincoast: Environment and Culture in an American Eden, 1778–1900* (Lawrence, KS, 1997) demonstrate, through careful discussion of biodiversity and man's impact, the limits of human control of the environment. Different kinds of grass, insects, rodents, and rabbits inhabit their pages and provide nuance for the narrative. Introduced species conflict with and often harm native plants and animals. Science has produced insecticide, fungicide, and rodenticide to further alter nature's course. Again, the science that was applied to nature had unintended consequences, further diminishing nature's economy. The stories vary in time and place, but the consequences frequently converge in human error.³²

Finally, historians have begun to understand that there is no more a singular West than there was an American Indian. Region and section in the Turnerian world of yesterday and the regional location of the West in the eyes of "New Western Historians" have been further refined by environmental historians who recognize micro-climates, watersheds, and arroyos. Again, this is an interdisciplinary enterprise, as Robert I. Rotberg and Theodore K. Rabb's *Climate and History: Studies in Interdisci-*

³²See also R. Douglas Hurt, "Gaining Control of the Environment: The Morton County Land Utilization Project in the Kansas Dust Bowl," *Kansas History* 19 (Summer 1996): 140–53; Jack L. August, Jr., "Carl Hayden's Indian Card: Environmental Politics and the San Carlos Reclamation Project," *Journal of Arizona History* 33 (Winter 1992): 397–422; Stephen R. Van Wormer, "A History of Flood Control on the Los Angeles County Drainage Area," *Southern California Quarterly* 73 (Spring 1991): 55–94.

plinary History (Princeton, 1981) demonstrated. Beyond history, these scholars must include biology, chemistry, geography, and geology in their quiver of inquiry.

Unfortunately, environmental history contains a very arid void in that it seldom concerns itself with gender. Simply put, Clara Foltz, Laura Gordon, and a myriad of other women made a substantive difference in the West. Further, the history of women in the American West affords legal historians a growing base upon which to build new questions about the gendered nature of law and politics. Barbara Allen Babcock's work does exactly that, breaking new ground for our understanding of how women gained access to the bar, clients, and power.³³ Lelia Robinson was forced by a patriarchal eastern bar to move to the West to find trial experience and clients. Clara Foltz pioneered for women in gaining access to the bar in the West, just as women gained suffrage in the West, giving reformers in the East rhetorical ammunition for their campaigns.

From first contact, American Indians knew that Europeans did not understand the gendered nature of America. European confusion regarding the role of women within tribes and bands continued from first contact well into the late nineteenth century. European willingness to conflate the five hundred tribes and bands into a single American Indian further confused a growing populace that moved west seeking opportunity on lands long inhabited by native peoples.³⁴ In the process of moving to a region that we now call the West, gender played a major role in altering the society that confronted a changing environment and a splendidly varied landscape. The divisions

³³Babcock, "Women Defenders in the West," 1-18.

³⁴John C. Ewers, "When Red and White Men Met," *Western Historical Quarterly* 2 (April 1971): 133-50; Brad Asher, "Their Own Domestic Difficulties: Intra-Indian Crime and White Law in Western Washington Territory, 1873-1889," *Western Historical Quarterly* 27 (Summer 1996): 189-209; Glenda Riley, "Some European (Mis)perceptions of American Indian Women," *New Mexico Historical Review* 59 (July 1984): 237-66; Riley, "Frontierwomen's Changing Views of Indians in the Trans-Mississippi West," *Montana: The Magazine of Western History* 34 (Winter 1984): 20-35; George Kios, "Our People Could Not Distinguish One Tribe from Another: The 1859 Expulsion of the Reserve Indians of Texas," *Southwestern Historical Quarterly* 97 (April 1994): 599-619; James A. Sandos, "Between Crucifix and Lance: Indian-White Relations in California, 1769-1848," *California History* 76 (Summer/Fall 1997): 196-229.



Attorney Clara Foltz pioneered for women in gaining access to the bar in the West. (Courtesy of The Bancroft Library, University of California, Berkeley)

between American Indian reality and white eyes were manifest despite the facts that were clearly at hand.³⁵

In the recent past, historians have started the process of recovering the gendered past of the American West and recognizing the complexity of western women's history. The stereotypes of western women as civilizers in sunbonnets have yielded to that complexity.³⁶ Women struggled for rights, but the West contained variations found in few other regions. While white women marched for the vote in California, they already had the vote in Wyoming Territory in 1869. American Indian women found it hard to contemplate the vote without citizenship; they would wait until 1924 to become citizens. Asian women would wait until World War II. Black women in Kansas suffered the indignities of racial discrimination in public accommodations, while women of color in the San Francisco Bay Area rode local street cars in the 1860s and attending desegregated schools thirty years later. The similarities as well as the differences in female experience because of race further complicate the West.³⁷

Race also impacted women's outlook on the future and the range of choice in the past. In many ways, these choices had to do with relationships with men. Many factors molded a woman's perception of the West. While the men of the West who were looking for women frequently did not recognize these distinctions, historians have done so, recognizing the diversity of the women of the West. Rather than marginalizing women because of a distinction, historians have found it necessary to

³⁵This cultural blindness has been noted by legal historians. Orlan J. Svingen, "The Case of Spotted Hawk and Little Whirlwind: An American Dreyfus Affair," *Western Historical Quarterly* 15 (July 1984): 281-97; Richmond L. Clow, "The Anatomy of a Lakota Shooting: Crow Dog and Spotted Tail, 1879-1881," *South Dakota History* 28 (Winter 1998): 209-27.

³⁶Riley, "Images of the Frontierwoman: Iowa as a Case Study," *Western Historical Quarterly* 8 (April 1977): 189-202; Susan Armitage, "Women and Men in Western History: A Stereoptical Vision," *Western Historical Quarterly* 16 (October 1985): 381-95.

³⁷Antonio I. Castaneda, "Women of Color and the Rewriting of Western History: The Discourse, Politics, and Decolonization of History," *Pacific Historical Review* 61 (November 1992): 501-33; Lawrence B. de Graaf, "Race, Sex, and Region: Black Women in the American West, 1850-1920," *Pacific Historical Review* 49 (May 1980): 285-313; Gail H. Landsman, "The 'Other' as Political Symbol: Images of Indians in the Woman Suffrage Movement," *Ethnohistory* 39 (Summer 1992): 247-84; Elizabeth Jameson, "Toward a Multicultural History of Women in the Western United States," *Signs* 13 (Summer 1988): 761-91.

account for difference in critically analyzing the experiences of western women.³⁸

Racial and ethnic heritage played a role in female experience, whether Hispanic, Japanese or Irish.³⁹ Women's work was part of western history, but women did not confine themselves to plow handles or brothels. Women demanded access to the professions, whether teaching or law, accounting or medicine. The process of eliminating barriers varied in time and space, but the struggle was constant. Yet the story of women in polygamous Utah or Idaho was different and an integral part of the fabric of western history. Because of their beliefs and practices, these women suffered at the hands of the federal government, but they persevered.⁴⁰

One method of illuminating women's lives in a multicultural West is to observe from their point of view and to analyze their experiences in their own context before placing their story in the larger West. Rosalina Mendez Gonzalez, Deena J. Gonzalez, and Antonia Castenada have been very successful with this method. In particular, Deena J. Gonzalez's *Refusing the Favor: The Spanish-Mexican Women of Santa Fe, 1820-1880* (New York, 1999) situates women and gender issues within the debate on conquest and colonization as New Mexico politically transforms itself from Mexico to America.

³⁸Legal historians have started down this path and found rich prospects. Paula Petrik, "If She Be Content: The Development of Montana Divorce Law, 1865-1907," *Western Historical Quarterly* 18 (July 1987): 261-91; Kenneth L. Cannon II, "Mountain Common Law: The Extralegal Punishment of Seducers in Early Utah," *Utah Historical Quarterly* 51 (Fall 1983): 308-27; Joseph W. McKnight, "Protection of the Family Home from Seizure by Creditors: The Sources and Evolution of a Legal Principle," *Southwestern Historical Quarterly* 86 (January 1983): 369-99; Gloria Ricci Lathrop, "Rancheras on the Land: Women and Property Rights in Hispanic California," *Southern California Quarterly* 76 (Spring 1994): 59-84; Bakken, "Constitutional Convention Debates in the West: Racism, Religion, and Gender," *Western Legal History* 3 (Summer/Fall 1990): 213-44; Donna C. Schuele, "Community Property Law and Politics of Married Women's Rights in Nineteenth-Century California," *Western Legal History* 7 (Summer/Fall 1994): 245-81; Petrik, "'Send the Bird and Cage': The Development of Divorce Law in Wyoming, 1868-1900," *Western Legal History* 6 (Summer/Fall 1993): 153-81.

³⁹Richard Griswold del Castillo, "Neither Activists nor Victims: Mexican Women's Historical Discourse: The Case of San Diego, 1820-1850," *California History* 74 (Fall 1995): 230-43; Yuji Ichioka, "Amerika Nadeshiko: Japanese Immigrant Women in the United States, 1900-1924," *Pacific Historical Review* 49 (May 1980): 339-57; Laurie K. Mercier, "We are Women Irish: Gender, Class, Religious, and Ethnic Identity in Anaconda, Montana," *Montana: The Magazine of Western History* 44 (Winter 1994): 282-301.

⁴⁰Carol Cornwall Madsen, "At Their Peril: Utah Law and the Case of Plural Wives, 1850-1900," *Western Historical Quarterly* 21 (November 1990): 425-43.

More generally, historians Joan Jensen and Darlis Miller have turned to women's documents to look at context through the eyes of nineteenth-century women.⁴¹ Sarah Deutsch traces Hispanic women within families and communities across the West.⁴² These women seasonally migrated north, following the ripening of various crops. They worked fields, maintained families, and created communities. Other Hispanic women remained in traditional villages, seasonally re-gendered, and took on expanded responsibilities for institutions and social relations. Antonia I. Castaneda found similar struggles without the migrating males in Alta California from 1769 to 1848.⁴³ Amerindian and mestiza women carved out space for themselves and their families, were active agents in their spheres, and resisted Spanish military and clerical power. Laurie K. Mercier looks at women's documents and preserves women's voices with oral history in reconstructing the lives of Irish women in Anaconda, Montana. A town created by the Anaconda Copper Mining Company smelting facility, Anaconda was 25 percent Irish. These women constructed a community with economic, social, and political security that persisted until the 1950s.⁴⁴ For comparative purposes, readers should consult Mary Murphy's *Mining Cultures: Men, Women, and Leisure in Butte, 1914-41* (Urbana, IL, 1997). Murphy, like Mercier, looks at community through the experiences of women in a very multicultural gendered community in the American West.

Glenda Riley's work is foundational in this field of western history. *Women and Indians on the Frontier, 1825-1915* (Albuquerque, 1984) opens the issue of women pioneers and their attitudes concerning the West and American Indians in time and place. Riley's *The Female Frontier: A Comparative View of Women and the Prairie and the Plains* (Lawrence, KS, 1988) analyzes the lives of women in dramatically different places during the nineteenth century. Importantly, their voices play a large role in the analysis. Her *Building and Breaking Families in the American West* (Albuquerque, 1996) took her study of divorce on a national level to the West and included the process of courting, committing, marrying, intermarrying,

⁴¹Joan M. Jensen and Darlis A. Miller, "The Gentle Tamers Revisited: New Approaches to the History of Women in the American West," *Pacific Historical Review* 49 (May 1980): 173-213.

⁴²Sarah Deutsch, "Women and Intercultural Relations: The Case of Hispanic New Mexico and Colorado," *Signs* 12 (Summer 1987): 719-39.

⁴³Antonia I. Castaneda, "Engendering the History of Alta California, 1769-1848," *California History* 76 (Summer and Fall 1997): 230-59.

⁴⁴Mercier, "We Are Women Irish," *Montana*, 50-61.

separating, and deserting. Open space and opportunity in the American West, as well as divorce law, allowed the creation of a fluid society. The gendered West owes a great debt to this intrepid historian.

What is particularly striking about these studies is the agency of women in achieving access to employment opportunities. Their strategies went beyond those of Laura deForce Gordon, who worked in the California Constitutional Convention of 1878–79 to obtain constitutional access to employment. They were many and varied and worthy of our consideration in exploring the western experience. In *Becoming Citizens: The Emergence and Development of the California Women's Movement, 1880–1911* (Urbana, IL, 2000), Gayle Gullett places Clara Foltz and Laura Gordon in a much larger picture of female activism. In 1896, few women were in the workplace, and suffrage lost at the polls. In 1911, more women were in the work force, and they were better organized and writing copy for newspapers. Women in the state legislature worked for a juvenile court system tied to the municipal playground movement. Success in getting their program institutionalized meant jobs for women. Gullett's historical quilt is the work of many hands in and out of the legislature, but all hands were sewing new opportunities for women.⁴⁵

Clearly, the history of gender in the West has a basis in literature, and now awaits new questions and insights. With law as the glue that held western society together and with western lawyers at the center of that political and institutional world, we must understand that gender mattered then as it does now in law and politics.

Looking at Richard White's *It's Your Misfortune and None of My Own: A History of the American West* (Norman, OK, 1991), it is clear that there is plenty of law in the New West, but a good deal of analysis and explanation remains to be done. White includes state and territorial law in the portrait. Women used Spanish law in New Mexico to manage their affairs and gain a great deal of independence, but the law of debt peonage forced Indians to work one year for a creditor. Americans in pre-Revolutionary Texas complained about the Mexican legal system. With the Mexican War, New Mexico had Kearny's Code as a base. In Utah, the Mormons used their probate

⁴⁵See also Beverly Beeton, *Women Vote in the West: The Woman Suffrage Movement, 1869–1896* (New York, 1986).

courts against Gentile aggression.⁴⁶ Further, law at the local level does not escape White's extensive research net. Both elite and peasant women in New Mexico went to court to maintain their rights within marriage. The expansion of the bureaucratic state in the nineteenth century West brought with it the growth of administrative law before it was ever noticed in the nation. When it was discovered that trapping beaver violated Mexican law, the Hudson's Bay Company ordered it stopped. Restrictive covenants in deeds proved an effective way of segregating minority communities, particularly Asians. Stockmen often worked out law among themselves without resorting to courts.⁴⁷ Law at the operational level also is an important part of understanding the New West.⁴⁸

This last issue, like that of the "dispossession of the Californios" under the California Land Act of 1851, is a volatile one with a great deal of political baggage. From the legal historian's perspective, the analysis usually ends with the issue of due process, that fundamental principle of American constitutional right and liberty. While the Indians may have both won and lost cases in court, we must remember that the Chinese often used those same courts to win and lose. Perhaps when western historians ask legal history questions, we will learn more about how to play the game than about who won and lost.⁴⁹ Perhaps the best players were the winners with the best lawyers

⁴⁶Madsen, "Decade of Detente: The Mormon-Gentile Female Relationship in Nineteenth-Century Utah," *Utah Historical Quarterly* 63 (Fall 1995): 298-319; Sara Barringer Gordon, "The Liberty of Self-Degradation: Polygamy, Woman Suffrage and Consent in Nineteenth-Century America," *The Journal of American History* 83 (December 1996): 815-47; Madsen, "At Their Peril: Utah Law and the Case of Plural Wives, 1850-1900," *Western Historical Quarterly* 21 (November 1990): 425-43.

⁴⁷Robert C. Ellickson, *Order Without Law: How Neighbors Settle Disputes* (Cambridge, MA, 1991).

⁴⁸One window on the operational level is the study of lawyers at work. See Harold M. Hyman, *Craftsmanship and Character: A History of the Vinson & Elkins Law Firm of Houston, 1917-1997* (Athens, GA, 1997); Bakken, *Practicing Law in Frontier California* (Lincoln, NE, 1991). For lawyers in action at state constitutional conventions, see David Alan Johnson, *Founding the Far West: California, Oregon and Nevada, 1840-1890* (Berkeley, CA, 1991).

⁴⁹Wunder, "What's Old about the New Western History? Part 3: Law," *Western Legal History* 10 (1997): 85-116; Eiichiro Stanley, "Japanese Immigrant Farmers and California Alien Land Laws: A Study of the Walnut Grove Japanese Community," *California History* 73 (Summer 1994): 99-113; Ebright, "Frontier Land Litigation in Colonial New Mexico: A Determinant of Spanish Custom and Law," *Western Legal History* 8 (Summer/Fall 1995): 199-226; Wunder, "Territory of New Mexico v. Yee Shun: A Turning Point in Chinese Legal Relations in the Trans-Mississippi West," *New Mexico Historical Review* 65 (July 1990): 305-18.

sitting at the Mad Hatter's Tea Party trying to make sense of western history.

The best analytic work using law in the New West is Debra L. Donahue's *The Western Range Revisited: Removing Livestock from Public Lands to Conserve Native Biodiversity* (Norman, OK, 1999). Donahue brings extensive training and experience in rangeland science, together with a law professor's analytic quiver of tools, to suggest the "unthinkable": the removal of livestock from many western rangelands on the grounds that it makes economic sense, is ecologically wise, and clearly is legally justifiable. In the process of arriving at this politically explosive suggestion, Donahue analyzes why the cattle industry has been able to retain such political and bureaucratic clout despite clear evidence that their grazing practices were destroying the region's grasslands. It was most fitting that the publisher released this book in the last month of the millennium, because it brings the New Western History into an analytic framework that both informs and convicts public policy.⁵⁰

Another western legal topic that has generated a flood of literature is water law. Robert G. Dunbar's *Forging New Rights in Western Waters* (Lincoln, NE, 1983) outlines the legal systems governing water rights and distribution systems. Norris Hundley, Jr.'s *Water and the West: The Colorado River Compact and the Politics of Water in the American West* (Berkeley, CA, 1975) set off a shelf list of books on the negotiation of the Colorado River Compact and the litigation that followed. In particular, *Silver Fox of the Rockies: Delphus E. Carpenter and Western Water Compacts* (Norman, OK, 2003), by Daniel Tyler, delineated the significance of the lawyers involved in the process. M. Catherine Miller's *Flooding the Courtrooms: Law and Water in the Far West* (Lincoln, NE, 1993) focused primarily on California litigation and water policy but explored the development of Oregon's water code and the role of Elwood Mead. In *Turning Water with a Shovel: The Career of Elwood Mead* (Albuquerque, 1992), author James R. Kluger outlined Mead's worldwide career in water development and his role in reclamation in the United States. Going to greater depths, Donald J. Pisani's *Water and American Government: The Reclamation Bureau, National Water Policy, and the West, 1902–1935* (Berkeley, CA, 2002) continued his outstanding analysis of water policy development constrained by western

⁵⁰See also Karen R. Merrill, *Public Lands and Political Meaning: Ranchers, the Government and the Property Between Them* (Berkeley, CA, 2002).



Dedicated in March 1911 on the Salt River northeast of Phoenix, Arizona, Roosevelt Dam is named after President Theodore Roosevelt, who was instrumental in approval of the Federal Reclamation Act in 1902. (Courtesy of Denver Public Library, Western History Collection, Z-5868)

state water law, state bureaucracies, and economic change.⁵¹ Douglas R. Littlefield's *Conflict on the Rio Grande: Water and the Law, 1879–1939* (Norman, OK, 2008) analyzes the complex legal problems involving Colorado, New Mexico, Texas, Mexico, and the United States rights in Rio Grande River water. Colorado recognized prior appropriation doctrine in its 1876 constitution.⁵² The New Mexico Territory Supreme Court did

⁵¹See also Pisani, *To Reclaim a Divided West: Water, Law, and Public Policy* (Albuquerque, 1992); Pisani, *Water, Land & Law in the West: The Limits of Public Policy, 1850–1920* (Lawrence, KS, 1996); John O. Baxter, *Dividing New Mexico's Waters, 1700–1912* (Albuquerque, 1997); Peter Carrels, *Uphill Against Water: The Great Dakota Water War* (Lincoln, NE, 1999); James Earl Sherow, *Watering the Valley: Development along the High Plains Arkansas River, 1870–1950* (Lawrence, KS, 1990); G. Emlen Hall, *High and Dry: The Texas-New Mexico Struggle for the Pecos River* (Albuquerque, 2002).

⁵²See Bakken, *Rocky Mountain Constitution Making, 1850–1912* (Westport, CT, 1987), 66–67.

not recognize the doctrine until 1891.⁵³ Texas provided for prior appropriation only in the western part of the state and recording of those rights only after 1913.⁵⁴ There was no recognized international law of waters for the sovereigns. Only a Rio Grande Compact would resolve water rights and allocation issues.

California water law and policy found expert analysis in the hands of Donald J. Pisani and Norris Hundley, Jr. Pisani's *From the Family Farm to Agribusiness: The Irrigation Crusade in California and the West, 1850–1931* (Berkeley, CA, 1984) argued that litigation was an economic tool to destroy competition, particularly in California. Hundley's *The Great Thirst: Californians and Water, 1770–1990s* (Berkeley, CA, 1992) was followed by an eight-hundred-page revised edition in 2001 and, in addition to outstanding analysis of statutory and case law, added the perils of pollution. The various regions of California and their ecological complexity, combined with the failure of political will in Sacramento, resulted in fitful reform at best.⁵⁵

Even more impervious to statutory change was American hard-rock mining law.⁵⁶ Further, Mexican land grants continue to play a role in litigation in the Southwest.⁵⁷ Paul Bryan Gray's case study of Rancho Santa Margarita's litigious past remains a model for scholars.⁵⁸ Similarly, Victoria Saker Woeste's analysis of the farm cooperative movement and legal change stands as the best scholarship on the subject.⁵⁹

Just as our reservoir of knowledge about western water law has filled since 1992, American Indian legal history has exposed the wide variety of issues and the richness of the subject

⁵³Littlefield, *Conflict on the Rio Grande*, 8. See also Bakken, *The Development of Law on the Rocky Mountain Frontier: Civil Law and Society, 1850–1912* (Westport, CT, 1983), 69–89.

⁵⁴Littlefield, *Conflict on the Rio Grande*, 8.

⁵⁵See also Robert Gottlieb and Margaret FitzSimmons, *Thirst for Growth: Water Agencies as Hidden Government in California* (Tucson, 1991).

⁵⁶See Charles Wallace Miller, Jr., *Stake Your Claim! The Tale of America's Enduring Mining Laws* (Tucson, 1991); Bakken, *The Mining Law of 1872: Past, Politics and Prospects* (Albuquerque, 2008). On coal mining in the West, see Nancy J. Taniguchi, *Necessary Fraud: Progressive Reform and Utah Coal* (Norman, OK, 1996).

⁵⁷See Maria E. Montoya, *Translating Property: The Maxwell Land Grant and the Conflict over Land in the American West, 1840–1900* (Berkeley, CA, 2002); Ebright, *Land Grants & Lawsuits in Northern New Mexico* (Albuquerque, 1994).

⁵⁸Paul Bryan Gray, *Forster vs. Pico: The Struggle for the Rancho Santa Margarita* (Spokane, WA, 1998).

⁵⁹Victoria Saker Woeste, *The Farmer's Benevolent Trust: Law and Agricultural Cooperation in Industrial America, 1865–1945* (Chapel Hill, NC, 1998). On California wine, see Victor W. Geraci, *Salud! The Rise of Santa Barbara's Wine Industry* (Reno, NV, 2004).

matter. Many scholars have analyzed the limits of tribal sovereignty.⁶⁰ Others have focused on tribal legal and constitutional rights in natural resources.⁶¹ Specific cases and litigation have attracted the attention of researchers. Sidney L. Harring's *Crow Dog's Case: American Indian Sovereignty, Tribal Law and the United States Law in the Nineteenth Century* (Cambridge, UK, 1994) and Blue Clark's *Lone Wolf v. Hitchcock: Treaty Rights & Indian Law at the End of the Nineteenth Century* (Norman, OK, 1994) are outstanding examples of case analysis. In *Coyote Warrior: One Man, Three Tribes, and the Trial that Forged a Nation* (Lincoln, NE, 2004), author Paul Vandevelder focuses on one lawyer's tribulations in litigation and lobbying for justice for the Mandan, Hidatsa, and Arikara, three affiliated tribes of North Dakota. John R. Wunder's *Retained by the People: A History of American Indians and the Bill of Rights* (New York, 1994) puts the constitutional rights of Indians in a national setting. Questioning whether justice was done when an Indian was on trial for a crime, Clare V. McKanna, Jr., and others have plumbed the depths of trial court proceedings to find a tarnished record.⁶²

The Chinese struggle within the legal system against racism, particularly in California, was epic, and lawyers played a substantial role in winning battles one at a time. "California was at its birth an equal-opportunity racist state," targeting American Indians, African Americans, and Asians for particu-

⁶⁰Vine Deloria, Jr., and David E. Wilkins, *Tribes, Treaties & Constitutional Tribulations* (Austin, TX, 1999); David E. Wilkins, *American Indian Sovereignty and the U.S. Supreme Court: The Masking of Justice* (Austin, TX, 1997); David E. Wilkins and K. Tsianina Lomawaima, *Uneven Ground: American Indian Sovereignty and Federal Law* (Norman, OK, 2001). For tribal sovereignty and casino gaming, see Steven Andrew Light and Kathryn A.L. Rand, *Indian Gaming and Tribal Sovereignty: The Casino Compromise* (Lawrence, KS, 2005); W. Dale Mason, *Indian Gaming: Tribal Sovereignty and American Politics* (Norman, OK, 2000).

⁶¹John Shurts, *Indian Reserved Water Rights: The Winters Doctrine in its Social and Legal Context, 1880s–1930s* (Norman, OK, 2000); Richmond L. Clow and Imre Sutton, eds., *Trusteeship in Change: Toward Tribal Autonomy in Resource Management* (Boulder, CO, 2001).

⁶²Clare V. McKanna, Jr., *The Trial of "Indian Joe": Race and Justice in the Nineteenth-Century West* (Lincoln, NE, 2003); Vanessa Ann Gunther, *Ambiguous Justice: Native Americans and the Law in Southern California, 1848–1890* (East Lansing, MI, 2006); John William Sayer, *Ghost Dancing the Law: The Wounded Knee Trials* (Cambridge, MA, 1997). For a cultural analysis outside of the courtroom, see John Phillip Reid, *Patterns of Vengeance: Crosscultural Homicide in the North American Fur Trade* (Pasadena, CA, 1999); McKanna, *White Justice in Arizona: Apache Murder Trials in the Nineteenth Century* (Lubbock, TX, 2005).

lar legislative and judicial venom.⁶³ The Chinese fought back within the legal system in the West and against the federal immigration system.⁶⁴ African Americans used litigation to gain civil rights in San Francisco in the nineteenth century.⁶⁵ Matthew C. Whitaker wrote a model history of civil rights work in Phoenix, Arizona, and demonstrated how state and federal law did not end racial discrimination in Arizona.⁶⁶

Women in the West also struggled for rights and, in terms of national events, were far more successful, particularly with suffrage.⁶⁷ In states with a Hispanic legal tradition, women gained in terms of property rights.⁶⁸ Yet women caught up in the criminal justice system did not fare well in prisons.⁶⁹ Access to all forms of employment and equal rights have remained goals into the twenty-first century.

Organized labor waged a similar struggle for protective labor legislation, and in the West unions' work paid off in local regulations, state and territorial law, state constitutions, and appellate courts decisions. John P. Enyeart's *The Quest for "Just and Pure Law": Rocky Mountain Workers and American Social Democracy, 1870–1924* (Stanford, CA, 2009) demonstrates how a unique, regional, working-class culture, engineered into a labor movement based on pragmatism as well as ideology, gained legal protections for workers' hours, wages, and workplace safety. Thomas Ralph Clark's *Defending Rights: Law, Labor Politics, and the State of California, 1890–1925*

⁶³Bakken, "The Courts, the Legal Profession, and the Development of Law in Early California," in John Burns and Richard J. Orsi, eds., *Taming the Elephant: Politics, Government, and Law in Pioneer California* (Berkeley, CA, 2003), 81.

⁶⁴Charles J. McClain, *In Search of Equality: The Chinese Struggle against Discrimination in Nineteenth-Century America* (Berkeley, CA, 1994); Lucy E. Salyer, *Law Harsh as Tigers: Chinese Immigrants and the Shaping of Modern Immigration Law* (Chapel Hill, NC, 1995).

⁶⁵Albert S. Broussard, *Black San Francisco: The Struggle for Racial Equality in the West, 1900–1954* (Lawrence, KS, 1993).

⁶⁶Matthew C. Whitaker, *Race Work: The Rise of Civil Rights in the Urban West* (Lincoln, NE, 2005).

⁶⁷On the national struggle, see Sandra F. VanBurkleo, "Belonging to the World": *Women's Rights and American Constitutional Culture* (New York, 2001). On suffrage in the West, see Rebecca J. Mead, *How the Vote Was Won: Woman Suffrage in the Western United States, 1868–1914* (New York, 2004); Petrik, *No Step Backward* (Helena, MT, 1987), 115–34.

⁶⁸Jean A. Stuntz, *Hers, His, & Theirs: Community Property Law in Spain & Early Texas* (Lubbock, TX, 2005); Kathleen Elizabeth Lazarou, *Concealed Under Petticoats: Married Women's Property and the Law of Texas, 1840–1913* (New York, 1986).

⁶⁹Anne M. Butler, *Gendered Justice in the American West: Women Prisoners in Men's Penitentiaries* (Urbana, IL, 1997).

(Detroit, MI, 2002) makes the case that rights consciousness sharpened working-class political consciousness and gained legal rights for labor. The record in the West, particularly in terms of gains for women and miners, formed the legal basis for gains nationally.⁷⁰

Criminal justice administration in the West continues to draw scholarly interest. Place dominates the literature, with few historians venturing beyond state lines. Clare V. McKanna, Jr., compared data from Douglas County, Nebraska; Las Animas County, Colorado; and Gila County, Arizona. White defendants fared better than minority defendants in court.⁷¹ Mark R. Ellis found far less violence and criminal disorder in North Platte, Nebraska, due to common legal culture and a focus on community building.⁷² Montana's vigilantes and the Big Horn Basin of Wyoming were the subjects of important books on popular justice and the movement toward institutionalized due process.⁷³ Kevin J. Mullen closely analyzed San Francisco's criminal justice system in the 1850s and linked taxation, policing, courts, and jails. He found that homicide was not out of proportion given city size, the vigilance committees did little to stem crime, fires were more probably accidental than arson, the business establishment opposed taxation for policing, the police did the most to curb crime, the courts were about as efficient as could be expected, and new, secure jails contributed mightily to community peace.⁷⁴ Bill Neal found a profound struggle between lawlessness and the criminal justice system in Texas. Lawyers and judges moved the Texas frontier from

⁷⁰Van Burkleo, "Belonging to the World," 222–23. See also Sally Zanjani and Guy Louis Rocha, *Ignoble Conspiracy: Radicalism on Trial in Nevada* (Reno, NV, 1986).

⁷¹McKanna, *Homicide, Race, and Justice in the American West, 1880–1920* (Tucson, 1997).

⁷²Mark R. Ellis, *Law and Order in Buffalo Bill's Country: Legal Culture and Community on the Great Plains, 1867–1910* (Lincoln, NE, 2007).

⁷³John W. Davis, *A Vast Amount of Trouble: A History of the Spring Creek Raid* (Niwot, CO, 1993); Frederick Allen, *A Decent Orderly Lynching: The Montana Vigilantes* (Norman, OK, 2004); John W. Davis, *Goodbye, Judge Lynch: The End of a Lawless Era in Wyoming's Big Horn Basin* (Norman, OK, 2005).

⁷⁴Kevin J. Mullen, *Let Justice Be Done: Crime and Politics in Early San Francisco* (Reno, NV, 1989), 238–40. Also on policing see Larry D. Ball, *Desert Lawmen: The High Sheriffs of New Mexico and Arizona, 1846–1912* (Albuquerque, 1992).

guns to gavels, often at great personal expense.⁷⁵ Scholars recognize that criminal justice exists within a place and its context.

The interaction of criminal justice and gender moves analysis one more sophisticated step further, but again the scholarship focuses on particular states. Bill Neal's *Sex, Murder, and the Unwritten Law: Courting Judicial Mayhem Texas Style* (Lubbock, TX, 2009) uses deeply developed context in time and place to analyze Texas homicide cases and their seemingly bizarre results. Neal also deploys his skill as a criminal law attorney to closely examine procedural issues in each trial. *Women Who Kill Men: California Courts, Gender, and the Press* (Lincoln, NE, 2009), by Gordon Morris Bakken and Brenda Farrington, analyzes eighteen cases from 1870 to 1958 for trial tactics, the portrayal of women in the press, and cultural expectations. The image of women on trial and their behavior played a substantial role in California trials.

Since John Phillip Reid's assessment of western legal history, a substantial body of work has appeared in print. Thanks to *Western Legal History* and the willingness of publishers to venture capital on the western legal projects, western legal history has prospered since the Transborder Legal History Conference that gave birth of Reid's essay. As usual, there is a lot to be done, but the field is now firmly established.

⁷⁵Bill Neal, *Getting Away with Murder on the Texas Frontier: Notorious Killings & Celebrated Trials* (Lubbock, TX, 2006); Neal, *From Guns to Gavels: How Justice Grew Up in the Outlaw West* (Lubbock, TX, 2008). For more localized analysis, see Ralph Melnick, *Justice Betrayed: A Double Killing in Old Santa Fe* (Albuquerque, 2002); Ronald B. Lansing, *Nimrod: Courts, Claims, and Killing on the Oregon Frontier* (Pullman, WA, 2005).

BALANCING PRIVACY AND THE RIGHT TO KNOW: NEWLY OPENED RECORDS AT THE CALIFORNIA STATE ARCHIVES

REBECCA L. WENDT

INTRODUCTION

The California State Archives in Sacramento is the official repository for that state's historical government records. These include the popularly researched California Supreme Court and Court of Appeal records, legislative papers, state election records, state agency records, and a myriad of other primary source materials. Ninety-five percent of those records, consisting of more than 85,000 cubic feet at this point, are open to the public, but, until recently, a few records series were slated to remain closed to most researchers. On January 1, 2005, that changed: records that had not been available to researchers at the California State Archives were opened for the first time to those not affiliated with a university or statistical research project. Assembly member John Laird's A.B. 2719 (chapter 783, 2004) which resulted in a new provision to the California Government Code (sec. 12237), meant that all records at the state ar-

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chives older than seventy-five years could be used by researchers without restriction.¹

This article will explain the perceived need for the new law and look at three of the state agency record groups impacted by the law: California Mental Hygiene/Mental Health records, Youth Authority records, and Department of Corrections records. With these three groups, interested researchers may now follow, in much greater detail than ever before, the legal history of crime and punishment, privacy rights, and institutionalization in California, as well as inherent social attitudes and their effects on individuals.

THE CODE AND THE NEED FOR CHANGE

Until the implementation of Government Code section 12237, access to state agency records—whether still housed in the creating agency or already transferred to the California State Archives—had, in the main, been pursuant to the California Public Records Act (CPRA) (Government Code sec. 6250 et seq.) and the Information Practices Act of 1977 (IPA) (Civil Code sec. 1798, et seq.). The CPRA, passed in 1968, followed the 1967 federal Freedom of Information Act and was the “outcome of a six-month study by an advisory committee to the Assembly Judiciary Committee.”² Governor Ronald Reagan, though initially concerned that government would be restricted, lauded the Public Records Act as legislation that helped

¹Government Code Section 12237:

- (a) Notwithstanding any provision of Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1, any provision of law that exempts from public disclosure any item in the custody of the State Archives shall not apply to that item 75 years after the item was created, irrespective of the origin of the item, the manner in which it was deposited with the State Archives, or any other condition or circumstance at the time the item was deposited.
- (b) Subdivision (a) shall apply to any item currently in the custody of the State Archives and any item deposited in the State Archives after the effective date of this section.
- (c) The State Archives shall notify any party who deposits any item in the State Archives after the effective date of this section of the provisions of subdivision (a).
- (d) The Secretary of State's Internet Web site shall include a public notice stating that on or after January 1, 2005, all items 75 years old or older that are on deposit in the State Archives shall be accessible to the public.

²William T. Bagley to Governor Ronald Reagan, August 15, 1968, chapter 1473 (1968), chaptered bill files, governor's records, California State Archives, Sacramento.



The California State Archives occupies a facility one block south of the state capitol as part of the secretary of state office complex. [Courtesy of the Department of Public Works-Architect [Durkee Collection] Record Group-file F3253:235A[20], ca. 1930-50]

"assure 'that the public's business is conducted in public.'"³ In particular, it provides that "except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records . . . , shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable."⁴

The IPA, on the other hand, concerns restriction of information about individuals to allay privacy concerns. It was intended by its author to regulate "the collection, storage and use of information about Californians by state agencies." It bans the existence of secret files.⁵ However, no public review date or end-of-restriction date is included in the IPA, and once closed,

³Governor Ronald Reagan Press Release, August 30, 1968, chapter 1473 (1968), chaptered bill files, governor's records, California State Archives, Sacramento.

⁴California Government Code sec. 6253, subsection b.

⁵David Roberti to Governor Edmond G. Brown, Jr., September 7, 1977, chapter 709 (1977), chaptered bill files, governor's records, California State Archives, Sacramento.

records remained so permanently. A state archives policy allowed researchers affiliated with a university to apply to view the restricted records for statistical purposes only.⁶ Thus arose the need for a new law opening records at the state archives after the reasonable period of seventy-five years, a time limit in keeping with similar regulations at the National Archives.

Although the state legislature declared that "the right to privacy is a personal and fundamental right protected by Section 1 of Article I of the Constitution and by the United States Constitution and that all individuals have a right of privacy in information pertaining to them,"⁷ they also realized that striking a balance for open government was important. The public was aware of this as well. And, in writing in support of A.B. 2719 to articulate these interests, the president of the Society of California Archivists stated, "Currently the California State Archives is faced with this frustrating situation—holding decades-old historic documents, sought after by the public, but closed by law without regard to their content. Passage of this bill would allow for the opening to the public of many records while preserving restrictions imposed by specific statutes and provisions of the California Public Records Act, thus addressing the release of private or otherwise sensitive information."⁸ Indeed, no objections to the proposed law were filed,⁹ and it was signed by Governor Arnold Schwarzenegger on September 24, 2004. It went into effect at the beginning of the next calendar year.

IMPORTANT NOTE

Each record series discussed below forms a part of a larger record group. The majority of the files from these three record groups have been open for research. Indeed, it would even be misleading to say that there has been no information available to the public for the restricted series to be described.

⁶From *Policies and Procedures for Use of Records Containing Personal or Confidential Information at the California State Archives*: "Only requests from individuals conducting research for statistical or similar purposes in association with the University of California or other non-profit educational institutions will be reviewed. Genealogical research requests cannot be honored."

⁷California Civil Code Section 1798.1.

⁸Paul Wormser to Jerome E. Horton, April 8, 2004, A.B. 2719 (2004), bill file, Assembly Governmental Organization Committee files, 2006-278, California State Archives, Sacramento.

⁹A.B. 2719 (2004), bill file, Senate Judiciary Committee files, 2006-276, California State Archives, Sacramento.

Descriptive information for each record group, including those restricted series, has always been available. Although the individual series discussed are the ones affected by the new law, it is important to keep in mind that any records in such series that have not reached the seventy-five-year mark are not yet available for research. With that point clarified, we proceed to information about the newly opened records themselves within the context of their overarching record groups.

MENTAL HYGIENE/MENTAL HEALTH: PATIENT CASE FILES

State hospitals for the insane were created by individual acts of the legislature, with the first one opening in Stockton in 1851.¹⁰ In 1897, the Insanity Law created a State Commission on Lunacy and also provided for uniformity in recordkeeping: "The by-laws, rules and regulations, books of record, and for steward's department, blank forms, both clinical and otherwise . . . shall be uniform for all hospitals and shall be approved by the commission."¹¹ Historians are the fortunate recipients of these records, and the state archives contains a wealth of information, from correspondence to commissioners' minutes, regarding mental health institutions. Because the vicissitudes of government renamed the department in charge of mental institutions several times over the years, these records are known collectively at the state archives as Department of Mental Hygiene/Mental Health records. The Mental Hygiene/Mental Health records, among many other record series, include case files for those who were patients in state mental institutions.

Before the existence of Government Code sec. 12237, patient case files were off-limits to most researchers, including family members of the individuals described. A family member was "not allowed access to restricted information on a member of his or her family. For example, the State Archives [was] not allowed to provide to a family access to records of the burial location of their 'Uncle Bob,' who died as a ward in a state mental hospital. Under current law, State Archives [was] not

¹⁰Elsy Hurt, *California State Government: An Outline of Its Administrative Organization from 1850 to 1936* (Sacramento, 1936), 106–10; 129 Cal. Stats 1851, 506–511, "An Act to Create a State Hospital in the City of Stockton."

¹¹227 Cal. Stats 1897, 311–33, "An Act to establish a State Lunacy Commission, to provide a uniform government and management of the state hospitals for the insane, and to provide for the care, custody, and apprehension of persons believed to be insane, and the commitment of insane persons, and providing for transfer of unexpended appropriations of moneys and properties."

allowed to tell the family anything: whether Uncle Bob was in a state mental hospital or whether he died."¹²

Currently, researchers may find records from the DeWitt State Hospital, Mendocino State Hospital, Modesto State Hospital, Sonoma State Hospital, and Stockton State Hospital at the California State Archives. The case files cover the period 1887 to 1972, although not all patient files for all years are available for all institutions. Records are arranged numerically by patient case number or alphabetically by patient's surname. Indices are available for Mendocino State Hospital for 1893–1955. Sonoma State Hospital records do not have an index as such, but the Register of Applicants, 1884–1949, or Index of Applicants, 1922–1940, serves in a similar capacity. The Modesto State Hospital records, 1900–1972, are in alphabetical order, so an index is unnecessary. Indices for Stockton State Hospital, 1856–1920, for both male and female patients are available. Below is the series description for the Mendocino State Hospital Records, patient case files. It is typical of the mental health-related patient records available at the state archives:

Case files are the primary source of information on care and treatment of individuals at hospital. . . . Common records for each file include, in order, commitment papers and related court documents, patient background information, nurse's admission reports, photographs, often a positive and negative, clinical conference reports, progress notes, social service reports, ward notes (nursing notes), behavior charts, hydrotherapy reports, electric shock treatment reports, intelligence test reports, release summaries, death certificates, permits for removal and burial of body, rap sheets relating to criminal activities, cumulative case summaries, autopsy reports, and correspondence.¹³

The records are a rich source of information on many levels. They demonstrate how people's rights could be taken away by the state, show correlations with the events going on at the time in the outside world, illustrate that alcoholism was singled out as a particular problem, and indicate that women were frequently thrust into mental institutions for unspecified "female issues." An example that shows mental health issues within the context of the events of the day is the Stockton

¹²"AB2719 Fact Sheet," A.B. 2719 (2004) bill file, Senate Judiciary Committee files, 2006-276, California State Archives, Sacramento.

¹³Inventory of the Department of Mental Hygiene, Mendocino State Hospital Records, California State Archives, Sacramento.

State Hospital case file of William Stevenson from San Francisco. Stevenson became ill after the April 1906 earthquake and fire. "After earthquake [he showed] a change in habits. Had not been drinking for one year when dementia began. Imagined he caused earthquake." He recovered by 1920, when he was discharged.¹⁴

The legal historian can enjoy the bounty of evidence, from early in the state's history through the Governor Reagan era, of the state's ability, or lack thereof, to cope with disturbed individuals. The genealogist will also be pleased that the records can be used to locate a particular individual whose whereabouts were unknown to others. The case file of Margaret Moore, for example, who lived in an institution from 1896 until her death at Mendocino State Hospital in 1921, is filled with correspondence and evaluations. Information about her burial, which occurred after attempts to contact her next of kin failed and thus went unrecognized by her family, is included in the file.¹⁵

YOUTH AUTHORITY: REGISTERS AND CASE FILES

Just as there have been many state mental institutions in California, several correctional schools have been set up during the state's history. All of the records pertaining to these schools are known collectively at the state archives as Youth Authority Records. The schools were conceived as "reform schools for Juvenile Offenders,"¹⁶ and the earliest longlasting successful institutions were the Preston School of Industry and the Whittier State School, both established in 1889.¹⁷ Both boys and girls were housed at the Whittier School until a separate institution, the Ventura School for Girls, opened in 1916.¹⁸ By 1914, the methods of schooling young offenders had evolved from reform to industry. Commissioners extolled schools where the "substitution of kind, intelligent vocational guidance for former methods of rigid and often inhumane discipline, has contrib-

¹⁴Patient 167986, Stockton State Hospital Commitment Register, vol. 17, 1907-1908, Department of Mental Hygiene Records, California State Archives, Sacramento.

¹⁵Patient case file #511, Mendocino State Hospital Records, Department of Mental Hygiene Records, F3886:137, California State Archives, Sacramento.

¹⁶Hurt, *California State Government*, 110-13.

¹⁷103 Cal. Stats 1889, 100-106, "An Act to establish a School of Industry, to provide for the maintenance and management of the same, and to make an appropriation therefor"; 108 Cal. Stats 1889, 111-23, "An Act to establish a State Reform School for juvenile offenders, and to make an appropriation therefor."

¹⁸Hurt, *California State Government*, 110.

FORM 10-30-28

ROBERT LEWIS RICHARDS
MEDICAL SUPERINTENDENT

File 311

MENDOCINO STATE HOSPITAL

YALMAGE, CAL.

January 18, 1921.

511

JAN 21 1921

ST. ALBANY, CAL.

Mr. Walter S. Hode,
1909 Bacon Block,
Oakland, Calif.

Dear Sir:

Mrs. Margaret Moore died this morning. Unless we hear from you to the contrary, or you can inform us of some relative or friends, we will bury the remains in the Hospital Cemetery.

We have a letter from you under date of March 8, 1908, re application for Letters of Guardianship, but have had no subsequent information or queries concerning this patient from any one.

Awaiting your reply by return mail, I am

Very truly yours,

Robert Lewis Richards
Medical Superintendent

ST:DL

Oakland, Cal.,
January 20, 1921.

Robert Lewis Richards,
Medical Superintendent,

Dear Sir:

Responding to the above, would say that I have lost track absolutely of all of Mrs. Margaret Moore's connections. I have not seen nor heard of them for years and do not know where to locate them.

WBR/ABC.

Yours truly,
WBR

ADDRESS ALL COMMUNICATIONS TO
MEDICAL SUPERINTENDENT
ALWAYS MENTION FULL NAME OF PATIENT
WHEN WANTING FOR INFORMATION

This letter regarding the death and burial of patient Margaret Moore is included in the Mendocino State Hospital patient case file, Department of Mental Hygiene. (Courtesy of California State Archives, Sacramento-file F3886:137)

uted much to the problem of juvenile reform. Thus 'Industrial School' has . . . supplanted the old term 'Reform School,' to remove from the institutions the stigma attached to the idea of a 'boys' prison.'"¹⁹

The previously restricted case file records from the California Youth Authority and its predecessors describe individuals yet to reach their majority (then defined as under the age of 21). Within these case files, a researcher can catch glimpses of the everyday lives of the youth in the institutions and follow the changes in the philosophy behind their stays at the schools and the discipline they received while there. The case files are arranged chronologically by the date an inmate was received, and each person has a unique identifying number (or numbers, in the event of multiple incarcerations). An index created by archives staff is available for Whittier, 1891–1930; Preston, 1894–1914; and Ventura School for Girls (including prior information for girls housed at Whittier), 1907–1931.

A typical entry consists of correspondence, newspaper clippings, and photographs, and includes identification number; inmate's name; offense committed; commitment date; county name; judge's name; complainant's name; inmate's physical description, such as weight, complexion, eye and hair color, gender, and identifying marks; birthplace and date of birth; names of schools attended; number of years in school; previous penal commitments (amount of time institutionalized and offense committed); number of brothers and sisters; whether inmate smokes or not; level of literacy; kind of employment; whether inmate is profane or intemperate; date of arrival at school; parents' names and birthplaces, and whether living or not; state of residence and marital status; present address; whether parents were intemperate or not; and father's occupation.²⁰

These entries also reflect racial bias and attitudes about the way the state schools tended to be a breeding ground for later criminal behavior. These views are apparent in the register entry for Willie Stewart, who was "colored" and who was sent to Whittier School for delinquency. Stewart was thought to have a history of "lying, petty pilfering, disobedience at home and at school, and general shiftlessness." According to the register, he went on to San Quentin Prison in 1917.²¹

¹⁹"Preliminary Report of the Psychological Survey of Whittier State School," 1914 Biennial Report of the Board of Trustees and Superintendent of the Whittier State School, 21.

²⁰Inventory of the Youth Authority Records, California State Archives, Sacramento.

²¹Inmate History Register, 1910–1912, 77–78, Whittier State School, Youth Authority records, F3738, California State Archives, Sacramento.

Girls were frequently sent to the Ventura School for immorality, dependency, and incorrigibility. Although many of the girls had committed crimes such as theft or robbery, most often they were sent to the school by the courts because either they had no guardians or their guardians were unable to care for them properly. A sample entry page shows the girl's name, admission number, age at admission, county of origin, cause, statute violated, date of entry into facility, court passing sentence, name of judge, names and addresses of guardians, and length of term, or other remarks.²²

Register and case files can be heartrending, as in the instance of William Prentice, a nine-year-old boy with an unhappy home life, who decided to run away. He managed to roller skate from San Francisco to San Jose but was found before he could go any further on his journey to Los Angeles.²³ He spent some time in the Whittier State School after his runaway attempt. More information is available in his files.

CORRECTIONS: CASE FILES AND EXECUTION FILES

Of course, there is some overlap between individuals housed at the Youth Authority and those later housed in correctional institutions such as San Quentin and Folsom Prisons. San Quentin opened its doors in 1852, and Folsom State Prison opened in 1880.²⁴ Although the state archives' Department of Corrections records contain files from both San Quentin and Folsom, it also offers many other series, from minutes and correspondence to scrapbooks and board reports, and covers the period from 1850 through the 1980s. San Quentin Prison inmate case files, 1890–1958, and Folsom Prison inmate case files, 1881–1942, are housed at the state archives and were previously screened for confidential material. Execution case files, 1911–1967, are also at the state archives, and, they too, were screened for confidential material. Confidential material from those records that is older than seventy-five years is now available in its entirety. Previously, medical, psychiatric, education, and investigative records, as well as rap sheets and personal information about third parties, were removed.

²²Inmate History Register, California (Ventura) School for Girls, Youth Authority records, F3738:544, California State Archives, Sacramento.

²³Inmate History Register, Whittier State School, 1923, Youth Authority records, F3738:110, #4169, California State Archives, Sacramento.

²⁴Hurt, *California State Government*, 182.



The state archives' Department of Corrections records include files from both San Quentin and Folsom Prisons. Pictured above is the forbidding East Gate of Folsom Prison. (Courtesy of Department of Corrections Records, Institutional Photographs Series: Folsom State Prison-file F3717:85, undated)

The execution files series concludes with the last execution before the state supreme court suspended application of the death penalty in California in 1972, and all files in this series will be completely open before 2047. The description of the execution file series is as follows:

This series is a collection of the individual case files of San Quentin State Prison inmates who were executed between 1911 and 1967. Early files consist primarily of legal documents. Later files contain an increasingly wider range of material that may include cumulative case summaries, disciplinary action reports, body receipts, legal records, chaplain's records, parole board calendar cards, visitor and correspondence records, inmate work cards, execution reports, death certificates, medical records, education records, personal and administrative correspondence, inmate photographs, and newspaper clippings. These materials provide a rich source of information about the prisoners' criminal records; the specific offenses for which they were executed; their

social and religious backgrounds; their psychological characteristics; their behavior on condemned row; specific details about their executions; and their communication with friends, family, prison officials, and others.²⁵

Examples from the Department of Corrections records abound; there are hundreds of cubic feet in this record group. An interesting case highlighting how quickly punishment followed the crime in the 1920s is that of Louis Lazarus. At the state archives there were already pages and pages of open documents about Lazarus, who participated in a 1928 Oakland bank robbery and shot and killed a bank employee during the heist. The supreme court case²⁶ and the application for pardon²⁷ are interesting in their own right, but Lazarus' now completely open execution case file shows not only the stays of execution he received but information about his past crimes and his attitudes toward crime and punishment. The FBI rap sheet record dated September 27, 1928, for California prisoner #45874, Louis Lazarus, would have been restricted from access. Now, because the entire file is older than seventy-five years, the information is available.²⁸

CONCLUSION

In this era of concern about individual privacy and identity theft, the state of California is concerned more than ever with protecting the identities of its citizens. The state is also aware that a policy of open government is reassuring to citizens. While the federal government seems to be more secretive in its information gathering, California may be bucking this trend. The recent addition of section 12237 to the California Government Code strikes a balance between privacy rights and open government. Seventy-five years is a reasonable amount of time to keep a file closed. As always, the state's archivists have the important responsibility of ensuring that the proper documents are either restricted or released to public view.

²⁵California State Archives Department of Corrections Finding Aid, California State Archives, Sacramento.

²⁶*People v. Louis Lazarus, George Costello, and Joseph Murran*, California Supreme Court case #3189 (1928), WPA 25424, California State Archives, Sacramento.

²⁷Application for pardon #353, Governor-Legal Affairs.

²⁸San Quentin execution file #45874, Department of Corrections, F3918:47, California State Archives, Sacramento.

The legal historian will appreciate that these are interesting but not unique times. And, as California voters decided in 2004 when Proposition 59 passed, "the people have the right of access to information concerning the conduct of the people's business."²⁹ The newly opened records series at the California State Archives are another window into viewing how the people's business was carried out seventy-five years ago, and, as time advances, that window will open wider.

²⁹California Voter Information Guide: November 2, 2004, general election (Sacramento, 2004), 81.

LEGAL HISTORY THROUGH LABOR'S PRISM: COLLECTION HIGHLIGHTS OF THE LABOR ARCHIVES & RESEARCH CENTER, SFSU

CONOR MICHAEL CASEY

Legal historians of the West will find a rich—and perhaps unexpected—range of primary sources reflecting the region's history at the Labor Archives & Research Center (LARC) at San Francisco State University. Founded in 1985 by a coalition of historians, journalists, labor leaders, and university administrators, LARC's collection documents the history of labor unions and working people in the nine counties of the Bay Area and spans the latter part of the nineteenth century to the present, with an emphasis on the twentieth century.¹

Although the records of labor unions are the major component of LARC's holdings, the archives also contains collections donated by prominent labor, civil liberties, and civil rights attorneys; preeminent arbitrators; labor-affiliated

¹I am greatly indebted to the many archivists and interns who skillfully processed the LARC collections discussed in this article; this survey would have been impossible without them. Lynn Bonfield, Edie Butler, Carol Cuénod, Conor Casey, Rex Doane, Justin J. Gorman, Michael Griffith, Amy Holloway, Olive James, Janette Martin, Richard Nardi, Joshua Paddison, Cynthia Taylor, Don Watson, and Nick Wright are those credited in the guides; the work of those too modest to record their names remains, regrettably, uncredited.

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organizations; state and federal boards; and pamphlets and publications from a myriad of organizations on the political Left. Labor relations is the primary focus of the archives, but the collection's scope encompasses civil liberties, civil rights, economic, political, and social history; legislative and electoral campaigns; court cases; and federal and state board records that chart legal and labor relations throughout the West—all through labor's prism.

This article examines LARC's collections in two sections: first, it describes the broad categories of record groups typical of labor organizations that researchers will find useful in tracing the history of lobbying, legislation, case law, arbitrations, negotiations, and government policy, and their impacts on organized labor, workers, and the Left; second, it highlights specific collections, sorted by format, in light of their usefulness to legal historians, discussing in greater depth the classes of records and collections introduced in the first section.

The article begins with an examination of the records of labor councils, state labor federations, and state and federal government boards in order to explain their utility in documenting labor's role and reactions to well-known legal cases and legislation. Next, the article illuminates the relevant records in the collections of labor-affiliated organizations, individuals, and selected oral histories. Finally, it provides a brief overview of the LARC ephemera, pamphlet, and periodical collections.²

TYPICAL LABOR ORGANIZATION COLLECTION COMPONENTS

Researchers will find that many of the classes of records typical of labor organizations are analogous to those of other associations. Nevertheless, a brief overview of the classes of records usually found in labor collections and the types of historical data they contain can be illuminating. Rather than providing an exhaustive list of all the local labor union collec-

²As suggested by the title, this article is a selected survey of some of the Labor Archives' collections. For a more comprehensive listing, visit <http://www.library.sfsu.edu/about/depts/larc.php>. Many guides are also available at the Online Archive of California, <http://content.cdlib.org>.

tions at the Labor Archives that contain each record format, this survey focuses on the broad components of these collections.³

Most labor union, labor council, and labor federation collections contain series composed of the documents generated by the organization's internal committees responsible for lobbying, tracking policy on legislation, and determining decisions on electoral politics. The names of these committees vary depending on the organization, but they have similar functions. LARC's labor union collections are all from California, primarily from the San Francisco Bay Area. A labor organization's records often reflect organizing efforts to support or oppose city or county ballot propositions, legislation, and elections. California's system of initiative, recall, and referendum ensures that labor organizations must frequently take positions on statewide propositions and elections, thus generating records of these activities. However, even before California voters approved this system in 1911, labor unions recognized the link between their survival, politics, and legislation—as demonstrated by the records of the California Labor Federation (discussed below).

Other common series of labor union records, as in other organizations, are subject and news clipping files, which serve as reference sources for officers of the organization, documenting events and issues they deem important, as well as the actions of the body. These files often contain reports, periodical clippings, publications, and correspondence about specific subjects, and serve as a resource for understanding the overall scope of the organization's interests and activities.

As in any group, publications such as the association's official organ, pamphlets, reports, and ephemera files reveal its public policies and actions, while correspondence and minutes often disclose internal negotiations and debates, illustrating the body's reactions to the law, politics, strategy, and policy decisions.

Legal files documenting court cases to which the group was a party or in which they were interested often contain supporting evidence and exhibits, transcripts, and correspondence, as well as the final rulings on the case. Stalemates during contract negotiations or refusals to recognize a collective bargaining agent

³Records groups that contain many of these typical components at the Labor Archives include the collections of the Bay Area Typographical Union, Local 21; the California Faculty Association, San Francisco State University Chapter; the Civil Service Association of San Francisco; the Hotel Employees and Restaurant Employees Union, Local 2; the International Association of Machinists, Lodge 284; the International Association of Machinists, Lodge 68; the Service Employees International Union, Local 250; and the United Electrical, Radio and Machine Workers of America, Local 1412. For more information, see the above-cited collection listings.

during an organizing campaign can result in labor actions such as strikes and employer actions such as lockouts. The records generated from such events—lawsuits, injunctions, grievances, and appeals—often reveal labor's relation to the law and the state, and frequently are parts of a union's legal files series.

Contracts negotiations, union elections, and collective bargaining agreements—the records generated by the central activity of labor unions—are almost universal union records groups. These agreements and contracts, as legally binding agreements for the parties involved, influence the next category of documents: grievances and arbitrations.

Grievances and arbitrations are another valuable class of primary source documentation. The National Labor Relations Board (NLRB) might handle these cases after 1935, but often parties in a dispute employ an independent arbitrator to create a legally binding decision. In some cases, state agencies or national boards arbitrate or mediate industrial disputes. The records generated by such proceedings—including transcripts of testimony or proceedings, supporting evidence, and final arbitration awards—are a significant historical resource in charting the impact of laws on workers, labor relations, and working conditions. Although labor councils and federations—because they are bodies made up of component unions—are not intimately involved in collective bargaining, they often compile files on the political and legal activities of their affiliates that illuminate these activities.

LABOR COUNCIL AND LABOR FEDERATION RECORDS

LARC contains the records of the San Francisco Labor Council, the Central Labor Council of Alameda County, and the California Labor Federation—collections that document the organizations' roles in legislative lobbying, electoral politics, court cases, negotiations, and arbitrations.

Important components of these collections are the records generated by committees concerned with legislation, lobbying, and political action. These committees go by different names, depending on the organization. For example, the San Francisco Labor Council Records⁴ feature primary sources generated by the organization's Law and Legislative Committee from

⁴San Francisco Labor Council Collection, 1902–1976 (predominantly 1965–1973), 56 cubic feet and 77 bound volumes. All collections cited are at the Labor Archives & Research Center, San Francisco State University, unless otherwise noted.

1962 to 1972, as well as its Committee on Political Education (COPE) from the 1960s to the mid-1970s. The documents created by these committees are central to tracing the council's positions on pending legislation and politics at various levels, ranging from the city and county of San Francisco to California ballot propositions, to state and national electoral politics and legislation. Similarly, officers' correspondence, meeting minutes, and subject files on the local union affiliates of the council provide an overview of some of the council members' contract negotiations, legal disputes, arbitrations, and other activities related to law and politics. In addition, records reflect some of the council's activities on behalf of friendly candidates and its lobbying for and against laws.

The records of the Central Labor Council of Alameda County contain materials generated by its Committee on Political Education, officers' correspondence, and subject files.⁵ These records paint a portrait of the organization's political and legal activities as well as the actions of some of its affiliates from the mid-1960s to the 2000s.

The records of the California Labor Federation (CLF) are a rich resource for legal history.⁶ One of the organization's central missions throughout its history has been to lobby for favorable labor legislation. The CLF pushed for laws promoting workers' compensation in the 1910s, unemployment insurance in the 1930s, and disability insurance in the 1940s. The organization also fought for laws supporting women's suffrage, the abolition of child labor, the eight-hour day and five-day week, and reforms in agricultural labor. The federation supported a legislative agenda that promoted worker health and safety, apprenticeship programs, worker education, minority hiring, and the right of collective bargaining—all of which required significant legal components.

The CLF collection's series include convention proceedings of the organization as well as the records of its Committee on Political Education, whose actions reflect the federation's legislative and political agenda. The federation's library subject files—a rich resource on labor legislation—cover laws governing collective bargaining, agricultural labor, the Taft-Hartley

⁵Central Labor Council of Alameda County Collection, c.1965–2003, 62 cubic feet.

⁶California Labor Federation, AFL-CIO, 1892–1997 (predominantly 1937–1977), 31 cubic feet.

Act,⁷ labor injunctions, employment, worker training, occupational safety, and child labor between the 1930s and the 1970s. Another series is devoted to state-level anti-labor initiatives from 1942 to 1958, propositions designed to limit or subvert the power of labor unions. This series documents the federation's fight against Proposition 1 (1942),⁸ which attempted to weaken unions by prohibiting them from refusing to handle "hot cargo" or stage secondary boycotts. In addition, the series contains sources from the federation's campaigns against two propositions intended to break unions' ability to make employees in a workplace join a union; Proposition 12 (1944)⁹ and Proposition 18 (1958)¹⁰ (the so-called Right-to-Work law) are included.

Other subject files will interest researchers studying civil liberties, civil rights, equal employment for minorities and women, and occupational health and safety issues.

STATE AND FEDERAL BOARD RECORDS

LARC is the steward of several collections that reveal the impact of the law and the policies of the state and federal government on workers and industry. The papers of Patrick W. Henning document the activities of the California Agricultural Labor Relations Board (ALRB) from 1975 to 1988.¹¹ The board was founded by the California Agricultural Labor Relations Act of 1975 (ALRA),¹² which affirmed the collective bargaining rights that farm workers had been denied by the National Industrial Recovery Act of 1933; the act also created a dispute-settling board (ALRB) for the state's agriculture industry similar

⁷The well-known act—the proper title is the Labor-Management Relations Act, 1947 (29 U.S.C. §141)—defined a list of "unfair labor practices" by unions and prohibited jurisdictional strikes, secondary boycotts, some types of picketing, closed shops, and donations by unions to federal campaigns. In addition, it curtailed much of the power of union shops, allowed states to pass "right-to-work" laws banning the closed shop, and allowed the federal government to obtain injunctions if a strike threatened the nation's "health or safety."

⁸Proposition Prohibiting "Hot Cargo," "Secondary Boycott." Referendum, California Labor Code §§ 1131–36.

⁹Right of Employment Initiative, Art. I §1A.

¹⁰Employer-Employee Relations Initiative, Art. I §1A.

¹¹Patrick W. Henning Papers, Agricultural Labor Relations Board, 1966–1988 (predominantly 1975–1988), 6.5 cubic feet.

¹²California Labor Code §1140, et seq.

to the one created nationally by the National Labor Relations Act of 1935.

The ALRB administers secret ballot collective bargaining elections and mediates labor disputes between unions and employers. Records in the collection include series documenting the legislative history of the ALRA, including the texts of bills, transcripts of legislative hearings, correspondence, and press releases. Subject files comprise another series, including annual reports and audits documenting the activities of the ALRB during a key period in California agriculture when the United Farm Workers was at the peak of its power and organizing efforts. More than two hundred ALRB cases make up another series, the bulk of which documents board rulings between growers and the United Farm Workers between 1983 and 1987. Typical cases contain a memo by a board member outlining the issues, a decision and order, a tally of how board members voted on the case, and dissents. In addition, decisions of an administrative law judge and detailed descriptions of labor conditions and the alleged unfair labor practices are often included in these case files. A final series of news clipping files documents contemporary events within the board's purview.

The Clark Kerr Collection¹³ is sure to be useful to researchers interested in the law, industrial relations, social history, or World War II; and the records of the Tenth Regional National War Labor Board. The National War Labor Board (NWLB)—a unit of the Department of Labor—was established by executive order during World War II and operated between 1941 and 1945 to mediate disputes between employees and employers; the board later gained powers to stabilize wages. The government eventually created twelve regional boards—San Francisco was Region 10's administrative base. This collection contains dispute cases heard by the board, providing a detailed overview of labor relations during World War II. Typical cases include orders, briefs, opinions, transcripts, exhibits, research, and correspondence. This collection includes the records of the Twelfth Regional National War Labor Board (Oregon and Washington), and small series of pre- and post-NWLB cases spanning 1925 to 1947.

The Institute of Industrial Relations, University of California, Berkeley, Arbitration Collection,¹⁴ spans the mid-1920s

¹³Clark Kerr Collection, U.S. National War Labor Board Records, 1942–1945, 154 cubic feet.

¹⁴Institute of Industrial Relations, University of California, Arbitration Collection, 1925–1950 [predominantly 1930s–1940s], 25.5 cubic feet.

through 1950. The collection features arbitration cases related to the West Coast longshore, San Francisco hotel, and Bay Area warehouse industries. Other cases illuminate labor relations during World War II, labor relations for seamen's unions during the postwar period, and the grievances of Pacific Gas and Electric workers.

Case files may contain awards, briefs, transcripts, exhibits, and correspondence and, as such, may provide a detailed view of labor relations and collective bargaining mechanisms in the industries involved. Prominent in the collection are the records of the National Longshore Board, established to arbitrate the Pacific Coast maritime strike of 1934, arbitrations from the San Francisco hotel strike of 1936, and arbitrations from the San Francisco Bay Area warehouse strike of 1939.

LABOR-RELATED ORGANIZATION COLLECTIONS

Closely related to the arbitration records of state and government bodies are the records of the Sam Kagel Collection,¹⁵ which document the activities of America's leading figure in the field of labor arbitration and mediation over a period of more than fifty years. Records from other members of Kagel's firm comprise the rest of the collection. A wealth of records from Kagel's more than nine-thousand-case career, spanning the gamut of industries and a broad geographical scope, chart labor relations and working conditions during the latter half of the twentieth century. Although the collection concentrates in the San Francisco Bay Area, California, and the West Coast, the geographical scope of the collection encompasses arbitrations in other western states like Nevada, Arizona, Utah, and Texas.

As described in the collection guide, records document Kagel's decisions as the permanent arbitrator between the ship owners of the Pacific Maritime Association and the International Longshore and Warehouse Union (ILWU), covering a period of fifty-four years. For the San Francisco Bay Area, the collection contains records relating to newspapers, hospitals, Bay Area Rapid Transit (BART), and the soft drink industry. Other arbitrations involve Bay Area city and county governments and such public employees as police and fire departments and workers at local universities. Like the

¹⁵Sam Kagel Collection, 1949–1997, 619 cubic feet. Michael Griffith, working under a National Historical Publications and Records Commission grant between 2003 and 2006, processed this collection.

Patrick Henning Collection, the Kagel Collection includes a number of United Farm Workers cases with a statewide significance. In addition, the collection contains records of cases involving the Pacific Coast pulp and paper industries, the national aerospace industry, and the National Football League. The typical case file contains the case decision, legal briefs, arguments, a transcript, exhibits, correspondence, and copies of the labor agreement.

Another group of records of great historical significance in the fields of law, labor relations, civil liberties, and civil rights is the Norman Leonard Collection.¹⁶ Spanning the 1930s through the 1960s, this collection documents the cases of the labor, civil liberties, and civil rights law firm in which Leonard was a partner.¹⁷ Highlights from the collection include records generated from cases in which the firm represented labor unions such as the International Longshore and Warehouse Union (ILWU), the National Marine Cooks and Stewards, the Cannery and Agricultural Workers Industrial Union, and the Food, Tobacco, Agricultural, and Allied Workers of America. Other clients included ILWU leader Harry Bridges (during his four trials)¹⁸ and accused Communists subpoenaed to appear before the House Committee on Un-American Activities (HUAC). The firm also represented Communist Party mem-

¹⁶Norman Leonard Collection, 1932–1968 (predominantly 1930s to 1950s), 192 cubic feet.

¹⁷Over the years, the firm included such luminaries of Left legal circles as Benjamin Andersen, George Andersen, Allan Brotsky, William Carder, Bertram Edises, Leo Gallagher, Richard Gladstein, Aubrey Grossman, Benjamin Margolis, Richard Patsey, Herbert Resner, Harold Sawyer, and Ewing Sibbett. Throughout its history the firm went through name changes according to its partners, including Gladstein, Grossman and Margolis; Gladstein, Grossman, Margolis and Sawyer; Gladstein, Andersen and Leonard; Gladstein, Leonard, Patsey & Andersen; and Gladstein, Anderson, Leonard & Sibbett. The successor firm is called Leonard & Carder.

¹⁸In two of the trials, the government aimed to deport Bridges, an Australian American, for allegedly being a Communist; in another, it attempted to denaturalize him for alleged perjury on his citizenship application. In the final trial, the government charged Bridges and two other defendants with tax violations. On appeal, one case resulted in the overturn of Bridges' perjury conviction in the Supreme Court decision *Bridges v. United States*, 346 U.S. 209 (1953). Charles P. Larowe, *Harry Bridges: The Rise and Fall of Radical Labor in the United States* (New York, 1972); Robert Cherny, "Bridges, Harry (1901–90)," in *Encyclopedia of the American Left*, ed. Mari Jo Buhle, Paul Buhle, and Dan Georgakas (Urbana, IL, 1992).



ILWU leader Harry Bridges (left) and attorney Richard Gladstein enjoy the good news. (Courtesy of Labor Archives & Research Center, San Francisco State University, photographer unidentified, Norman Leonard Photograph Collection-acc. 1985/006)

bers arrested under the auspices of the Smith Act;¹⁹ noncitizens threatened with deportation under the auspices of the 1918 Immigration Act; the 1950 McCarran Act;²⁰ and defendants affiliated with the Free Speech Movement of the 1960s.

The Asiatic Exclusion League Records²¹ reflect a less noble chapter in lobbying history; the founders formed the organization to work for the legal exclusion of Asian immigrants from the United States. The league was financed by the contributions of about two hundred affiliate organizations, more than half of which were labor unions. The remainder of its members were fraternal and community organizations, businesses, and individuals.

THE COLLECTIONS OF INDIVIDUALS

Among the most important collections at LARC are those of individuals. In particular, the collections of Arthur K. Bierman, Harry Bridges, George W. Johns, William Schneiderman, John F. Shelley, and Elaine Black Yoneda are important primary sources.

Arthur Bierman's²² records reflect his role in organizing against planned 1959 House Un-American Activities (HUAC) hearings in San Francisco when the committee subpoenaed 140 California teachers. Another series documents the aftermath of the 1960 anti-HUAC protest where the police turned firehoses

¹⁹Also known as the Alien Registration Act of 1940 (18 U.S.C. §2385), the law made it a federal crime to advocate, abet, or advise the overthrow the U.S. government and was used to destroy radical Left organizations in the U.S., especially the Communist Party U.S.A. The Leonard Collection includes records related to the firm's involvement in the Supreme Court cases *Dennis v. United States*, 341 U.S. 494 (1951); *Kremen et al. v. United States*, 353 U.S. 346 (1957); and *Yates v. United States*, 354 U.S. 298 (1957). In *Dennis*, the court upheld the convictions and the Smith Act. *Kremen* reversed the defendants' convictions based on illegally obtained evidence. *Yates* upheld the act, but interpreted the law's scope in much narrower terms and reversed the convictions. Justia: U.S. Supreme Court Center, <http://supreme.justia.com>; Christopher Waldrep and Lynne Curry, *The Constitution and the Nation: A Revolution in Rights, 1937–2002* (New York, 2003).

²⁰The act, also called the Internal Security Act of 1950 (50 U.S.C.A. §781 et seq.), required the registration of Communist organizations with the attorney general, established a board to investigate "subversives," banned members of these groups from citizenship, and provided for their indefinite detention in national emergency situations. In addition, the act provided for the exclusion and deportation of aliens dubbed "subversive." The cases of the Leonard Collection document the firm's role in representing these defendants. The collection also includes deportation cases predating the Smith Act under the auspices of the Immigration Act of 1918.

²¹Asiatic Exclusion League Records, 1905–1910, .5 cubic feet.

²²Arthur K. Bierman Collection, 1959–1969, 1.75 cubic feet.



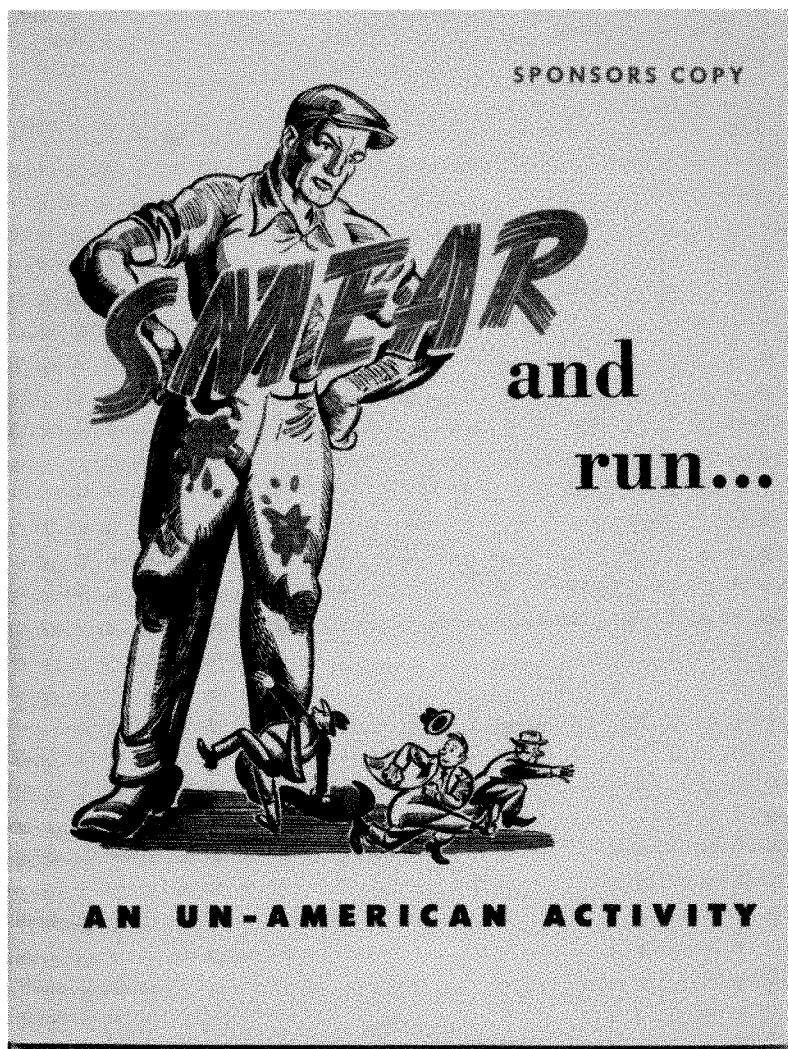
A march took place at City Hall in San Francisco on May 12, 1960 to protest HUAC hearings involving 140 subpoenaed teachers. (Courtesy of Labor Archives & Research Center, San Francisco State University, photographer unidentified, People's World Collection)

on protestors on the steps of San Francisco City Hall. Also of interest are the papers of Harry Bridges,²³ leader of the International Longshore and Warehouse Union. Some records are from the Bridges deportation trials, but the bulk is from the 1958 Bridges-Robertson-Schmidt tax case (mentioned above in the Leonard Collection section). In addition, a transcript of Bridges' testimony before the House Un-American Activities Committee in 1959 is part of the collection.

The collection of George W. Johns²⁴ contains an unpublished account of his tenure as secretary treasurer of the San Francisco Labor Council from 1933 to 1948, including descriptions of the council's policies and its role in legal and political matters.

²³Harry Renton Bridges Papers, c. 1901–2002 (predominantly 1930s–1970s), 10 cubic feet. Labor Archives & Research Center, San Francisco State University; most of the collection contains material related to Bridges' personal life, although there is a good deal of overlap with his career as the leader of the International Longshore and Warehouse Union.

²⁴George W. Johns Collection, 1951–1988, 1 cubic foot.



An anti-HUAC pamphlet attacks the committee's smear tactics.
(Courtesy of Labor Archives & Research Center, San Francisco State University, general ephemera collection)

In this way, it complements the records of the San Francisco Labor Council mentioned above.

The William Schneiderman Papers²⁵ document Schneiderman's various legal battles. Records detail the U.S. Justice Department's

²⁵William Schneiderman Papers, 1905–1985, 5 cubic feet.

1939 attempt to deport Schneiderman based on the claim that he had hidden his Communist Party ties when he applied for naturalized citizenship. The Supreme Court ruled in his favor in *Schneiderman v. United States*, 320 U.S. 118 (1943). Another legal battle ensued during Schneiderman's 1952 Smith Act trial and conviction, subsequently overturned by the U.S. Supreme Court.²⁶ Records from this trial include court transcripts, newspaper clippings, correspondence, pamphlets, petitions, newsletters, and speeches.²⁷ In addition, the collection contains a series of transcripts and newspaper clippings from Schneiderman's testimony before the California State Legislature's Un-American Committee.²⁸

The John Francis "Jack" Shelley Collection²⁹ charts Shelley's long and varied career as a leader in the Bakery Wagon Drivers, Local 484; head of the San Francisco Labor Council; president of the California State Federation of Labor; California state senator for San Francisco; United States representative; candidate for lieutenant governor; and mayor of San Francisco. The collection includes the texts of bills from Shelley's legislative career; materials from political campaigns during both his labor and public service careers; scrapbooks; and publicity files.

The Elaine Black Yoneda Collection³⁰ highlights the intersection between the life of an individual and the law and politics, as well as legal defense efforts by the Left. Records document Yoneda's work as an International Labor Defense (ILD)³¹ member involved in various labor upheavals in the 1930s, including the 1936 Salinas-Watsonville lettuce strike and the Pacific Coast maritime strike of 1934. The collection illuminates Yoneda's experiences during World War II, when she fought for her own internment in Manzanar along with her Japanese-American husband and child (Yoneda was not of Japanese descent herself). The collection also documents

²⁶Schneiderman's conviction was reversed in *Yates v. United States*, 354 U.S. 298 (1957).

²⁷Other records from Schneiderman's case are contained in the Norman Leonard Collection.

²⁸This body was also called the Tenney Committee.

²⁹John Francis "Jack" Shelley Collection, 1905–1974, 27 cubic feet.

³⁰Elaine Black Yoneda Collection, c. 1900–1991 (predominantly 1930–1988), 3.75 cubic feet.

³¹ILD was a national legal defense organization affiliated with the Communist Party U.S.A. that defended members of the working class in the courts. In 1946, ILD merged with another organization to become the Civil Rights Congress.

**Growers-Shippers Vegetable Association
SALINAS-WATSONVILLE, CAL.**



A Salinas lettuce strike poster illustrates unfair labor practices
(Courtesy of Labor Archives & Research Center, San Francisco State
University, Norman Leonard Collection-acc. 1985/006)

Yoneda's efforts on behalf of Japanese Americans who sought legal redress for their internment.

Finally, the Mooney-Billings Case Research Papers³² document the famous case of Tom Mooney and Warren Billings, two labor activists who were convicted of a San Francisco Preparedness Day bombing in 1916. Mooney was sentenced to death, and Billings was sentenced to life. A myriad of irregularities plagued the trial, and the case became a cause célèbre for the next several decades for labor activists and civil rights supporters, who believed the convictions were a "frame-up." The collection is composed predominantly of legal records from the case, including thirty-five bound volumes of court records, habeas corpus petitions to the California State Supreme Court, petitions for pardon to the governor of California, and court transcripts. Other documents include correspondence, an unpublished book manuscript on the case written by Thomas McDade, and legal statements.³³ Pamphlets and photographs relating to the case comprise the remainder of the collection.

ORAL HISTORY COLLECTION

LARC's Oral History Collection features taped interviews and transcriptions on topics pertinent to legal and political history from the twentieth century to the present.³⁴ Other collection highlights include oral histories with San Francisco State professor and union leader Arthur Bierman describing his fight against HUAC; Madeline Mixer's recollections of her career as regional director of the Department of Labor's Women's Bureau in San Francisco from 1962 to 1996; and Tom Nicolopoulos' account of his career in the California State Conciliation

³²Mooney-Billings Case Research Papers, 14.5 cubic feet. Labor Archives & Research Center, San Francisco State University. Partially processed. This collection was donated by the American Heritage Center at the University of Wyoming. This group of papers is an artificial collection that combines the records of at least two individuals relating to the Mooney-Billings case: Warren Billings and Thomas M. McDade. Estolv E. Ward also may have collected or created some of the later records in the collection. Because there were multiple records creators, the collection's provenance is not completely certain.

³³Ward's contribution to the collection is not entirely clear, but he probably used it in writing his 1983 biography of Tom Mooney. Ward, Estolv Ethan, *The Gentle Dynamiter: A Biography of Tom Mooney* (Palo Alto, CA, 1983).

³⁴For the purposes of this article, I discuss only those oral histories that are unique to the Labor Archives and are sponsored by LARC. The full collection includes copies of recordings or transcriptions from various other institutions, including the Regional Oral History Office at UC Berkeley, the California Historical Society, and the International Longshore and Warehouse Union Library.

Service between 1948 and 1976. In his interview, Don Watson remembers his career as a labor activist and officer in the ILWU and the Marine Cooks and Stewards Union, and the impact of the coast guard's Port Security Program on seamen screened as "security risks" in the 1950s.³⁵

Finally, labor and civil rights attorney Allan Brotsky's interview covers many major labor and political issues from the 1940s to the present. Brotsky remembers his role as a founder of the American Law Students' Association (affiliated with the National Lawyers Guild). Other topics include his career as counsel for various labor unions (including the United Auto Workers, United Electrical and Allied Workers Radio and Machine Workers of America, the ILWU, the Marine Cooks and Stewards, and the Marine Engineers Beneficial Association) in court cases and before the NLRB. Brotsky also represented labor leaders accused of being Communists before the federal grand jury, and other clients called before the U.S. Senate Internal Security Subcommittee³⁶ in San Francisco in the 1950s. Employed in several San Francisco Bay Area law firms, including Gladstein, Andersen, Resner, & Sawyer,³⁷ Brotsky represented civil rights protestors arrested in the 1964 San Francisco Sheraton Palace Hotel sit-ins, as well as clients who picketed Richmond, California, Lucky stores in 1949. In addition, Brotsky recalls defending members of the Black Panther Party and peace activists during the 1960s.

PAMPHLET, EPHEMERA, AND PERIODICAL COLLECTIONS

The Labor Archives pamphlet, ephemera, and periodicals collections are so large, their contents so varied, that a brief overview must suffice. The pamphlet and ephemera collections contain an array of print material, including pamphlets,

³⁵The coast guard's Port Security Program was spawned by the 1950 Magnuson Act, 64 Stat. 427 (1950), which empowered the president to order the creation of the program. Under the aegis of the program, the coast guard screened seamen they dubbed security risks based on "subversive activity." This was used to deny employment to many outspoken and Left-leaning merchant marines until the Ninth Circuit Court decision *Parker v. Lester*, 227 F. 2d 708, 717 (Ninth Circuit 1955).

³⁶The committee, chaired by Nevada senator Pat McCarran during the 82^d Congressional session of 1951–53, was an outgrowth of the McCarran Act of 1950.

³⁷This is one incarnation of the firm of which Norman Leonard was a part. There is some overlap between the topics covered in this interview and the records of the Leonard Collection.

flyers, mailings, and publications on a myriad of topics related to labor, civil rights, civil liberties, worker health and occupational safety, equal opportunity, and the Left. As such, they constitute a unique and convenient resource for scholars of legal, social, political, and economic history, addressing cause célèbre court cases and legal issues, including the California free speech fights by the Industrial Workers of the World, the Tom Mooney-Warren Billings case, and the Sleepy Lagoon case, the case of the Scottsboro Boys, the Smith Act trials, and the various trials of Harry Bridges. The collections feature a broad range of sources from an array of organizations, including labor unions and labor bodies, the Industrial Workers of the World, various liberal and radical political parties, the American Civil Liberties Union, the National Association for the Advancement of Colored People, and the Union Women's Alliance to Gain Equality. Various publications of rightwing, conservative, or anti-labor organizations add another perspective to some topics.

Finally, the Labor Archives' periodicals collection contains publications of labor organizations throughout California, documenting the activities of working people and their organizations, and articulating their concerns. The types of publications in the collection range from the periodicals of local labor unions and county labor councils throughout California to the publications of statewide labor organizations such as the California Labor Federation and the California Congress of Industrial Organizations. In addition, the collection contains some non-labor San Francisco newspapers from the late nineteenth and twentieth centuries for the convenience of researchers.

The topical scope of the collection of the Labor Archives & Research Center is broader than many researchers of legal history might suspect. The collection—though primarily focused on the history of labor unions in the San Francisco Bay Area—features a plethora of primary source materials that offers scholars of the West insights into the legal, political, social, and economic history of the region.

THE FEDERAL GOVERNMENT AND CITIZENSHIP: ARCHIVAL RESOURCES AT THE NATIONAL ARCHIVES IN LAGUNA NIGUEL

GWEN E. GRANADOS

As an archivist at the National Archives' Pacific Region, I have had the opportunity to witness countless "aha" moments as researchers and students discover the stories of people documented in our holdings. The mission of the National Archives is to "ensure continuing access to the essential documentation of the rights of American citizens and the actions of their Government." This statement may immediately bring to mind the Emancipation Proclamation or the policies of J. Edgar Hoover's FBI; however, in the regional archives, it refers to the effects of national policies on states, municipalities, and individual people in a particular geographic area.

When I was a graduate student, one of my professors told me that I had to visit the National Archives in Washington, D.C., to complete research I was doing on a local Indian tribe—that it was essential. Since coming to the National Archives in Laguna Niguel, California, I have discovered that my professor was, indeed, correct that the research could be complete only with a trip to the National Archives, but I also discovered that he overlooked a rich source of records—the regional archives—that documented the local effects of Indian policy on that tribe.

Researchers have come to visit us following a pilgrimage to the building in downtown Washington, D.C., or to our extensive facility in College Park, Maryland. Many of them are surprised at the value of the records in Laguna Niguel. They are not aware that these regional repositories contain primarily the

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records created by an agency's central office. The regional archives system holds records created by the field offices of those agencies. The local records reveal something that the records of the central offices of the federal government often cannot—the unique personalities of individual agency employees working in the field, and the street level reactions to the national policies they managed.

By its very nature, the National Archives holds records that document the impacts of government on its citizens. In the United States, citizens have the right to vote, which influences how government operates; citizens have the right to petition the government for a redress of grievances; and citizens have an expectation that the government they elect will represent them in the policies that it produces. For those reasons, the most basic relationship in our records is the one between the government and its citizens.

In this article, I will reveal how some of the lesser-known holdings at the National Archives' Pacific Region in Laguna Niguel illuminate issues of citizenship, and how some of our better-known holdings can be utilized to reveal the impact of events that have been given very little treatment in historical scholarship. In looking at these resources, I am only scratching the surface of our holdings, which measure in excess of 35,000 linear feet of records. Each of the following sections will deal with a specific group of Americans and how their interaction with the federal government changed through the creation and enforcement of laws and government policies.

Our records document the difficulties that different groups of citizens have had in maintaining their rights as citizens and that others have had in their struggle to gain citizenship. Records of federal agencies such as the Immigration and Naturalization Service, the Selective Service System, and the War Relocation Authority lend support to the numerous court cases filed in the United States district courts by Japanese-Americans seeking to reestablish their rights as American citizens following World War II and to protest the government's treatment of them. Records of the Immigration and Naturalization Service, filed before the district courts, document the stories of women regaining their citizenship after losing it due to the passage of the Act of March 2, 1907, commonly known as the Expatriation Act, because they had married foreign nationals (prior to the enactment of the Nineteenth Amendment, ratified in 1920, granting women the right to vote). And the records of the Bureau of Indian Affairs bring light to the complex relationship between Native American peoples and the paternalistic bureaucrats who oversaw them, as both the government and the people themselves sought to define them as wards and as citizens.

'TIS NOBLER IN THE MIND—JAPANESE-AMERICAN CITIZENSHIP AND WORLD WAR II

The internment of Japanese immigrants (Issei) and their Japanese-American children (Nisei) during World War II is a well-documented story. Numerous researchers have looked at the records of the War Relocation Authority (WRA) housed at the National Archives in Washington, D.C., and have written about various aspects of the WRA's treatment of internees and their reactions to internment. Scholars and family historians regularly access our holdings of enemy alien case files compiled by the Immigration and Naturalization Service, which describe the removal of the large community of Issei who were living in Southern California at the time of the Japanese attack on Pearl Harbor on December 7, 1941.

Often overlooked are a number of individual cases filed in the U.S. district courts in Southern California and Arizona by and against Nisei, which document the strained relationship that existed between them and the federal government. Between the stories of drug smugglers and postal fraud, a series of criminal cases filed in Arizona document the resistance to the Selective Training and Service Act of 1940 by young Japanese-American men sent to live in the heat and aridity of the WRA camp in Poston. Waiting between the stories of copyright infringement and price regulation violations are hundreds of civil cases filed by Nisei who lost their American citizenship either unknowingly or through coercion. Exhibits in these cases document the philosophical differences between the WRA, the Department of State, and the Justice Department. The transcripts of proceedings reveal, in the words of individual internees, bureaucrats, and civil rights attorneys, the events that surrounded the draft resistance movement at Poston and the renunciations at Tule Lake, California. These records have been used sparingly by researchers looking to discuss the legal ramifications of internment.

By June 1942, 110,000 Japanese and Japanese Americans had been resettled in camps administered by the newly created WRA: Manzanar and Tule Lake in California; Gila River and Poston in Arizona; Minidoka in Idaho; Heart Mountain in Wyoming; Granada in Colorado; Topaz in Utah; and Rohwer and Jerome in Arkansas. By the end of 1942, the Issei who had been labeled enemy aliens had been relocated with their families into the WRA camp system.

In mid-1943, the WRA, in conjunction with the War Department, instituted a program to review the loyalty of all internees. They had internees complete a Statement of United States

Citizens of Japanese Ancestry (Selective Service form 304A). These questionnaires were meant to determine whether young Nisei men were willing to join the army and whether Nisei women and Issei would be able to work in war-related industries. Two questions in particular were meant to reveal the loyalties of internees: question 27 asked, "Are you willing to serve in the Armed Forces on combat duty wherever ordered?" and question 28 asked, "Will you swear unqualified allegiance to the United States of America and faithfully defend it from any or all attacks from foreign or domestic forces and forswear any allegiance to the Japanese Emperor, or to any other power, foreign government, or organization?" The questions created a problem for the Issei. Because they had been restricted from becoming naturalized citizens of the United States, a "yes" answer to question 28 would essentially make them people without a country, while a "no" answer would make them appear disloyal to their adopted land.¹

Nisei were aware of the inconsistencies between the values espoused by the American system and the treatment they received following the bombing of Pearl Harbor. Osamu Nakata, a Nisei interned at Poston, attached a sheet to his Statement of United States Citizens of Japanese Ancestry, which contained his qualified answers to those questions:

My answer to question no. 27 and 28

YES:

If all the "CONSTITUTIONAL RIGHTS" are returned to myself, my father, my mother, my brother, my sister, and to rest of relatives [sic] regardless of color, race or creed prior to my induction into the U.S. Army. I would [be] more than willing to serve in the U.S. Army or any branch of service provided that the U.S. government give what I have asked for and pay what my family has lost because [of] the evacuation [sic] from the west coast.

¹United States Department of the Interior, War Relocation Authority, *Impounded People: Japanese Americans in the Relocation Centers* (Washington, DC, 1946), 99, 108; located in case 10303, *Miyoko and Norio Kiyama v. John Foster Dulles*, Civil Case Files, United States District Court for the Central Division of California (Los Angeles), record group 21, Records of the District Courts of the United States, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA.

I am a loyal citizen [of] the U.S., am put in a concentration camp and not permitted to have my civil liberty and rights just like other citizens of the U.S. just because of my race. It is truly undomocratic [sic] in this country, that first started the true democratic [sic] form of government. And I would be ashame[d] to bare arms for a country that would not follow the laws of its own country.

If my family are not returned this "CONSTITUTIONAL RIGHTS" of the U.S. I will not serve in the armd [sic] forces of the U.S., this does not mean that I will not completely serve the armd [sic] force of the U.S. but will serve half way, but I am willing to preserve the principles [sic] of democracy [sic] and freedom by working in a defense plant or by operating a farm or in any other form to help the U.S. to win this war providing that the U.S. government will provide the fund.

Very truly yours,
Osamu Nakata²

The National Archives in Laguna Niguel holds nearly two hundred of these statements, filed with the Selective Service System, which describe the education, military service, family relationships, and organizational membership, including political party affiliation, of men born in the United States—in Arizona, California, Utah, Michigan, Oregon, Washington, and the territory of Hawaii.

The Selective Service System reclassified citizens of Japanese descent to 1-A—eligible for the draft—in January 1944. In testimony before the district court in Los Angeles, Dillon Meyer, director of the WRA, told the court that he had great hope for the Nisei when they were reinstated to 1-A classification:

Our position from the beginning had been very strongly one of allowing Nisei American citizens of all kinds to become members of the armed forces, without restriction or without discrimination. We were very happy when this was announced. . . . [W]e had preferred

²Statement of United States Citizens of Japanese Ancestry for Osamu Nakata, May 31, 1944, Yuma County Local Board No. 1 [2/3], Statements of United States Citizens of Japanese Ancestry, State Director of Selective Service, Arizona, record group 147, Records of the Selective Service System, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA.

My answer to question no. 27, and 28

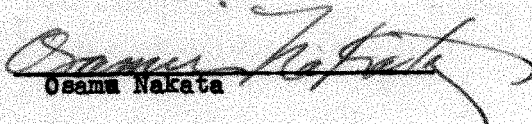
YES:

If all the "CONSTITUTIONAL RIGHTS" are returned to myself, my father, my mother, my brother, my sister, and to rest of relatives regardless of color, race or creed prior to my induction into the U.S. Army. I would more than willing to serve in the U.S. Army or any branch of service provided that the U.S. Government give what I have asked for and pay what my family has lost because of the evacuation from the west coast.

I am a loyal citizen of the U.S., am put in a concentration camp and not permitted to have my civil liberty and rights just like other citizens of the U.S. just because of my race. It is truly undemocratic in this country, that first started the true democratic form of government. And I would be ashamed to bare arms for a country that would not follow the laws of its own country.

If my family are not returned this
"CONSTITUTIONAL RIGHTS" of the U.S.
I will not serve in the armed forces of
the U.S., this does not mean that I
will not completely serve the armed
force of the U.S. but will serve half
way, but I am willing to preserve the
principles of a democracy and freedom
by working in a defence plant or by
operating a farm or in any other form
to help the U.S. to win this war
providing that the U.S. government will
provide the fund.

Very truly yours,


Osamu Nakata

Nisei internee Osamu Nakata attached this sheet to his "Statement of United States Citizens of Japanese Ancestry," qualifying his answers to questions about his allegiance to the United States and his willingness to serve in combat in the armed forces. (Courtesy of National Archives-Pacific Region)

... instead of developing a special unit that they should be allowed to volunteer and come into the Army as anyone else would do.³

³Reporter's transcript of proceedings, July 10, 1956, p. 14; case 10303, *Miyoko and Norio Kiyama v. John Foster Dulles*, Civil Case Files, United States District Court for the Central Division of California (Los Angeles), record group 21, Records of the District Courts of the United States, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA.

For Nisei living in the camps, the reclassification was an opportunity to express their frustration over the differences between American values and actions. George Fujii posted handbills around the Poston camp calling for the Nisei to take the opportunity to press for their rights. The handbills, which called for resistance against the draft, were posted throughout the camp at the recreation hall, the canteen, and other merchandise stores:⁴

TO THE GENTLEMEN OF 17 YEARS TO 38 YEARS
OF AGE

As you know fellow Americans, at last they did recognize and realize that we are Americans. We are going to be drafted soon, just like an American outside enjoying the freedom and liberty. But, don't you think they should reconsider the step that they had taken?

As we believe that Mr. Roosevelt's speech at the Congress was not merely an excuse to draft us to soldier's [sic] and die in vain, we are demanding the following as an American Citizen:

1. Personal Apology from Gen. Dewitt regarding his statement "Jap is Jap" and be expelled from his office. We also want apology from Mayor Bowron and Gov. Warren, and American Legion of Cal.
2. Freedom, Rights and Privilege [sic] should not be denied in California, militarily, economically, and politically.
3. Open barb-wire and withdraw the Guard-duty of M.P.
4. Such signs as "No Jap," "You Rat," "No Orientals or Colored Admitted" and etc. which were familiar in California, must be taken down throughout the U.S.A.
5. No discrimination upon the Japanese securing occupations.

⁴Reporter's transcript of proceedings, March 2, 1944, pp. 6-7, case 529, *In the Matter of the Application George Fujii for a Writ of Habeas Corpus*, Civil Case Files, United States District Court of Arizona, Phoenix Division, record group 21, Records of the District Courts of the United States, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA.

6. Every opportunity much be given to the Japanese soldier for advancement in the Air Corps, in the Army, and in the Marine Corps.
7. Japanese soldier must be mixed with other Caucasian soldier to fight side by side.

VOICE OF NISEI⁵

The sedition case against George Fujii is fairly well known. Less well known are the 160 criminal violations of the Selective Training and Service Act of 1940 docketed before the United States District Court in Phoenix, mostly from Poston, as Nisei refused to report for induction in 1944 and 1945.

A letter written by Yasuto Fujioka to his local Selective Service Board in Santa Ana, California, was filed as an exhibit in one of those cases; it reveals the end of his faith in the American system:

I have received my change of classification from 4-C to 1-A, and at this time, I would like to appeal for retaining my classification of 4-C on the following grounds.

I am 19 years of age, and have just graduated from the high school in this center. Thus, I have completed all of my education in this country. I have never been to Japan and my parents have been pioneer residents in this country for more than thirty years. Even after several decades of hardships and struggles to establish themselves as respectful residents, they are looked upon as enemies, fugitives and saboteurs. It is their sincere belief that they cannot, and will not, be accepted as residents of this country.

I have been manhandled and have been made to dwell in a location unfit for human inhabitation. From this ordeal, my mother has been taken seriously ill by the unaccustomed hardship brought upon her. My parents have expressed their desire to repatriate to Japan and after much discussion, I have filed our applications. I am the second to the oldest in my family and I desire to fill my supreme obligation, that of caring for my aged parents. Furthermore, I am confident that if I remain in this country, I cannot foresee a future of equality,

⁵Indictment, June 6, 1944, case 6781, *United States v. George Fujii*, Criminal Case Files, United States District Court of Arizona, Phoenix Division; record group 21, Records of the District Courts of the United States, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA.

a full execution of my civil rights or freedom from discrimination, but I know that in Japan I will be treated and respected as one of its subjects because I possess a dual citizenship, which makes me [a] Japanese citizen.

From the foregoing facts, you can see that my heritage of United States citizenship will be of little value to me since I am going home to Japan.⁶

The response from the Selective Service Board in Santa Ana came a few weeks later, denying Fujioka's appeal. Ridley Smith, the chairman of the board stated,

It is with regret that this Board notes that you state that you have been made to dwell in a "location unfit for human inhabitation." We seriously question this, and are quite sure that any location in which you have had to live in the United States is much more habitable than that occupied by our American prisoners in Japan. It is also with regret that we observe you[r] desire to repatriate to Japan, and that you feel your United States citizenship will be of little value to you, and that you have no intention of availing yourself of your American citizenship. In view of the above, it is suggested that if you wish to forfeit your American citizenship you do a good job of it by going before a Superior Court . . . in the state of Arizona which is authorized to naturalize citizens and take an oath of renunciation of your American citizenship. You may do this through the nearest Immigration and Naturalization Service office, and they will see that it is put on the calendar.

In passing, it is the observation of this Board that we see eye to eye on one thing: That dual citizenship is not desirable. Therefore, we trust you will choose one or the other and make it permanent. In our opinion you are making a sad mistake, but it is your decision, not ours.⁷

⁶Letter from Yasuto Fujioka to Selective Service Board No. 172, June 29, 1944, case 7071, *U.S. v. Ben Yumen, et al.*, Criminal Case Files, United States District Court of Arizona, Phoenix Division; record group 21, Records of the District Courts of the United States, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA.

⁷Letter from Ridley C. Smith to Yasuto Fujioka, July 3, 1944, case 7071, *U.S. v. Ben Yumen, et al.*, Criminal Case Files, United States District Court of Arizona, Phoenix Division; record group 21, Records of the District Courts of the United States, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA.

This period saw an increase in the number of Issei and Nisei who requested applications for repatriation to Japan. Families were torn apart as some Nisei dutifully answered negatively to the two loyalty questions and requested that they be repatriated with their parents. For these individuals, the consequences were serious, since they were poised to lose their American citizenship and be deported to a country they had never seen.⁸ Others, against the desires of their parents, answered "yes" to the loyalty questions. Some Nisei answered "no" to protest the draft. Many answered "no" in response to a rumor that those who answered "yes" would be paroled from the camps into a still-hostile American population.

Anthropologists and WRA employees who wrote reports on the effects of WRA policy on the residents of the camps (several of these reports were filed as exhibits in cases before the district court by ACLU attorneys) noted numerous factors hidden behind the simple "yes" or "no" answers provided on the questionnaire. Records of the Colorado River Irrigation Project, which was managed by the Office of Indian Affairs, contain information about the effects of these questionnaires on the population of the camp at Poston, which was operated under agreement by Indian Affairs. These records and reports document that about 8,500 internees answered negatively to the loyalty questions. That number belies the complicated decisions made by the internees. In spring 1943, the WRA used these questionnaires to divide internees in a program of "segregation."⁹

In a press release received by the Poston administrators, Dillon Meyer described the groups designated for segregation:

During February and March of this year [1943] a registration program was conducted at all relocation centers for the purpose of accumulating information on the background and attitudes of all adult residents. . . . After the results of registration were compiled and analyzed, W.R.A. began a program to separate from the bulk of the population at relocation centers, those evacuees who have indicated by word or action that their loyalties lie with Japan. . . .

1. Those who requested repatriation or expatriation to Japan;
2. Citizens who refused during registration to state unqualified allegiance to the United States; and aliens who refused to agree to abide by the laws of the United States;

⁸United States Department of the Interior, *Impounded People*, 111.

⁹*Ibid.*, 129–30.

3. Those with intelligence records or other records indicating that they might endanger national security or interfere with the war effort;
4. Close relatives of persons in the above three groups who expressed a preference to remain with the segregants rather than disrupt family ties.¹⁰

As a result of the transfers, the Tule Lake center became home to the most pro-Japanese internee population. A group of pro-Japan extremists called the *Sokuji Kikoku Hoshidan*, or Society to Serve the Emperor on Speedy Repatriation, became increasingly influential. On July 1, 1944, Congress passed an amendment to the Nationality Code permitting American citizens to renounce their citizenship if they wished to make "a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the United States shall be in a state of war and the Attorney General shall approve such renunciation as not contrary to the interests of national defense."¹¹

The Hoshidan began to push Tule Lake Nisei and Kibei (Nisei who had lived in Japan and returned to the United States) who were concerned over the tenuous circumstances that surrounded their future as American citizens. On December 17, the Western Defense Command withdrew the Japanese exclusion orders. Simultaneously, the WRA announced that it would be liquidating all relocation projects within a year. Faced with the likelihood that they would be released and resettled back into the hostile population of their former communities on the West Coast, and that they would now be eligible for the draft, many young Nisei men rushed to join the ranks of the Hoshidan, which became increasingly aggressive

¹⁰Office of War Information, War Relocation Authority Press Release, November 13, 1943, Japanese Settlement, records of R.H. Rupkey, project engineer, 1938–1945, Irrigation District #4, Colorado River Irrigation Project, record group 75, Records of the Bureau of Indian Affairs, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA.

¹¹United States Department of the Interior, War Relocation Authority, *WRA: A Story of Human Conservation* (Washington, DC, 1946), 71–72, located in case 10303, *Miyoko and Norio Kiyama v. John Foster Dulles*, Civil Case Files, United States District Court for the Central Division of California (Los Angeles), record group 21, Records of the District Courts of the United States, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA.

in its attempts to convince Tule Lake residents to renounce their American citizenship.¹²

During the winter and spring of 1944 and 1945, the Department of Justice received approximately 5,700 applications for renunciation of citizenship; more than 95 percent of these were from the Tule Lake center. Many of these applications are filed as exhibits in the cases of individual Nisei. The application was a relatively short form filled with basic information and bureaucratic jargon. It documented place of birth, education, military service, and overseas travel. Information given by Tsutako Sumi documented that she was born in Los Angeles in 1914; she had traveled to Japan when she was a child and attended school there, returning to the United States in 1931; her closest relatives were her husband Saichi, who was a citizen of Japan, her three American-born children, and her brother. A hearing, conducted by a representative of the Department of Justice, followed her application. The transcript of Sumi's hearing on February 1, 1945 was short:

Q Why do you want to renounce your citizenship?

A My father is in Japan and is old and I have to go back.

Q Is that the only reason?

A I am going back with my husband.

Q Is that the only reason you are renouncing your citizenship, because your husband is going back?

A I was in Japan a long time so I want to go back. . . .

Q Do you understand that if you give up your citizenship you can never get it back?

A Yes.

Q If you do that and go back to Japan you can never come back to this country.

A I know. My father is old and can't work so I just have to go back.

¹²United States Department of the Interior, *Impounded People*, 186–87; Dorothy Swaine Thomas and Richard S. Nishimoto, *The Spoilage* (Berkeley, 1946), 333, located in case 10303, *Miyoko and Norio Kiyama v. John Foster Dulles*, Civil Case Files, United States District Court for the Central Division of California (Los Angeles), record group 21, Records of the District Courts of the United States, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA.

Q You can still go back without giving up your citizenship.

A I don't care, I want to go back anyway.

(Interpreter reads and explains Renunciation of U.S. Nationality form to Applicant)

(Applicant signs Renunciation of U.S. Nationality form)¹³

Joseph Shevlin, the Department of Justice attorney who conducted the hearing, stated in his affidavit in the case that, "having satisfied myself that such renunciation was the independent act of said plaintiff, I recommended approval thereof as not being contrary to the interests of national defense." Most of the applications were approved in this manner, and the final number of Tule Lake Nisei and Kibei who renounced was 70 percent of the total camp population.¹⁴

Following the war, approximately 2,300 Tule Lake internees appealed to the federal courts to rescind their renunciations. These cases remain relatively untouched by scholars. Hundreds of cases were filed in the U.S. district courts in Los Angeles and San Diego between 1946 and 1956. The case transcripts document stories of internees' renunciations made under duress and coercion through a combination of factors: pressure from the Hoshidan and other pro-Japanese factions; pressure by Issei parents; fear of community hostility outside of the camps; and a belief that they would be deported anyway and needed to renounce their American citizenship to avoid reprisals when returned to Japan.¹⁵

Martha Kozuki and her husband, residents of Tule Lake, were afraid of the pro-Japanese faction at Tule Lake and were fearful that they would be separated from their family and from each other. Martha became pregnant while she was at the Gila River camp; her father died while he was interned at Jerome, and as a result she had become frantic and emotional, especially at the thought of being separated from her mother and her husband. When she testified regarding the decision to renounce

¹³Exhibits B and C, affidavit of Joseph J. Shevlin, March 20, 1947, case 5945, *Albert Yuichi Inouye, et al. v. Tom C. Clark, et al.*, Civil Case Files, United States District Court for the Central Division of California (Los Angeles), record group 21, Records of the District Courts of the United States, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA.

¹⁴*Ibid.*; United States Department of the Interior, WRA: *A Story of Human Conservation*, 72; and Thomas, *The Spoilage*, 357.

¹⁵William W. Bishop, Jr., "Tadayasu Abo et al. v. Clark," *The American Journal of International Law* 42 (October 1948): 941.

her U.S. citizenship, she said, "We decided we had to renounce, because at that time when this renunciation came up, the pressure group was very active and they had threatened my husband and I that all of us should renounce, and if we don't, well, something would happen to us."¹⁶

Martha's husband, Kinji testified that the pressure of the *Seinen-dan Hokoku*, a group related to the Hoshidan, was strong:

They came around urging us to renounce our United States citizenship, and told us that we will not be able to accompany our alien parents to Japan unless we renounced our United States citizenship, and if we didn't renounce our United States citizenship, upon arrival to Japan we would be punished severely, or even before leaving this country, and they said that our United States citizenship was worthless due to conditions which us United States citizens went through, and they ordered us to renounce our United States citizenship.¹⁷

The organization, Kozuki was told, was meant to assist Nisei in learning the customs of Japan to prepare them for deportation with their parents. When he was approached to join, he was told "that the one who did not join will be treated as dogs, and the one who opposed the organization, that they had an underground group that would take care of that certain person for opposing the organization."¹⁸

He also testified that his mother, who was very ill and wanted to return to Japan, pleaded with him. "She told me that I had better, because I might be punished or mistreated, and in that way I might even lose her and even the security of my wife and son."¹⁹

Miyoko Kiyama, also a resident of Tule Lake, testified to the pressures she and her husband felt: "When I was asked whether I was loyal to the United States, I have answered the opposite, and as to the other question, I always answered it was too bad for me, it was too bad for me." When she was asked, "Why did you answer the questions in that way?" she responded, "If I did

¹⁶Reporter's transcript of proceedings, December 5 and 6, 1956, 121, case 14138, *Kinji John Kozuki, et al. v. Dean Acheson*, Civil Case Files, United States District Court for the Central Division of California (Los Angeles), record group 21, Records of the District Courts of the United States, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA.

¹⁷*Ibid.*, 21–22.

¹⁸*Ibid.*, 18.

¹⁹*Ibid.*, 20, 23.

not answer the questions which looked bad for me, why, the renunciation will probably not go through, and if it doesn't go through, then the people would think that I didn't answer the way [I] should, and then the neighbors may threaten me and my family. And my husband has told me to answer it the way he did. We were both afraid something may happen to our family if we didn't do it."²⁰

Following their hearing regarding their desire to renounce their citizenship, Miyoko's husband was removed from Tule Lake, leaving Miyoko and their two children in the camp. "My husband was taken away and I was left back with my two children, and I was at that time pregnant. And two or three women came to me and said, 'Since your husband is taken away, it would be better for your sake that you will also have your name entered in the women's organization which is similar to the husbands'.' And I was afraid at that time because they told me that I will be safer to have my name in the organization, and I did. The reason is that I was afraid."²¹

These cases are only examples. The district court records contain cases filed by Nisei who had lost their citizenship while living in Japan during the war and cases challenging the exclusion orders. Many of these cases contain large transcripts and detailed briefs, as well as exhibits.

"I DO" AS AN OATH OF RENUNCIATION—AMERICAN WOMEN AND THEIR ALIEN HUSBANDS, 1907–1922

Miyoko Kiyama, and other women like her, agonized over the decision to renounce their U.S. citizenship during World War II; other American women, only thirty-six years before, had lost their citizenship through marriage. Records contained within our holdings of the United States district courts of Arizona and Southern California detail the route by which these women regained their citizenship. The process was documented in the most bureaucratic format—a government-produced form. Although these were seemingly mundane, consider that nearly four thousand forms were filed in the Los Angeles court; several hundred more were filed in Phoenix, Tucson, and San Diego; and countless other women were required to complete the traditional naturalization process to regain their citizenship.

²⁰Reporter's transcript of proceedings, July 10, 1956, 66, case 10303, *Miyoko and Norio Kiyama v. John Foster Dulles*.

²¹*Ibid.*, 67.

The effects of the Act of March 2, 1907, more commonly known as the Expatriation Act, on American women was dramatic. Section 3 of the act stated "that any American woman who marries a foreigner shall take the nationality of her husband."²² The intention of the law was to limit the political influence of foreign-born men in an increasingly nativistic and isolationistic America. Reacting to the tandem influences of an upsurge in "dollar princesses"—daughters of newly rich American industrialists who married European royalty—and growing numbers of immigrants from southern and eastern Europe, Congress sought to punish women who were not interested in keeping America for Americans. Of course, all rights could be reinstated upon termination of the marriage either by death or divorce, or if the woman's husband became a naturalized American citizen. The effect was that average American women lost their citizenship when they married foreigners.

The law was repealed in 1922 by the Cable Act, but, for those women who had married between March 2, 1907, and September 22, 1922, American citizenship was not automatically reinstated. Ironically, the records show that many of the women who sought repatriation had not married royalty but average men from Great Britain, Canada, Germany, and Mexico, countries that were not a part of the eastern wave of immigrants. That the law was repealed in 1922 is likely due to the passage of the Nineteenth Amendment, granting suffrage to American women.

In considering the naturalization petition of Mollie Lynch, a native of Kentucky who had married an Irishman, Judge William P. James of the United States District Court for the Central Division of California in Los Angeles debated the paternalistic intent of the law:

If . . . citizenship of the wife is to be considered as one of the things which by her marriage is "incorporated and consolidated" into that of the husband, then in the view of the judges, stating the statute to be declaratory of the common law, is right beyond question. But the Supreme Court of the United States [in *Shanks v. Dupont*] early decided that civil rights only were affected by the marriage. "The incapacities of *femes covert*, provided by the common law, applied to their civil rights and are for their protection and interest. But they do not reach their

²²National Archives Microfilm Publication M2033, *Laws Relating to Immigration and Nationality, 1798–1962*, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA.

political rights nor prevent their acquiring or losing a national character."²³

Prior to 1936, women who wished to regain their citizenship were required to complete the same naturalization process as immigrants. In 1936, divorced or widowed women were allowed to repatriate by simply submitting forms documenting their oaths of allegiance to the United States before the district court. By 1940, all women who had lost their citizenship under the 1907 law could repatriate by completing an oath of allegiance. The records of the United States district courts of Los Angeles and Arizona contain a large number of these Immigration and Naturalization Service forms, entitled "Application to Take Oath of Allegiance to the United States Under the Act of June 25, 1936, and Form of Such Oath," which document the reality of these cases.

Housewife Beatriz Barraza de Gallego, born in Tucson, Arizona, married Juan Gallego, a native of Mexico, thereby losing her American citizenship on March 4, 1920. By 1930, this "dollar princess" who had, according to the 1920 federal census, formerly been a domestic servant, was a clerk in a grocery stand in Tucson.²⁴ Mae Lyness swore that, because of her marriage to Joseph Lyness, a native of Canada, she lost her citizenship and "became an alien under the federal laws as they existed at that time."²⁵ And housewife Helen Winter, born in New York City, married Austrian George Winter, a

²³Opinion, *In re Petition for Naturalization for Mollie Lynch*, 24658, Contested Naturalizations, 1916–1991, United States District Court for the Central Division of California (Los Angeles), record group 21, Records of the District Courts of the United States, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA.

²⁴Application to Take Oath of Allegiance to the United States, R-41, Beatriz Barraza de Gallego, July 7, 1941, Naturalization Repatriations, 1936–1964, United States District Court of Arizona, Tucson Division, record group 21, Records of the District Courts of the United States, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA; and National Archives microfilm publication T626, *Fifteenth Census of the United States*, 1930, roll 61.

²⁵Affidavit of Mae Lyness, November 20, 1936, R-29, Repatriation Oaths and Petitions, 1936–1971, United States District Court for the Central Division of California (Los Angeles), record group 21, Records of the District Courts of the United States, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA.

factory manager, on May 19, 1918, thereby losing her American citizenship.²⁶

Only months before George and Helen Winter married, the United States entered into World War I. Because Helen was married to a citizen of the Austro-Hungarian Empire, she acquired not only his nationality but his designation as an enemy alien. These women, like their husbands, were required to register with the federal government on yet another form, the "Registration Affidavit of Alien Enemy Female," created by the Department of Justice. The affidavits, which contained information about employment and military service for the men and the names of their parents, brothers and sisters, and, in the case of the women, the citizenship status of their husbands, were given before government employees such as the local postmaster and filed in the United States district courts. Our records from the court in Phoenix document women such as Mrs. Rudolf Bretschneider, who was born Lollie Murff in Marshall, Texas, and Mrs. Frank Dietz, who was born Hattie May Mooney in Sanders, Arizona, and Mrs. Guido [Gustave] H. Meyers, born Addie Hubbell in Gardner, Illinois. According to the 1920 federal census, these women were the wives of a druggist, a locomotive engineer, and a baker, respectively, and had grown up in the United States. They submitted personal information, including a photograph and a physical description of themselves.²⁷

These records are a potential source for study of the impact of this law on individual women and their families. They provide a uniform sampling of information gathered for each woman and could serve as an extraordinary starting point for case studies or statistical sampling with regard to the effects of the Expatriation Act.

²⁶Application to Take Oath of Allegiance to the United States, R-99, Mary Winter, February 17, 1964, Naturalization Repatriations, 1936-1964, United States District Court of Arizona, Tucson Division, record group 21, Records of the District Courts of the United States, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA; and National Archives microfilm publication T625, *Fourteenth Census of the United States, 1920*, roll 1158.

²⁷In order listed: Registration Affidavit of Alien Female, Mrs. Rudolf Bretschneider, June 22, 1918, Alien Registration Affidavits, 1918, United States District Court of Arizona, Phoenix Division, record group 21, Records of the District Courts of the United States, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA, and T625, roll 323; Registration Affidavit of Alien Female, Mrs. Hattie May Dietz, June 18, 1918, and T625, roll 1150; and Registration Affidavit of Alien Female, Addie A. Meyers, June 24, 1918, and T625, roll 48.

12. Have you ever been naturalized, partly or wholly, in any country other than the United States? ☐ Yes ☒ No. If yes, state when and where and in what country.

13. Has your present husband ever applied for naturalization in or taken out his papers of naturalization in the United States? ☒ Yes ☐ No. If yes, state when and where. *El Paso, Texas, March, 1917*

Has your present husband ever been naturalized, either wholly or partly, in any country other than the United States? ☐ Yes ☒ No. If yes, state when and where and in what country.

14. Have you ever taken an oath of allegiance to any country, State, or nation other than the United States? ☐ Yes ☒ No. If yes, state when and where and in what country.

15. Have you ever been arrested or detained on any charge? ☒ No ☐ Yes. If yes, state when, where and of what charge. *No*

Are you on parole? ☒ No ☐ Yes. If yes, state number of permit. *No*

16. Have you a permit to enter forbidden areas? ☒ No ☐ Yes. If yes, state number of permit. *No*

17. Language:

Spoken: *English*

Written: _____

Read: _____

I solemnly swear that all the above statements and answers by me made are true.

Left thumb nail, if each thumb nail has a nail.

Sworn to before me this *22nd June*, 1918, at *Marathon, Garza County, Texas*.

Wm Rudolf Bretschneider
(Signature of Registrant)

Carl Schuler
(Registration Officer)

Prudhoe Station
(Address, name, street, or post office or street line)

DESCRIPTION OF REGISTRANT.
(To be filled in by registration officer.)

Age *26* years *5* months. Mouth *Small*

Height *5 ft 2 in* Skin *Swedish*

Weight *115 lb* Hair *Black*

Forehead *Medium* Complexion *Very fair*


Eyes *Dark Green* Face *Round*

Nose *Straight*

Distinctive marks *None*

Name *Mrs Rudolf Bretschneider*

Address *Marathon, Texas*



Mrs. Rudolf Bretschneider, born Lollie Murff in Marshall, Texas, lost her U.S. citizenship when she married her husband, a druggist who was a German citizen. This page is from her registration as an alien female during World War I. [Courtesy of National Archives-Pacific Region]

12. Have you ever been naturalized, partly or wholly, in any country other than the United States? *no* If yes, state when and where and in what country. *(Yes or No?)*

13. Has your present husband ever applied for naturalization in or taken out first papers of naturalization in the United States? *no* If yes, state when and where. *Washington*

14. Has your present husband ever been naturalized, either wholly or partly, in any country other than the United States? *(Yes or No?)* If yes, state when and where and in what country.

15. Have you ever taken an oath of allegiance to any country, State, or nation other than the United States? *no* If yes, state when and where and to what country. *(Yes or No?)*

16. Have you ever been arrested or detained on any charge? *no* If yes, state when, where, and on what charge. *(Yes or No?)* Are you on parole? *(Yes or No?)*

17. Have you a permit to enter forbidden areas? *no* If yes, state number of permit. *(Yes or No?)*

(18) Languages:
 Spoken *English*
 Written *English*
 Read *English*

I solemnly swear that all the above statements and answers by me made are true.

Subscribed and sworn to before me this *Seventy Second day of June, 1918*
at Winslow, Navajo County, Arizona
Frank Dietz
 Postmaster
(Official title, position or post office or other title.)

Left thumb print, if register cannot read this write.

Mrs. Hattie May Dietz

DESCRIPTION OF REGISTRANT.
 (To be filled in by registration officer.)

Age	<i>29</i>	months	<i>10</i>	Month	<i>Small</i>
Height	<i>5 ft 2 in</i>	Chin	<i>Round</i>		
Weight	<i>100 pounds</i>	Hair	<i>Black</i>		
Forehead	<i>high</i>	Complexion	<i>Dark</i>		
Eyes	<i>Blue</i>	Face	<i>Medium</i>		
Nose	<i>Medium</i>				

Distinctive marks:
 Name *Mrs. Hattie May Dietz*
 Address *Winslow Arizona*

Mrs. Hattie May Dietz

Hattie May Mooney, a native of Arizona, was forced to register as an alien during World War I, after she lost her U.S. citizenship by marrying Frank Dietz, a locomotive engineer and a German citizen. (Courtesy of National Archives-Pacific Region)

THE TRAIL ENDS HERE—THE CITIZENSHIP OF NATIVE AMERICANS, 1887–1948

With the repeal of the Expatriation Act, women showed that access to the vote can influence how Congress treats a group of citizens. Indian peoples in the United States were the last group of American citizens to achieve universal suffrage. Government representatives in Arizona and Southern California spent the early years of the twentieth century trying to determine the nature of Indian citizenship as it applied to the Indians of Southern California, and the Apache, Navajo, Pima, Tohono O'odam, Mohave, and other tribal groups. Administrators of Indian agencies constantly dealt with the nuances of policies established by Congress and the Office of Indian Affairs (OIA) in Washington, D.C. The Central Classified Files compiled by these administrators in the holdings of the Regional Archives in Laguna Niguel document the effects of the patchwork of laws and policies that were used to establish Indian citizenship prior to the passage of the Act of June 2, 1924, which granted broad citizenship.

In addition to the numerous policies and legal provisions that the OIA managed, each agency dealt with a culturally and historically unique group of people. Laguna Niguel alone holds the records of forty-four agencies, sub-agencies, and offices, and two Indian boarding schools located in Southern California and Arizona. Each agency reacted differently to each national policy. Our holdings have the potential for a great diversity of research in the records of individual agencies, or on one topic across agencies.

Consider the case of Indian citizenship. In 1924, Congress passed a law granting citizenship to noncitizen Indians. The text of the law was brief, stating "[t]hat all noncitizen Indians born within the territorial limits of the United States be, and they are hereby, declared to be citizens of the United States: *Provided*, That the granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property."²⁸ While the law seemed like a straightforward piece of legislation, full citizenship for all Native Americans was accomplished only as a result of small steps and individual legal challenges.

The Dawes Act of 1887 initiated the policy of "Americanization" of the Indian. Under this act, the OIA sought to

²⁸National Archives Microfilm Publication M2033, *Laws Relating to Immigration and Nationality, 1798–1962*, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA.

indoctrinate Native Americans by teaching them the American values of land ownership and citizenship. The process to gain citizenship prescribed by the Dawes Act was long and complicated, with the federal government holding individual Indian allotments in trust for twenty-five years, at the end of which the Indian would receive both citizenship and the land in fee simple. With the passage of the Burke Act in 1906, Indian competency—not time—became the determining factor in the issuance of the fee patents. In the spirit of the Burke Act, commissioner of Indian affairs Cato Sells issued his “Declaration of Policy in the Administration of Indian Affairs.” It was distributed to the superintendents in 1917 and proclaimed:

The time has come for discontinuing guardianship of all the competent Indians and giving even closer attention to the incompetent that they may more speedily achieve competency. . . . This is a new and far reaching declaration of policy. It means the dawn of a new era in Indian administration. It means that the competent Indian will no longer be treated as half ward and half citizen. . . . [I]t means the ultimate absorption of the Indian race into the body politic of the Nation. It means, in short, the beginning of the end of the Indian problem.²⁹

With this declaration, Sells defined competency not only by the Indians’ ability to manage his or her own affairs, but by the percentage of Indian blood contained within the individual. Patents in fee were to be issued to “all able-bodied adult Indians of less than one-half Indian blood, [who will] be given . . . full and complete control of all their property.” Those with one-half Indian blood or more would have to be carefully investigated to determine their competency.³⁰

Correspondence of the various Indian agencies shows that superintendents had ongoing issues with the applications of these policies. In Southern California, tribal history and organization were vastly different from those of Native peoples in the rest of the United States. In a file labeled “tribal relations, citizenship,” Central Classified Files of the Mission Indian Agency, correspondence tells of the frustration felt by Paul Hoffman, who, almost from the time he assumed charge of

²⁹Cato Sells, “Declaration of Policy in the Administration of Indian Affairs,” April 17, 1917, 063 Tribal Relations, Citizenship, Central Classified Files, 1920–1953, Mission Indian Agency, record group 75, Records of the Bureau of Indian Affairs, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA.

³⁰*Ibid.*

the Pala Indian Agency in 1918, pressed for clarification of the 1917 policy as it related to the Indians in his jurisdiction. In his letter containing the list of all competent allotted Indians on the reservations he supervised, Hoffman did not mask his struggle to apply this policy and his irritation at the lack of information he received from the commissioner's office:

Attention is invited to the fact that on June 5, 1918, I asked for information from your Office concerning the rights of Indians on these reservations should they be given patents in fee. . . . No further communications have been received concerning these questions and consequently nothing has been possible since that time as the questions asked concerning irrigation and tribal land are quite important and I would hesitate to recommend patents in fee until an understanding had been reached concerning the effect of such action upon the rights of the Indians.³¹

In 1920, he pressed again for clarification, noting that many of his tribal members were not allottees and therefore could not receive their citizenship with the conference of a fee patent:

For example: A young man about one-half Indian blood, about thirty years of age, son of an allottee but unallotted himself. He has lived practically all his life twenty or thirty miles away from the reservation, was educated in the public schools, is self-supporting on a farm whic[h] he neither leases nor owns, has his automobile purchased from money earned by himself, and is in no way dependent upon the Government. There is little probability that any allotment will ever be available for him and less probability that any allotment which might be given him would induce him to lease his present location; if he should ever be allotted he should be given a fee patent at once, but there is little likelihood that he will ever be given land. . . . [I]t is your wish that Indians of this type be released from any Government supervision. The only evidence that such supervision now exists is the fact that their names appear on our census along with their older relatives who are allottees. To merely drop their names from the census to indicate that the Government control had ended would seem irregular

³¹Letter from Paul T. Hoffman to Cato Sells, June 6, 1919, 063 Tribal Relations, Citizenship, Central Classified Files, 1920-1953, Mission Indian Agency, record group 75, Records of the Bureau of Indian Affairs, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA.

and unsatisfactory. Would it not be more satisfactory and proper to issue certificates of competency?"³²

Hoffman noted that it would be impossible, since many of these sorts of Indians lived off reservations and were "scattered throughout the entire southern part of the state." Other records of the Mission Agency provide further evidence to this: allotment records show the original allottee and section of land; tribal censuses document the relationship of heirs to that allotment; other correspondence in the Central Classified Files documents community debates about land and family, including blood quanta and the disposal of estates.

Commissioner Sells' response to Hoffman was pointed and showed the difficulties associated with the one-size-fits-all aspect of federal Indian policy. He assured Hoffman that the OIA had given the matter careful consideration, but that "at the present time certificates of competency are issued only to Indians who have been allotted and have received *patents in fee with restrictions against alienation*. Such certificates are issued to give the allottees full control of their lands. . . . [T]his Office does not believe it would be proper to recommend fee patents for any of your Indians."³³ Sells encouraged Hoffman to table his concerns until the passage of a bill before Congress that would confer citizenship on Indians as a whole.

In 1924, when Indian citizenship became law, the correspondence between various superintendents, the OIA, and Indian rights supporters hailed the opening of a new era. In a circular letter distributed to the various Indian agencies, then commissioner of Indian affairs Charles Burke directed the superintendents to explain citizenship and its responsibilities to the communities under their supervision. "You should inform your Indians, however, that they are now citizens of the United States. As they are now entitled to suffrage under the same conditions as other residents of the States."³⁴

³²Letter from Paul T. Hoffman to Cato Sells, January 2, 1920, 063 Tribal Relations, Citizenship, Central Classified Files, 1920–1953, Mission Indian Agency, record group 75, Records of the Bureau of Indian Affairs, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA.

³³Letter from Cato Sells to Paul T. Hoffman, March 24, 1920, 063 Tribal Relations, Citizenship, Central Classified Files, 1920–1953, Mission Indian Agency, record group 75, Records of the Bureau of Indian Affairs, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA.

³⁴Circular No. 2023, Office of Indian Affairs, 063 Tribal Relations, Citizenship, Central Classified Files, 1920–1953, Mission Indian Agency, record group 75, Records of the Bureau of Indian Affairs, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA.

The records in the Mission Indian Agency's "tribal relations, citizenship" files show that many Southern California Indians had been voting in state and local elections since 1917, when the Supreme Court of California handed down the decision in *Ethan Anderson v. Shafter Mathews*. Attorney J.E. Pemberton, who had brought that action on behalf of the Indian Board of Cooperation of California, summarized the case in a letter to the superintendent:

The grounds upon which the decision is based seem to me to practically decide that almost, if not quite, all of the California Indians are citizens. It holds that all born in the U.S. not owing allegiance to any other Government (or quasi Government) are by right of birth citizens under the U.S. Constitution; that the only Indians not . . . made citizens are those that owe allegiance to the tribal government of an Indian tribe. . . . Some tribes of Indians have sufficient organization, rules, laws and customs to be equivalent to a rude form of government; but I doubt if many of the California Indians have ever had any real tribal organization sufficient to be classed as a tribe, in the governmental organization sense.³⁵

Following the decision, the OIA asked J.E. Jenkins, the superintendent of the Malki Indian Agency in Banning, to "consider the circumstances of the case cited by the court and advise the Office wherein the Indians of your jurisdiction come within the same class and wherein their conditions are different."³⁶ Jenkins responded:

I will state that I have given the matter of Indian citizenship particularly as regards the Indians of this jurisdiction—as well as all of the so-called Mission Indians—considerable thought and study. . . . The taking over of these Indians by the Mission Padres a hundred or more years ago was the beginning of their civilization and the breaking up of their old or tribal customs and it has always been the policy of the United States government

³⁵Letter from J.E. Pemberton to John Dady, July 25, 1922, 063 Tribal Relations, Citizenship, Central Classified Files, 1920–1953, Mission Indian Agency, record group 75, Records of the Bureau of Indian Affairs, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA.

³⁶Letter from E.B. Meritt to J.E. Jenkins, July 19, 1918, 063 Tribal Relations, Citizenship, Central Classified Files, 1920–1953, Mission Indian Agency, record group 75, Records of the Bureau of Indian Affairs, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA.

to make Indians citizens. . . . These Indians have been living as civilized people for many years past, in the midst of white communities, wearing civilian clothes, attending our public schools, churches, etc., observing our laws, marriage customs, etc., and in fact being a part of the body politic rather than living by themselves and maintaining a tribal government. . . . The Supreme Court of California, in the case of *Anderson v. Mathews*, cited, declared Anderson to be a citizen and I regard his status as almost exactly parallel to that of these Mission Indians.³⁷

As of June 2, 1924, all noncitizen Indians were citizens. In his circular letter, Commissioner Burke instructed the superintendents to educate themselves as to the state voting laws and procedures, stating, "[Y]ou should endeavor to advise your Indians so as to avoid embarrassment or disappointment."³⁸

The records of the Pima and San Carlos Indian agencies in Arizona show a markedly disappointing turn of events for the Indians of Arizona. As Indians across the United States registered to vote, the commissioner of Indian affairs worked with the state attorneys general to determine where polling places on the reservations would be established. In a letter to Congressman Carl Hayden of Arizona, Commissioner Burke noted that the attorney general of Arizona was concerned over jurisdictional issues with setting up polling places on Indian reservations, but thought that "[a] polling place can be established as now near a reservation and the reservation included in the precinct." The commissioner seemed amenable to that, suggesting that the "procedure be adopted at once, at least for the present, in order that the arrangements be made at the earliest possible date whereby Indians of the State of Arizona may be given the opportunity of registering and voting if qualified. This will avoid a feeling on their part that they are being improperly treated or discriminated against."³⁹

This arrangement, made by the Washington office, did not see results on the ground. In files labeled "Indian suffrage," Superintendent B.P. Six collected correspondence and court

³⁷Letter from J.E. Jenkins to the commissioner of Indian affairs, August 9, 1918, 063 Tribal Relations, Citizenship, Central Classified Files, 1920–1953, Mission Indian Agency, record group 75, Records of the Bureau of Indian Affairs, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA.

³⁸Circular No. 2023, July 10, 1924.

³⁹Letter from Charles Burke to Carl Hayden, July 30, 1924, 128.0 Indian Suffrage, Central Classified Files, 1926–1946, Pima Indian Agency, record group 75, Records of the Bureau of Indian Affairs, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA.

materials that documented the ensuing Arizona battle. In September 1928, several Pima Indians were turned away from the polls in Pinal County. Superintendent Six wrote a letter to the commissioner of Indian affairs the following day summarizing the events:

The Board of Supervisors included the reservation in voting precincts, and so far as the physical arrangement is concerned it is satisfactory. It was presumed that the Indians living in Pinal County on the reservation would be permitted to vote in the various polling places off the reservation. During the period of registration deputy recorders came onto the reservation in Pinal County and took the applications of a number of Indians, approximately thirty-five, to register for voting in the primary election, which was held in the State of Arizona on September 11, 1928.

The Indians were given the impression, and so was I, that they would be permitted to vote. However, on the Friday before election day it appears that the County Recorder, acting under instructions from the County Attorney of Pinal County, struck the names of all but three of the Indians from the register. When the Indians appeared at the polls on Tuesday the 11th, they were denied the privilege of voting. . . .

[The County Attorney's] attitude in the matter is entirely inconsistent in that he permitted all of the white people who reside on the reservation to register and vote, and has permitted Indians who are in the Government service but who are not permanent residents of the reservation, to register and vote, but has denied the privilege of voting to the Pima Indians who are permanent residents of the reservation.⁴⁰

Despite the promises of the attorney general, Six informed Commissioner Burke that in the 1927 election, the attorney general and the county attorney had made voting difficult for the Pima Indians. He stated that the attorney general "refused to permit voting precincts to be formed on Indian reservations, and refused to permit white people who were residing on Indian reservations to vote. He gave as his reason that the police powers of the State did not extend to the Indian reservations,

⁴⁰Letter from B.P. Six to the commissioner of Indian affairs, September 12, 1928, 128.0 Indian Suffrage, Central Classified Files, 1926-1946, Pima Indian Agency, record group 75, Records of the Bureau of Indian Affairs, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA.

and that therefore the State would have no control over any disorder that might occur at the voting precincts." The Pinal County attorney had contended that "Indian reservations were the same in status as the District of Columbia, and that the residents therein were not the residents of the State of Arizona, and therefore had no right to participate in the elections." Six suggested that the Office of Indian Affairs take note of the actions of the two, stating, "[I]f it is contested the opinion will not be upheld by the courts."⁴¹

Unfortunately for Six and the Pima Indians, and for all of the Indians in Arizona, the Supreme Court of Arizona determined in *Peter H. Porter and Rudolph Johnson v. Mattie M. Hall* that the Arizona state constitutional provision stating, "No person under guardianship, *non compos mentis* or insane, shall be qualified to vote at any election," applied to Indians and their status as wards of the federal government. Superintendent Six was confident that Indians would not be denied the vote. In a letter to a member of the Federation of Women's Clubs of Arizona, he assured her,

[W]e now have a test case before the Supreme Court of Arizona to ascertain whether the Indians of this reservation are entitled to vote. The decision of the question on this reservation will settle the question all through the State, and we will, after the decision of the court know what the real status of the Indian is so far as his right to vote is concerned. . . . We have quite a few Indians on this reservation who are well educated, and are just as well qualified to exercise the privilege of citizenship of the State of Arizona as many white people, and as many Mexicans who are voting. I believe that you realize that this is true, and that you feel that it would be unfortunate to have the Indian disqualified as a voter.⁴²

Six's files contain correspondence between Six and the commissioner of Indian affairs, copies of letters sent to the Arizona attorney general by the commissioner of Indian affairs, and correspondence between Six and other Arizona superintendents and the public.

⁴¹Letter from B.P. Six to the commissioner of Indian affairs, March 10, 1928, 128.0 Indian Suffrage, Central Classified Files, 1926–1946, Pima Indian Agency, record group 75, Records of the Bureau of Indian Affairs, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA.

⁴²Letter from B.P. Six to Mrs. Katherine MacRae, October 8, 1928, 128.0 Indian Suffrage, Central Classified Files, 1926–1946, Pima Indian Agency, record group 75, Records of the Bureau of Indian Affairs, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA.

The decision in *Porter v. Hall* and a law in New Mexico restricting the ability of non-taxed citizens to vote stood unchallenged until 1948 as the Office of Indian Affairs pursued new policies focusing on the tribe over the individual. John Collier's term as commissioner of Indian affairs was marked by the passage and implementation of the Indian Reorganization Act, which pushed tribal groups to write constitutions or charters, retain and regain tribal lands, and preserve Indian cultures rather than force individual "Americanization."

Although Collier's OIA pushed for Indian rights in many ways, it was not until the end of World War II that Indians themselves demanded the right to vote in Arizona (and also in New Mexico). Many soldiers and sailors from tribes in Arizona and New Mexico returned from the war eager to exercise their rights as American citizens, including registering to vote. In May 1946, the *Los Angeles Times* carried a small article reporting that several Zuni and Navajo veterans had their voter registration applications rejected.⁴³

In 1948, Miguel Trujillo from Isleta Pueblo in New Mexico; Frank Harrison and Harry Austin from the Mohave-Apache Indian tribe; Lewis Kichiyan and Marvin Mull of the San Carlos Apache Reservation; and Lester Oliver and Robert Suttle of the Fort Apache Reservation in Arizona all submitted test cases in the courts of New Mexico and Arizona. Superintendent A.E. Stover of the San Carlos Indian Agency collected materials related to each of these cases in his correspondence files. A letter that accompanied a copy of the civil complaint filed in the United States district court in Arizona, from attorney Charles MacPhee Wright, described the circumstances on February 11 and February 13, 1948, that formed the basis for the test case filed by him and Felix Cohen in the federal court:

In Whiteriver [Fort Apache Indian Agency] I accomplished practically the same thing with the White Mountain Apache Tribe as I did with your San Carlos Tribe, namely, that the Tribal Council picked two men whom I accompanied to the County Recorder's while they attempted to register. In Phoenix I prepared a complaint which was filed in federal court there after I returned to Washington.⁴⁴

⁴³"Indian Veterans Refused Vote in New Mexico," *Los Angeles Times*, May 7, 1946.

⁴⁴Letter from C.M. Wright to A.E. Stover, January 12, 1948, 063 Tribal Relations: Enrollment, Citizenship, Degree of Indian Blood, Voting, Program Correspondence (underdescribed), San Carlos Indian Agency, record group 75, Records of the Bureau of Indian Affairs, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA.

The suit was filed in March 1948, but the judge in the case chose to await the outcome of the case filed in the superior court, *Frank Harrison and Harry Austin v. Roger G. Laveen*. Filed by Congressman Richard F. Harless and supported by the National Congress of American Indians (NCAI) and the American Civil Liberties Union (ACLU), the case challenged the 1928 decision in *Porter v. Hall*. Attorney Frances Lopinsky sent a copy of the *amici curiae* brief filed by the NCAI and the ACLU to Stover. The brief emphasized the importance of voting as a cornerstone of American citizenship:

The National Congress of American Indians has endeavored to help American citizens of Indian descent achieve the same measure of political rights and protection of property that is enjoyed by citizens of other races. In this endeavor, it has opposed bureaucratic infringements upon Indian rights by the Department of Interior, the Department of Agriculture, and other Federal departments and agencies. It faces peculiar difficulties in seeking to vindicate the rights of American citizens of Indian descent in the State of Arizona, because of the fact that such citizens are denied the franchise and therefore have no voice in the Congressional Committees which pass on the activities of Federal bureaus in the field of Indian administration. It therefore considers the vindication of the Indian's right to vote in Arizona the keystone of its efforts to achieve for Arizona's Indian population the full enjoyment of citizenship rights.

The American Civil Liberties Union joins in their brief in the belief that all constitutional rights of our Indian citizens are endangered if the most basic of civil rights, the right to vote is denied.⁴⁵

On July 15, 1948, the Supreme Court of Arizona reversed its decision in *Porter v. Hall*. Felix Cohen sent a copy of the decision in *Harrison v. Laveen* to Stover. His attached letter said simply, "I think this decision will make the path of prog-

⁴⁵ Attachment to letter from Frances Lopinsky to A.E. Stover, May 5, 1948, 063 Tribal Relations: Enrollment, Citizenship, Degree of Indian Blood, Voting, Program Correspondence (underdescribed), San Carlos Indian Agency, record group 75, Records of the Bureau of Indian Affairs, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA.

ress that you and the San Carlos Indians are treading, a good deal safer and easier traveling."⁴⁶

In the same year, Miguel Trujillo's case was heard by the New Mexico Supreme Court, and Indians in New Mexico were also granted the vote, bringing to a close—at least for the individual Indian—the question of the voting rights of the Indian as American citizen.

The records of each Indian agency show the differences and similarities, across tribal groups, in the application of these citizenship laws and policies. Generally speaking, the vast amounts of correspondence of superintendents reveal their personal biases, their administrative frustrations, and the whisper of Native American voices influencing their work, as well as the directives issued to them from the commissioner in Washington, D.C.

American citizenship is the basis for our connection with the institutions of the federal government. For most of us it is clearly understood, and it is ours through birth or naturalization. The records in the holdings at the National Archives Pacific Region in Laguna Niguel document cases where citizenship was not so clear. The policies associated with some of these particular cases, those of Native Americans and Japanese-Americans, have been thoroughly studied. What researchers often miss, however, are the stories found in the correspondence files of the Indian superintendents and the briefs and testimony of the Nisei. In the case of the loss of citizenship by American women, the individual stories are often completely overlooked.

I encourage all students of the law and of history to extend themselves past the decisions and the official policies of the federal government into the regional facilities of the National Archives to discover the gems and "aha" moments waiting there. Endless amounts of material for articles, dissertations, and books are housed in the records of the United States district courts in Arizona and Southern California relating to legal and social history. The records of the Bureau of Indian Affairs provide resources that document the cultural and political histories of Native peoples and their non-Native neighbors. And numerous small series, such as those in the records of the Selective Service System or the Immigration and Naturalization Service, can be utilized in hundreds of different ways to provide support to research across thousands of topics.

⁴⁶Letter to A.E. Stover from Felix S. Cohen, July 19, 1948, 063 Tribal Relations: Enrollment, Citizenship, Degree of Indian Blood, Voting, Program Correspondence (underdescribed), San Carlos Indian Agency, record group 75, Records of the Bureau of Indian Affairs, National Archives and Records Administration, Pacific Region, Laguna Niguel, CA.

HISTORICAL RESOURCES FROM THE FEDERAL JUDICIAL CENTER

BRUCE RAGSDALE

Historical researchers and educators will find numerous resources for the study of federal judicial history from the Federal Judicial Center. The Federal Judicial Center develops historical resources and research guides in furtherance of its statutory mandate to "conduct, coordinate, and encourage programs relating to the history of the judicial branch of the United States government." The FJC's Federal Judicial History Office maintains an online encyclopedia of federal judicial history with extensive reference materials and makes its research available to scholars and the general public as well as to the judges and staff of the federal judiciary. The FJC's historical education programs offer materials that can be used on both the secondary and undergraduate levels.

The *Biographical Directory of Federal Judges* documents the judicial service and professional career of the more than thirty-one hundred judges who have served in life-tenured positions in the federal courts since 1789. The directory was compiled by the Federal Judicial Center based on original research in the National Archives records of the various executive departments with responsibility for judicial commissions and in the Senate Executive Journals. The directory is the first complete compilation of federal judges and is updated regularly. An online search feature allows users to identify groups of judges by the nominating president, the party of the nominating president, type of courts, dates of service, gender, ethnicity, reasons for termination, and other criteria. Researchers may also obtain from the Federal Judicial Center electronic copies of the entire database of the biographical directory for customized use of

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The Federal Judicial Center is housed in the Thurgood Marshall Federal Judiciary Building, above right, Washington, D.C. (Courtesy of Administrative Office of the U.S. Courts)

the data and more detailed information on the confirmation process in the Senate.

The *Biographical Directory* is linked to several other judge-related reference guides compiled by the Federal Judicial Center. The guide to manuscript collections of former judges includes information about the collections of judges' papers and other manuscript collections with significant documentation of judges. A bibliography includes biographies and other scholarly publications about aspects of judges' careers. A directory of oral histories supports researchers interested in the careers of former judges. The FJC also has catalogued available images of former judges.

Legislative histories of all the courts in the federal system trace the establishment of judgeships and the jurisdictional boundaries of the courts. Online articles describe landmark legislation related to the courts, the organization and administration of the judiciary since 1789, judicial salaries since 1789, and the histories of judicial offices and staff positions. Nearly six hundred courthouse photographs, available for downloading, illustrate the architectural heritage of the courts and give researchers access to images for exhibits and publications. The FJC also maintains information on the historic case files of all federal courts and the many court-related materials in the records of the executive branch and the Congress. Researchers

will find at the FJC extensive information on many other topics related to the history of the federal courts, and the FJC welcomes historical reference requests from the courts, scholars, and the public.

Teachers of legal history will find several educational resources to support study of the history of the federal judicial system. The "Teaching Judicial History" project explores judicial history through a detailed examination of notable court cases, including the treason trial of Aaron Burr, the *Amistad* case, the voting rights trial of Susan B. Anthony, and the court-ordered desegregation of New Orleans schools. The cases present an opportunity to incorporate the federal judiciary into existing history curriculum and into civic education initiatives. Extended essays and historical documents provide teachers with background for studying the cases in the classroom. The online units are also suitable for use at the undergraduate level.

In partnership with the American Bar Association, the FJC has developed accompanying curriculum strategies for secondary schools and models for judges to participate in student discussions. A collection of "Talking Points on Federal Judicial History" offers judges and teachers background essays, historical documents, and suggestions for discussion of the constitutional origins of the judiciary, the establishment of the court system, and debates on the separation of powers.

Historical programs and reference materials from the Federal Judicial Center are available on the FJC website at <http://www.fjc.gov/history/home.nsf>.

MINING NEVADA'S LEGAL HISTORY: GOING TO THE SOURCES

JEFFREY M. KINTOP

After almost 150 years of legal history, Nevada's documentary sources are fairly complete and are preserved on paper and on microfilm at the Nevada State Library and Archives, the Supreme Court Clerk's Office, and the courthouses of the seventeen counties. Newspaper accounts of court cases dealing with mining claims, water rights, crimes, and divorces are included in the microfilmed copies of Nevada's newspapers. The state library and archives, the Nevada Historical Society, and the libraries of Nevada's two universities in Reno and Las Vegas contain complete collections of newspapers. Public libraries have microfilm of their own local newspapers, and some of them have compiled indexes.

Law librarians have also compiled bibliographies about Nevada's legal history. Most notable are Ann S. Jarrell and Galen LeGrande Fletcher's *Nevada State Documents Bibliography: Legal Publications and Related Material*, second edition (Chicago, 2000), and Galen LeGrande Fletcher's "200 Nevada Legal History References: A Selective Annotated Bibliography and Introduction," *Nevada Law Review* 1 (Spring 1998). These bibliographies are good places to get an overview of the published sources on Nevada's legal history.

In addition, the Nevada Judicial Historical Society has been promoting research and preserving judicial history since 1988. The society has been active in collecting oral histories of judges and attorneys. The documentary sources exist because Nevada had a small population until modern times, and the documents could be preserved easily.

Jeffrey M. Kintop is the Nevada state archivist and a trustee of the Nevada Judicial Historical Society. Susan Southwick and Dennis Myers of the Nevada Judicial Historical Society, and Susan Searcy and Christopher Driggs of the Nevada State Library and Archives all contributed to this essay.

Nevada was originally part of Utah Territory, which was organized in 1851, and that's where its legal history begins. Utah, however, did not organize the Sierra Nevada's eastern slope into any kind of county or district. There were county lines on the map for western Utah Territory, but all the official offices were in the territory's eastern region.

In western Utah Territory, the settlers met on November 12, 1851, and established a provisional government to protect their land claims and to maintain civil order. They adopted procedures for filing land claims and appointed officers to carry out those new regulations—a recorder, a treasurer, a justice of the peace, a court of four, a clerk of the court, a sheriff, and a permanent committee of seven (later reduced to five) persons to “exercise & enforce law according to the acknowledged rules of equity which govern all civilized communities.” They kept their records, including all legal transactions, in a small, ruled notebook from November 12, 1851, to March 5, 1855. The book contained land surveys, claims, mortgages, and sales; toll road licenses; applications for attachments; performance bonds; and legal judgments. The records documented the settlement of the Carson Valley until Carson County was created in 1855.

The original book, along with a few other legal files, is in the territorial papers in the state archives. It was passed down in private hands for several generations and was presented to the state archives in 1985. The *First Records of Carson Valley* was photocopied and published as “First Records of Carson Valley, Utah Territory, 1851,” *Nevada Historical Society Quarterly* 9:2–3 (Summer-Fall 1966) and indexed by Marion Ellison in her book, *An Inventory and Index to the Records of Carson County, Utah & Nevada Territories, 1855–1861* (Reno, 1984). In 2000, archives staff created a digital copy and transcribed the book as written, including misspellings, excessive capitalization, and nineteenth-century abbreviations, and placed it on the archives' web page at <http://nevadaculture.org>.

The Utah Territorial Legislature created Carson County in 1854, but it was not organized until the following year, when Orson Hyde was sent as the probate judge. Carson County was the primary unit of local government in western Utah and Nevada Territories until the creation of nine counties by the Nevada Territorial Legislature in 1861. The probate court transacted most of the legal actions in Carson County. The Carson County, Utah Territory, records are in two formats—bound volumes and loose documents. The documents were submitted by parties of interest and copied into the official record volumes by the recorder or his assistants. These records have also been microfilmed; the film is available at the Nevada State Library, the Nevada Historical Society, and the

Special Collections Department in the University of Nevada, Reno, library.

The probate court oversaw the administration of estates of deceased persons and also functioned as a lower civil court, hearing divorce cases and contract disputes. The decisions were almost always contested, depending on whether the probate judge was Mormon or non-Mormon. The records of Carson County were entrusted to Orion Clemens, secretary of the territory, as archives of the territory in 1861. Marion Ellison's book provides a name index and a summary to all the Carson County record books.

Carson County was included in several district courts of Utah Territory from 1856 to 1861, but there are few records for them. There was no courthouse and no court clerk to file the records. William Wormer Drummond came to Carson County as United States judge for the Third District of Utah in 1855. He held court in a barn at Mottsville and summoned a grand jury, charging it to bring in indictments against all citizens guilty of gambling, concubinage, or other minor frontier offenses. The jury, unwilling to indict themselves, adjourned. Judge Drummond fled from the territory and spread scathing reports about the Mormons in newspapers around the nation, undoubtedly affecting President James Buchanan's decision to send federal troops to Utah in 1857.

Judge John Cradlebaugh of Ohio, who had become very unpopular because of his investigations into the Mountain Meadow Massacre in southern Utah in 1857, was then assigned to the district court. He occupied the position of judge from 1858 until Nevada became a territory in 1861. President Buchanan tried to remove him in 1859 and sent Robert Patterson Flennikan to replace him, but Cradlebaugh denied the right of the president to remove him and refused to leave. Both men held court until the Utah Supreme Court upheld Cradlebaugh's claim.

There were a couple of disputes over mining claims on the Comstock Lode, but, without a courthouse or a clerk, there are no district court records for Cradlebaugh's tenure, even though he remained in the newly created Nevada Territory. He became the congressional delegate in 1861.¹ For the early mining cases, historians rely on reports in California newspapers, Elliot Lord's *Comstock Mining and Miners* (Washington, D.C., 1883), and the reminiscences of Senator William M. Stewart, who

¹For an excellent examination of early judges in Utah Territory, see Thomas Alexander, "Carpetbaggers, Reprobates, and Liars: Federal Judges and the Utah War, 1857-58," *The Historian* 70:2 (Summer 2008): 209-38.

practiced law in Carson County and later in Nevada Territory.² Stewart outlived his enemies and was often the primary source for earlier written histories. In his dotage, he was able to point to the books and say all his stories were true.

Nevada became a U.S. territory on March 2, 1861, and the organic act created the Supreme Court of the Territory of Nevada, stating that the judicial power of the territory was vested in a supreme court, district courts, probate courts, and justices of the peace.³ The supreme court consisted of a chief justice and two associate justices, any two of whom constituted a quorum. They were appointed by the president of the United States and held their offices for four years. They were directed to hold a term at the seat of government of the territory annually. The territory was divided into three judicial districts, and each justice held court in his own district at such time and place as was prescribed by law. The supreme and district courts had the same jurisdiction as was vested in U.S. civil and district courts in all cases arising under the constitution of the United States, as well as the constitution or laws of Nevada Territory affecting persons or property.

President Lincoln appointed three justices to the territorial supreme court on July 17, 1861: Gordon Newell Mott, George Enoch Turner, and Horatio McLean Jones. Territorial governor James Warren Nye assigned each to a judicial district to serve also as a circuit court judge until the legislature met and assigned permanent district courts. The territorial supreme court heard eighty-eight cases and rendered sixty-nine decisions, which were never formally reported. The records of the territorial supreme court are of two types: bound volumes labeled "Record and Judgments," which are, in effect, a minute book and its index; and original case files documenting actions and decisions of suits brought before the supreme court. The minute volume, arranged chronologically, begins with a list of attorneys authorized to practice law in the territory and includes summaries of the first twenty-nine cases heard by the court. A separate book contains an index of this volume. The case files, which are incomplete, contain documents submitted to the court, arranged by case numbers. The case files have been microfilmed, and the film is available in the Nevada State Library. The original case files are in the state archives.

²George Rothwell Brown, ed., *Reminiscences of Senator William M. Stewart, of Nevada* (New York, 1908).

³"An Act to Organize the Territory of Nevada," ch. 83, 12 Stat. 209-14 (March 2, 1861).



The memoirs of Nevada attorney and U.S. Senator William Morris Stewart, above, were an important source of much of the legal history of the territorial period. (Courtesy of Nevada State Library and Archives)

The Russell McDonald manuscript collection at the Nevada Historical Society contains four boxes of compiled and somewhat organized research notes for a book McDonald planned to write but never completed on the history of the court system of Nevada Territory. McDonald's collection summarizes the cases heard by the supreme court and organizes them into civil and criminal cases, with major legal points considered and a list of the attorneys in each case. The collection also includes the only compilation of opinions, collected from existing Nevada and California newspapers, for the sixty-nine cases decided

in the court. Contemporary newspaper editors borrowed the court's opinions for typesetting, and attorneys borrowed sworn affidavits of conflicting mining claims to use them again in other cases. As a result, some of the case files are rather thin. Chief Justice Turner kept a crib sheet of sorts, compiled from the newspaper's accounts, for ready reference during the oral arguments. He offered these notes for publication, a project funded by the legislature but vetoed by Governor Henry Goode Blasdel in 1865. The governor's stated reason for his objection was the printing cost, but he had been the superintendent of Ophir Mine, which lost a case regarding its payment of taxes. If the cases had been published, the mining company would have had to pay two years of back taxes. McDonald also gives descriptions of district courts, justice courts, and recorders' courts of the incorporated Virginia City.

The legislature divided the territory into three judicial districts and assigned each of the justices to one of the districts. It also created nine counties, which were organized late in 1861; regardless of the district, the records are always kept in the county seat. The number of counties increased to eleven by 1864, and county boundaries shifted. There was no single way of filing records in the counties, so the names of the records may vary slightly. Records that were compiled in well-bound books as the laws proclaimed are still kept in their original form and include court dockets or registers of action, which give a chronological listing of all the documents filed in a court case. These usually have a separate name index, because the cases are organized by case number. Court minute books, arranged chronologically, record the minutes of all the proceedings, detailing actions taken and listing the title, names of plaintiff, defendant, witnesses, attorneys, and dates. Sometimes there is a judgment book, arranged by court case number. The judgment book includes all of the above information plus the judgment rendered in the case.

Information about the territorial courts can be found in Lord's *Comstock Mining and Miners*. Chapter 8 examines mining litigation and the problems in the territorial courts from the perspective of Senator William M. Stewart and the newspaper *Territorial Enterprise*. David A. Johnson's "The Courts and the Comstock Lode: The Travail of John Wesley North," *Pacific Historian* 27:2 (1983): 31-46, and Bruce Alverson's "The Limits of Power: Comstock Litigation, 1859-1864," *Nevada Historical Society Quarterly* 43 (Spring 2000): 74-99 are more balanced studies of the courts. Finally, Galen L. Fletcher and Ann S. Jarrell's "Territorial Legal Research for Nevada" in *Pre-Statehood Legal Materials Bibliography: A Fifty-State Research Guide, Including New York City and District of Columbia*,

vol. 2, ed. Michael Chiorazzi and Marguerite Most (New York, 2005) provides the most comprehensive bibliography for Nevada Territory.

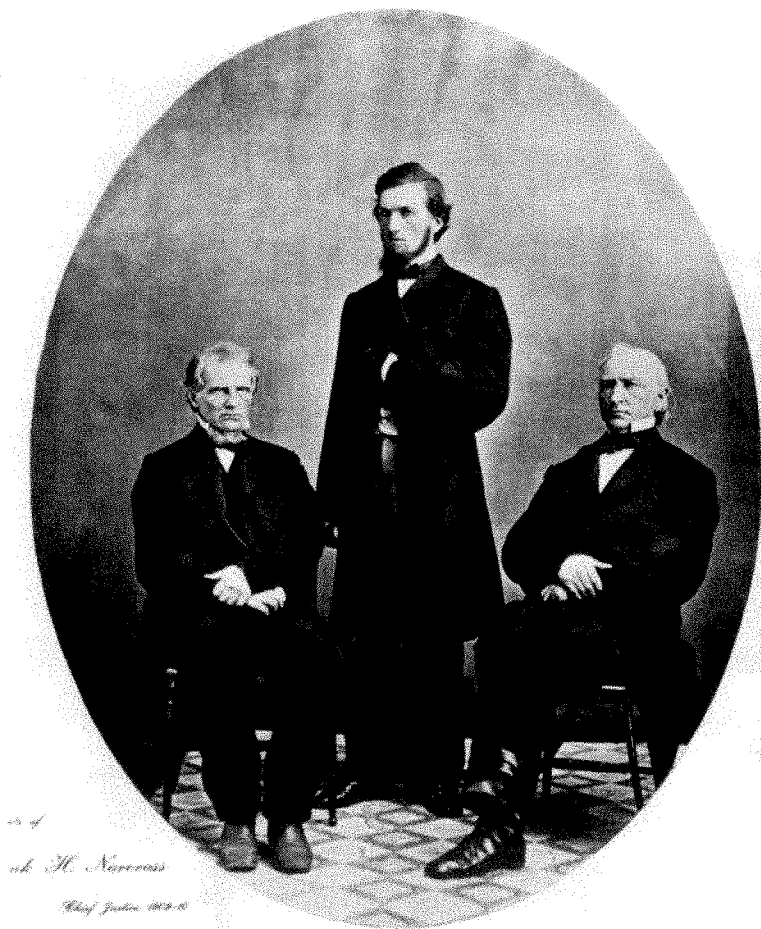
Nevada became a state on October 31, 1864. The Nevada constitution vests the judicial power of the state in a court system composed of the supreme court, the district courts, and the justice courts. In addition, the legislature has established municipal courts as courts of limited jurisdiction in incorporated areas.

Justice courts and municipal courts hear only minor civil and criminal matters and are not courts of record, meaning they do not keep permanent records of their cases. The district courts are courts of general jurisdiction, trial courts that hear civil and criminal matters of a more serious nature. The supreme court is the court of last resort, reviewing appeals from the decisions of the district courts. The supreme court must consider all cases filed. It selectively publishes the opinions of each of its annual sessions in the *Nevada Reports*. Decisions of the lower courts are not published.

Supreme court justices are elected to six-year terms, assuming office on the first Monday in January after their election. The governor fills midterm vacancies by appointment from nominees submitted by the Commission on Judicial Selection (established by constitutional amendment in 1976). Appointments are effective the day the appointee takes the oath of office. Justices, district judges, and justices of the peace can be removed from office by recall, impeachment, or legislative removal, or by the Commission on Judicial Discipline, which was established by constitutional amendment in 1976. Apparently, no judge has ever been impeached in Nevada, but in 1921 the state assembly voted to remove Frank P. Langan from office. The state senate failed to get the required two-thirds majority to pass the resolution.

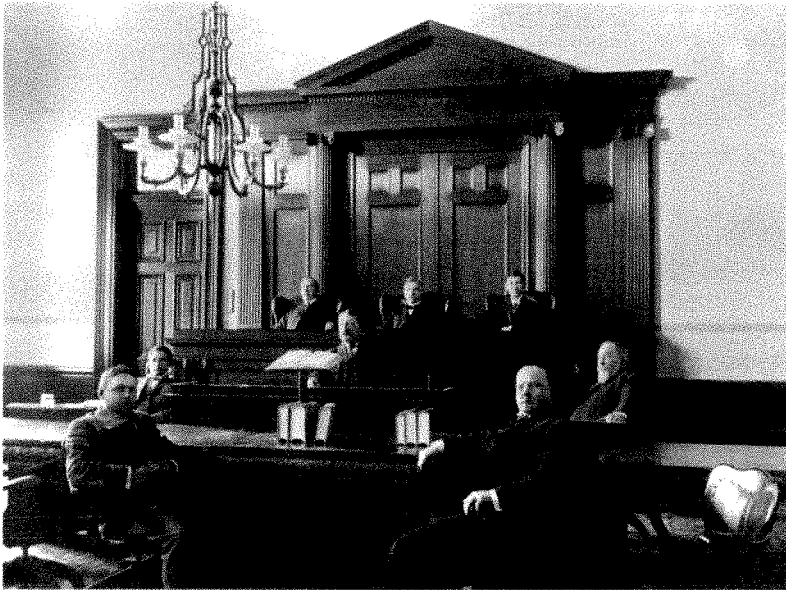
Originally, the supreme court consisted of three justices—the chief justice and two associate justices—with staggered terms two years apart. The legislature could increase the number of justices to five, which it did in 1967. The chief justice is the justice most senior in commission, but if two or more justices' commissions bear the same date, the chief justice is chosen by lot. The constitution was amended in 1976 to permit the legislature to increase or diminish the number of justices and allows the creation of panels if the court consists of more than five justices.

The terms of the supreme court are held in the state capital, although it may hear oral arguments at other places in the state. The court holds several sessions a year in Las Vegas and has heard oral arguments for educational purposes in Reno and in Elko. The court has had chambers in several locations in Carson



The first justices of the Nevada State Supreme Court, 1864, were (l-r) Justice Henry O. Beatty, Chief Justice James F. Lewis, and Justice Cornelius M. Brosnan. (Courtesy of Nevada State Library and Archives)

City. Initially, the court shared quarters with other state offices on the second floor of the Great Basin Hotel, which also served as the county courthouse. It moved to the newly completed capitol building in 1871, where it remained until its own Supreme Court and Library Building was constructed in 1937. The "Library" was the Nevada State Library, an executive branch agency whose law division became the Supreme Court Library in 1973. In 1992 the court moved to its current building.



The Nevada Supreme Court sits in chambers in the state capitol, ca. 1908. On the bench (l-r) are justices Frank Norcross, George Talbot, and James Sweeney. Court reporter James Finch and court clerk L.W. Legate are seated in the center row. (Courtesy of Nevada State Library and Archives)

The Nevada Supreme Court has a tradition of memorializing justices after their deaths in the *Official Reports of the Cases Reported to the Nevada Supreme Court*. Sometimes they are the only published source of biographical information about an individual. Sometimes they only generally recognize a justice's accomplishments in life and the high regard of his peers. They are not always accurate, and not all of the deceased supreme court justices are memorialized. Those missing include Henry Oscar Beatty (1864–68), John Neely Johnson (1867–71), William Edwin Orr (1939–45), Charles M. Merrill (1951–59), Gordon Rufus Thompson (1961–77), and John Code Mowbray (1967–93).

There is a numerical list of Nevada state supreme court cases in the state archives. The cases for 1865 to 1997 are indexed in volume 45 of the *Nevada Revised Statutes (NRS)*. The index in *NRS* refers to a volume and page number in the *Reports of Cases Determined in the Supreme Court of the State of Nevada*, also known as the *Nevada Reports*, which in turn refers to the case number

necessary to find the case in the archives or the Special Collections Department of the library at the University of Nevada, Las Vegas.

All of the Nevada Supreme Court cases are available on microfilm at the Nevada Supreme Court Clerk's Offices in Carson City and Las Vegas. The clerk keeps the official record of the court's actions and decisions. Nevada Supreme Court cases 1 through 2507 are available on microfilm for the years 1863 to 1921 in the state library and the Special Collections Department at the University of Nevada, Las Vegas, library. The original, existing paper copies of cases 1 through 3208, from the years 1863 to 1937, are preserved in the state archives. Original case files that are also available on microfilm may be researched in the archives but not photocopied unless the microfilm is damaged or unreadable.

Nevada is divided into nine judicial districts whose numbers and boundaries are not permanent; they often are changed by the legislature to suit public convenience or to fit the volume of judicial business. The more populated districts are divided into departments. Until recently, these records were filed with the county clerk in the courthouse in the county seat. The two largest counties, Clark and Washoe, have court clerks who keep the court records. Nevada has seventeen counties, and it is more important to know in what county the trial was held than in what district. The county boundaries have been the same since 1919, but before that time county boundaries shifted with legislation and the creation of new counties. Nine original counties were created in 1861 by the Nevada Territorial Legislature. By statehood in 1864, there were eleven. In the twentieth century, Clark County was formed out of the southern part of Lincoln County in 1909, Mineral County out of Esmeralda in 1911, and Pershing County out of Humboldt in 1919. These cause some confusion among legal historians because the original court cases stayed in the original counties. Stan Mottaz's "County Evolution in Nevada," *Nevada Historical Society Quarterly* 21 (1978): 25-50 describes the changing boundaries of Nevada's seventeen counties.

The county clerks have microfilmed many of the court cases, although some of the rural counties also have kept the original files. Although some clerks may tell researchers that older cases were lost in a past courthouse fire, inventories done by the Federal Historical Records Survey in the 1930s indicate that most of the records survived; poor indexing or remote storage make them hard to find. Only White Pine County lost early cases when the courthouse at Hamilton burned in 1881. During the 1930s, the Nevada Historical Records Survey conducted complete inventories of the records in

Nevada's courthouses and published guides to six of the counties.⁴ The inventories were undertaken by the Nevada Historical Society as a project of the Work Projects Administration. The remaining reports were not printed because of the start of World War II, but notes for the project can be found in the U.S. Work Projects Administration Collection at the society.

All district judges served for four years until a 1976 constitutional amendment changed their terms to six years. Judges' salaries are set by the legislature and paid by the state; the counties pay staff salaries. If a judge's seat becomes vacant, the governor fills the vacancy from a list of three nominees furnished by the Judicial Selection Commission. Such appointments fill the vacancy until the first Monday in January following the next general election.⁵

The 2006 edition of *Political History of Nevada*, issued irregularly by the secretary of state's office, contains a complete and current list of all judicial districts and their judges. Biographical information about many district court judges can be found in copies of a manuscript, "Biographical Summaries of Nevada's Federal, State and Supreme Court Justices, 1856–1992," compiled by Russell McDonald, which can be found at the Nevada Historical Society, the Nevada State Library and Archives, and the Supreme Court Law Library. Other biographical information about early judges can be found in a number of "Bench and Bar" publications, including Charles North Harris, "History of the Bench and Bar in Nevada," in Myron Angel, ed., *History of Nevada, with Illustrations and Biographical Sketches of Its Prominent Men and Pioneers* (Oakland, CA, 1881), pp. 332–40; Frank H. Norcross, "The Bench and Bar," in Sam P. Davis, ed., *The History Of Nevada* (Reno, 1913), vol. 1, pp. 273–314; and Oscar T. Shuck, *History of the Bench and Bar of California Being Biographies of Many Remarkable Men, a Store of Humorous and Pathetic Recollections, Accounts of Important Legislation and Extraordinary Cases, Comprehending the Judicial History of the State* (Los Angeles, 1901). An important contribution to the history of the early twentieth-century court is Jerome E. Edwards, "Patrick A. McCarran: His Years on the Nevada Supreme

⁴Nevada Historical Records Survey, *Inventory of the County Archives of Nevada* (Reno, 1937–44). No. 3, *Douglas County* (Minden); no. 4, *Elko County* (Elko); no. 6, *Eureka County* (Eureka); no. 11, *Mineral County* (Hawthorne); no. 12, *Nye County* (Tonopah); no. 13, *Ormsby County* (Carson City); no. 16, *Washoe County* (Reno).

⁵Michael W. Bowers and Larry State, "Judicial Selection in Nevada: A Historical, Empirical, and Normative Evaluation," *Nevada Historical Society Quarterly* 36 (Winter 1993): 227–45.

Court, 1913–1918," *Nevada Historical Society Quarterly* 18:4 (1975): 185–205.

Since 1988, the Nevada Judicial Historical Society has worked to preserve and promote the study of the history of Nevada's courts. Society members located photos of almost all Nevada Supreme Court justices and produced portraits for exhibit in the Supreme Court Building in Carson City; they also created a traveling exhibit and produced an audio CD of *Ten Famous Cases of the Nevada Supreme Court, 1865–1937*. These ten cases were selected for their legal importance or for the novel nature of their facts. They include such disparate cases as the last stagecoach holdup in 1916,⁶ the only execution of a woman in Nevada history,⁷ and the integration of Nevada's schools.⁸

The historical society currently is selecting another ten cases for publication and is working with the University of Nevada Oral History Program and the Ninth Judicial Circuit Historical Society on a series of oral histories of Nevada judges and attorneys. The Nevada Legal Oral History Project focuses mostly on the legal careers of Nevada's judges and attorneys, including former supreme court chief justice Cliff Young (2002), Washoe County district judge John W. Barrett (2005), and Charlotte Hunter Arley (2001), who was one of just a few women attorneys practicing in Nevada during the middle twentieth century. Other oral histories of lawyers and judges taken before this project are mostly memoirs, including *Clark J.*

⁶Regarding *State v. Kuhl* 42 Nev. 185 (1918), legal historians are apt to point out that the opinion is notable as the first decision where a palm print was used for identification, but westerners know the case as the last stagecoach robbery in America in 1916. Local miner Ben Kuhl was arrested and brought to trial for the robbery and the murder of the stage driver. The evidence included a letter from the mail pouch smeared with a bloody palm print, which experts convinced the jury was made by Kuhl. In 1917, the jury found him guilty of murder, and the Supreme Court upheld the conviction. The \$4,000 in gold coins were never recovered.

⁷While not significant in a strictly legal sense, *State v. Potts* 20 Nev. 389 (1889) nevertheless earned its niche in Nevada history after one of the unsuccessful appellants, Elizabeth Potts, became the first and only woman ever executed in Nevada. The Pottses were convicted of murder and appealed to the Nevada Supreme Court, claiming that certain evidence had been improperly admitted and that the jury had been improperly instructed. After thorough review of the record, the justices declined to reverse the judgment of the lower court, and the couple were hanged in Elko.

⁸One unsung hero of civil rights, whose name has all but escaped history's recognition, was a seven-year-old boy named David Stoutmeyer. In 1871, young Stoutmeyer was denied admission to public school under Nevada law because he was black. David and his family were unwilling to accept this denial of his rights. They took his case directly to the supreme court—and won. *State ex rel. Stoutmeyer v. Duffy*, 7 Nev. 342 (1872).



The case of *State v. Kuhl* arose from the last stagecoach robbery in America in 1916, in Jarbidge, Nevada. Ben Kuhl was convicted of first-degree murder of the stage driver and served twenty-eight years in the state prison. (Courtesy of Nevada State Library and Archives)

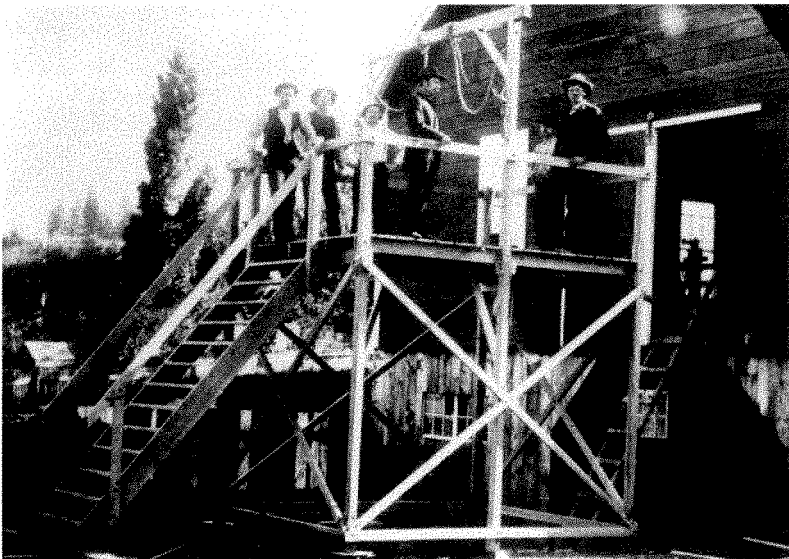
Guild: Memoirs of Careers with Nevada Bench and Bar, Lyon County Offices and the Nevada State Museum (1971) and *An Interview with Milton Badt* (1965). Guild focuses on railroad abandonment cases and banker George Wingfield's bank receiverships. Milton B. Badt, associate justice of the Nevada Supreme Court, was a member of a pioneer Nevada family. All of these oral history transcripts may be found at the University of Nevada, Reno, Oral History Program.

On February 27, 1865, Congress organized Nevada as one judicial district and assigned the district of Nevada to the Tenth Circuit Court (13 Stat. 440). The following year, Congress reorganized the circuits, and Nevada was assigned to the Ninth Circuit. The records of the Nevada federal courts relate to bankruptcy, common law, criminal, and equity cases, including mining company bankruptcies; disputes over water rights and mining claims; and federal condemnation proceedings during World War II. They are preserved at the Pacific branch of the National Archives and Records Administration in San Bruno, California, near San Francisco.

Ann Morgan Campbell, former chief of NARA's San Bruno branch, clarified the value of federal court records for historians and highlighted some of Nevada's more interesting cases in "Nineteenth-Century Nevada: Federal Records as Sources for Local History," *Nevada Historical Society Quarterly* 17:3 (Fall 1974): 145–51. James W. Hulse's "Making Law in the Great Basin: The Evolution of the Federal Court in Nevada, 1855–

1905," *Western Legal History* 1:2 (Summer/Fall, 1988): 135–64, provides a good overview of the federal courts in Nevada. Other notable articles include Elmer R. Rusco's, "Early Nevada and Indian Law," *Western Legal History* 2:2 (Summer-Fall, 1989): 163–90; Phillip I. Earl, "Nevada's Miscegenation Laws and the Marriage of Mr. and Mrs. Harry Bridges," *Nevada Historical Society Quarterly* 37:1 (1994): 1–17; and Eleanore Bushnell, "Judge Harry E. Claiborne and the Federal Impeachment Process," *Nevada Historical Society Quarterly* 32:4 (1989): 235–60.

Often overlooked as a good source of legal history are the records of the Nevada State attorney general in the Nevada State Archives. During Nevada's territorial period, the attorney general was appointed by the president but was limited in authority to trying federal cases and giving advice to the other territorial officers and the legislature. The first territorial attorney general, Benjamin B. Bunker, was appointed in 1861 but resigned the next year because there was not much to do. Theodore D. Edwards followed Bunker from 1862 until statehood in 1864. Both territorial attorneys general were allowed to augment their government salaries with service as private counsels, a common nineteenth-century practice for government lawyers.



Josiah and Elizabeth Potts were executed on the gallows in Elko, Nevada, above, in 1889 for the murder of Miles Faucett. Elizabeth Potts was the first and only woman executed in Nevada. (Courtesy of Nevada State Library and Archives)

Bunker's private law firm once represented the state in prosecuting individuals, and Edwards served as Ormsby County district attorney at the same time he was attorney general. These practices were prohibited by the 1864 state constitution.

The Nevada constitution provided for the popular election of the attorney general to a four-year term but was otherwise vague on the duties of this office until the 1867 legislature passed the first comprehensive legislation on the office and its powers. The attorney general was required to live and practice in Carson City and fulfill the following duties: to attend each session of the state supreme court and prosecute or defend all cases in which the state or a state officer in an official capacity was a party in a suit; to assist in all impeachments tried before the senate; to give his opinion in writing upon any question of law relating to their offices; to submit an annual report to the governor on January 1; to prosecute foreign corporations.

From the earliest days of statehood, the attorney general was a member or ex-officio member of numerous state boards and commissions, some of which were powerful and some of which were enabled for only a short time. They included the Board of Examiners; the Board of Pardons (later Parole and Pardons); the Board of Directors of the State Library; the Board of State Prison Commissioners; the Commission of Industry, Agriculture, and Irrigation; the Board of Railroad Commissioners; the Board of Revenue; the Board to Investigate State Police; and the Board of Mineral Land Commissioners. As the state's legal counsel, the attorney general can place the office on the fringe or at the center of important policy determinations—for example, control of water and power resources, nuclear testing, divorce, gaming, prostitution, control of federal lands, and organized crime. This trend became stronger in the twentieth century.

The records of the attorney general's office came to the Nevada State Archives in several accessions, and the filing systems of the office have remained more or less consistent over time. The records include general correspondence, agency correspondence, case files, opinions of the attorney general, and biennial reports. The attorney general was required to issue legal opinions when requested to do so by state officers and agencies. The state of Nevada's first attorney general, George A. Nourse, kept a record of his opinions in a handwritten volume, which would be used by his successors as established precedents, especially in the nineteenth century. Opinions were also published in the attorney general's biennial reports (beginning in the 1870s), as separate government publications. These have been compiled and recorded on a compact disc entitled "Nevada Law." Opinions are also found in the correspondence between the office and state agencies.

The nineteenth-century opinions of the attorney general were written in roughly chronological order in a single bound volume. Most of the opinions are in polished form, although later pages appear to be rough notes for opinions. These records include biennial reports for 1871–1895, opinions for 1867–1929, reports by Storey and Washoe County district attorneys on criminal activity for 1890–1899, and general correspondence from 1879.

The general correspondence of the attorney general from 1908 to 1961 is arranged chronologically and alphabetically. The agency correspondence dates from 1889 to 1964, but the bulk of the records date from 1923 to 1962. This series contains correspondence between the attorney general's office and state agencies; the governor and other state officials; and the district attorneys of Nevada counties and various state boards. Also included is a small amount of correspondence with the Council of State Governments and the Interstate Conference on Crime, and official opinions. These are arranged roughly by the name of the state agency or official, and then chronologically. A history of the office for the nineteenth century was written by William N. Thompson in his two-part article, "The Office of the Attorney General of Nevada in the Nineteenth Century," *Nevada Historical Society Quarterly* 26:4 (1983): 272–97, and 27:1 (1984): 13–33.

Now it is legal to make a wager in forty-eight states, but until recently Nevada was the pioneer of legalized gambling, and practices that previously were illegal are now regulated. Casino owners who were formerly tried in courts for cheating customers and faced possible incarceration now face administrative hearings and possible fines.

Gambling began in Nevada long before it became a territory in 1861. From the "thimble rig" game that fleeced passing emigrants, to the green tables operated by the Chinese, where prospectors gambled their day's profits, gambling was to become very much a part of life in a mining town. The discovery of the Comstock Lode's large and rich veins saw gambling grow in proportion to the wealth extracted from what then seemed an inexhaustible supply. From this situation developed opposing views toward gambling. From the territorial bill in 1861 that declared gambling a felony, through the constitutional convention, and the state legislatures that enacted laws prohibiting gambling, efforts were made to discover a balance between two extremes. The legislature of 1869 overrode the governor's veto of a bill to legalize gambling in Nevada. Succeeding legislation attempted to control the ill effects gambling had on families. Between 1877 and 1907, regulations addressed the major problems in gambling, such as location, population ratio relative to license fees, hours of operation, and cheating. At the same time, there

was a growing awareness of gambling as a source of revenue for the state. In 1909 the anti-gambling forces scored a victory, and the state witnessed what was considered the demise of gambling on September 30, 1910. Even with police enforcement, there were problems with the interpretation of the statutes as to when a game was a legal pastime and when it was a felony.

In 1931, because of new legislation, the state saw the beginning of the modern era of legalized gambling. Afterwards, the growing significance of the revenues that gambling earned for the state and county coffers was underlined when gambling was placed under the Nevada State Tax Commission in 1945. By 1955, the commission was granted sweeping powers to administer the provisions of the act, and the legislature created the State Gaming Control Board as the commission's enforcement and investigative unit. The legislature also inaugurated a policy designed to eliminate the participation of undesirable elements in Nevada's gambling industry. Despite the increased authority and powers given to the tax commission and the control board, the industry became more and more subject to pressures from within as well as without, as revenues from gambling added considerable wealth to the state.

Considering the problems related to the industry, in 1959 Governor Grant Sawyer requested that the legislature completely overhaul the gaming control machinery. The legislature's response was the Nevada Gaming Control Act, passed on March 30, 1959. The act eliminated the tax commission's role in gaming, and in its place established the Nevada Gaming Commission, making the State Gaming Control Board its audit, investigative, and administrative arm. In order to give the governor more voice in gaming control matters, the legislature approved establishment of a Gaming Policy Board in March 1961. In 1993 the Nevada Racing Commission was eliminated, and its responsibilities were transferred to the gaming commission, so that today the Nevada Gaming Commission is the ultimate authority in all gambling matters. It has the sole responsibility for issuing or denying licenses and collecting state gaming taxes and fees.

Fifty percent of the Nevada Gaming Commission collection is made up of the minutes and transcripts of the meetings of the commission from 1959 to 1992, when the bulk of the gaming business and practices were discussed and judgments made about gaming issues. The legal files of the commission, 1959-1994, consist of complaints against gambling institutions and/or persons employed there, for violations of the gaming policies and regulations in force in the state. The files contain proceedings and exhibits, a number of which are sealed and marked "confidential."

The State Gaming Control Board is primarily empowered to investigate the qualifications of each license applicant and has

the authority to inspect and examine the gaming premises as well as all equipment and supplies; and demand access to and inspect, examine, and audit all papers, books, and records of applicants and licensees. The board, the commission, and their agents, inspectors, and employees are vested with the powers of peace officers of the state of Nevada for the administration of the rules and regulations of the industry.

More than half of this collection consists of minutes of control board meetings from the board's creation in 1955 to 1986. Included in the files is a note: "For the period minutes of the State Gaming Control Board meetings were not transcribed in their entirety June, 1971 through May, 1975; except transcriptions of some specific matters may appear in either rough draft or final form. The tape recordings of these proceedings are retained in the Carson City Board Offices for review by interested persons." The transcript of meetings is a more comprehensive record of the proceedings. Usually there is a monthly disposition, an index of the agenda of the meetings of the month, indicating specific item numbers in the agenda and the action taken for each. The files also include exhibits of the particular cases under consideration. Where the exhibits are confidential, the reporter notes that these are maintained in the office of the executive secretary.

Eric Moody's dissertation, "The Early Years of Casino Gambling in Nevada, 1931-1945" (Ph.D. dissertation, University of Nevada, Reno, 1997), provides the most complete picture of the development of Nevada's gaming industry from its legalization in 1931 to the beginnings of state regulation in 1946. Other valuable sources of information about early state regulation include the oral histories of Robert Faiss and Guy Farmer, published by the University of Nevada Oral History Program in 2006.⁹ Robert Faiss was an assistant executive secretary for the Nevada Gaming Commission. He also was a speechwriter and press secretary during Grant Sawyer's administration. Guy Farmer was the chairman of the State Gaming Control Board.

Legal history is an important part of the history of Nevada, because the case files of the courts relate closely to the historical development of the state and its major industries of mining, gambling, and divorce, federal-state relations, and the progress of civil rights in Nevada. Historians have noted the importance of legal history and have written a great deal about it. They

⁹"Gaming Regulation and Gaming Law in Nevada: As Remembered by Robert D. Faiss," oral history interviews by Dwayne Kling, ed. R.T. King (Reno, 2006); "Gaming Regulation in Nevada: The First Sawyer Administration: As Remembered by Guy W. Farmer," oral history interviews by Dwayne Kling, ed. R.T. King (Reno, 2006).

examine famous crimes and infamous criminals, stage robbers, trials of executed murderers, and the divorces of the rich and famous, who have flocked to Nevada for easy dissolution of their marriages. But historians are also beginning to look at the lives of the legal practitioners—judges and attorneys—and the way law has been practiced in Nevada. Those historians who choose to mine this vein will find a wealth of sources in Nevada.

BOOK REVIEWS

Conquest by Law: How the Discovery of America Dispossessed Indigenous Peoples of Their Lands, by Lindsay G. Robertson. New York: Oxford University Press, 2005; 239 pp.; appendix, notes, bibliography, index; \$29.95 cloth.

In *Conquest by Law*, Lindsay Robertson explores the conditions surrounding the now-infamous 1823 Marshall decision in the case of *Johnson v. M'Intosh*. The case established the discovery doctrine, which would serve as the legal basis for the dispossession of eastern indigenous peoples and their removal into the western territories. The underlying theme of rapacious land speculators willing to manipulate the legal and political systems to achieve financial success is reminiscent of Patricia Limerick's *Legacy of Conquest*. However, Robertson's work is strong enough to stand alone and serves as an excellent example of the contention that greed provided a significant incentive for the settlement of the nation.

Robertson has exhaustively charted the course of the *Johnson* case from the founding of the Illinois Land Company in 1773 to its merger with the Wabash Company a few years later and the persistent, if fruitless, attempts by these investors to claim title to lands they had purchased from the Piankashaw and Illinois Indians. Using the confusing and tumultuous era of the American Revolution as their backdrop, the Illinois and Wabash Company attempted to defy royal decree and the will of the new government of the United States in order to gain title to the Indian lands. Despite repeated failures, the Illinois and Wabash Company continued to challenge the federal government in their quixotic quest for almost fifty years. The *Johnson v. M'Intosh* decision finally exhausted their last hope for success, and their claim was irrevocably denied.

Although Robertson's work focuses on the Illinois and Wabash Company, other like-minded land companies make their appearances throughout the text and help to illuminate a period in American history when the rights of Indians were disposable and the quest for profit riveted the attention of many people. Despite Robertson's excellent history of the Illinois and Wabash Company, she has sacrificed the Native voices. Although she readily states that her intention is to examine the case from the Anglo-European perspective and admits that this diminish-

es the voice of the Native people involved, her decision leaves out a very human dimension in the story and leaves the reader somewhat numbed by the passionless maneuverings of greedy individuals. Her approach does, however, underscore the fact that the *Johnson* decision was harmful to the Indians and that they were virtually powerless to arrest the damage once the decision was rendered.

Although the land claims of the Illinois and Wabash Land Company served as the basis of the *Johnson v M'Intosh* decision, the irony of the case is that the company's five-decade struggle to wrest the land from the Indians for their own profit came to naught, but that the case was seized as a convenient vehicle through which John Marshall could insure that revolutionary war soldiers received title to lands promised to them for their war service. Guilty of legislating from the bench, Marshall established the doctrine of discovery, which contended that once lands had been "discovered" by the Europeans, they assumed ownership, thereby effectively dispossessing the Indians of territory they had inhabited for generations.

Using questionable historical documents and convoluted logic, Marshall expanded his ruling far beyond the original merits of the Illinois and Wabash Land case to achieve what the author supposes was a precedent intended only to benefit the soldiers. When the states of Georgia, Alabama, and Mississippi later extracted the discovery doctrine from the *Johnson v. M'Intosh* case to shore up their attempts to remove the Indians from their territories, Marshall attempted to reverse the discovery doctrine using the 1831 case of *Worcester v. Georgia*. But Marshall had literally let the genie out of the bottle, and despite the *Worcester* ruling, the discovery doctrine continued to be utilized to remove Indians from their lands.

Robertson's text is accessible to the well-informed lay reader, but its principal audience will be scholars interested in colonial, legal, or Native American history. The text gleans much from secondary sources, many written more than fifty years ago. Since several of these texts have been edited, the reader may wonder what else might have been said about the case, since these references were compiled at a time when public opinion would have favored the land speculators over the Indians. This perhaps can be counted as one of the "unexpected consequences" of the case and assuredly is a minor criticism of an otherwise well-written and highly readable book.

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Architect of Justice: Felix S. Cohen and the Founding of American Legal Pluralism, by Dalia Tsuk Mitchell. Ithaca, New York: Cornell University Press, 2007; 384 pp.; notes, bibliography, index; \$59.95 cloth.

Felix S. Cohen is best known in Western legal circles as the creator and author of the *Handbook of Federal Indian Law*. Cohen worked as a solicitor at the Interior Department from 1933 to 1947 and was involved in many of the New Deal initiatives relating to Indians and Alaska Natives. Cohen was also a legal philosopher, earning a doctorate in philosophy at Harvard in addition to his law degree at Columbia. His writings and articles cover both domains and, as Dalia Tsuk Mitchell argues, intertwine in his life's work. His vision of legal pluralism informed all of his work in Indian law.

Mitchell follows Cohen's life and career, from his birth to his graduate work, to his work with the Interior Department during the New Deal. Cohen was the son of noted philosopher Morris Raphael Cohen, a Russian Jewish immigrant. Mitchell believes that these elements—his relationship with his prominent father, his Jewishness, and his immigrant father—greatly influenced Cohen's thinking, but her arguments on this point sometimes seem strained and repetitive. Felix Cohen's dissertation, published as *Ethical Systems and Legal Ideals*, did challenge some of his father's thinking. Felix Cohen was looking for his own worldview, and he found it in legal pluralism.

As described by Cohen, legal pluralism was a philosophy that explored the boundaries of the roles of groups in society, including the balances between group autonomy and group power. It looked at the state as one group among many diverse groups. Legal pluralists believed that the focus on groups encouraged a diversity of values, experiences, and points of view, which would benefit all. Mitchell writes that "intellectuals endorsed a legal pluralist image of the state because it promoted a particular social and economic agenda. They were certain that a state built on the grounds of pluralism would promote social and economic equality" (p. 57). This worldview fit well for someone like Cohen, who would become involved in Indian affairs in the New Deal. It was during the New Deal that the focus of federal Indian policy shifted from assimilation of individual Indians to the recognition of tribes as viable political and economic groups.

In 1933, he joined the Interior Department—intending to stay for a year—to help put his vision of a pluralistic state into action. It was a time of change in Indian relations. At Interior, he was involved with drafting the Indian Reorganization Act (IRA), a major piece of New Deal legislation that changed the

way the government interacted with the tribes. The tribes were the groups that Cohen recognized in legal pluralism, and Mitchell argues that they became the proving ground of his philosophical theories. Mitchell writes, "He wanted to establish self-governing communities on Indian reservations, communities that would also provide models that other groups could follow" (p. 74). Cohen's work at Interior allowed him to put this philosophy into practice.

The book discusses the major events and issues with which Cohen was involved during his time at Interior, including the IRA, the writing of tribal constitutions, the writing of the *Handbook of Federal Indian Law*, the Indian Claims Commission, and the representation of Indian tribal claims, and then adds the overlay of his philosophy of legal pluralism to explain how and why Cohen acted and responded the way he did. Mitchell also shows that as the years passed and the New Deal legislation turned out not to work as expected, Cohen had to compromise his legal philosophy and adapt it to the world around him.

Mitchell does a good job of explaining how Cohen's daily practical work and philosophy intertwined. My only concern is that, at times, Cohen comes across as one-dimensional and flat—his only thoughts being of law and philosophy. Where are his singing, his trips to the Adirondacks, his dinners with friends and family, his sense of humor? The personal side of him is missing, but Mitchell may not have set out to cover that. She documents Cohen's thinking well and presents an excellent biography of his work, his writings, and his thoughts. Cohen deserves such a biography.

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Gus J. Solomon: Liberal Politics, Jews, and the Federal Courts, by Harry H. Stein. Portland, Oregon: Oregon Historical Society Press, 2006; 256 pp.; illustrations, notes, bibliography, index; \$22.00 paper.

Legal history sometimes suffers from an overemphasis on the study of appellate cases and appellate decision making. Legal biography often mirrors this shortcoming by its disproportionate emphasis on appellate judges. There is, of course, reason for this: case law provides an important guide to the development of the law, and case law is by far the most easily accessed source for the study of legal history. It is also true,

though, that case law and the appellate process reflect only a small part of how lawyering and judging and, indeed, the development of the law actually work. Everyday lawyering and everyday judging are much harder for the historian to access. All the more important, then, that someone access this world and write about it in a meaningful way.

Harry Stein has done this for us in his fine legal biography *Gus J. Solomon: Liberal Politics, Jews, and the Federal Courts*. As the author points out, district court judges are rarely the subject of legal biography (p. ix). They are often, however—and this is certainly true of Judge Solomon—the “source of endless stories” (p. ix). What is more, district judges are the work-horses of the federal judiciary and often the final interpreters of federal law (p. ix).

Gus Solomon was born in Portland, Oregon, in 1906 and died in 1987. His life spanned a remarkable time in American history, and while there is no doubt that Stein's book is, by design, a biography, it is also a good history of Portland and Oregon politics from the 1930s to the 1980s. Solomon was born into a Jewish immigrant family, and being Jewish informed his obligation “to the weak, oppressed, and suffering” (p. 5). He was educated at Reed College in Portland and the University of Chicago, and then at Columbia Law School and Stanford Law School, where he graduated in 1929.

Returning to Portland, Solomon was unable to find work in a law firm because he was Jewish, so he became a sole practitioner. Soon he became involved in Portland and Oregon politics as an active member of the ACLU and the Democratic Party. In the 1930s he represented public power cooperatives, which were then at the cutting edge of progressive politics in Oregon. Much of his life, as both an attorney and a judge, was taken up with the cause of equal rights for Jews, and later Blacks, and eventually women and Native Americans. Indeed, the progression of Judge Solomon's views about who should be the subject of equal rights efforts reflects the progression of this debate nationally.

Appointed to the U.S. District Court bench for Oregon in 1950 by President Harry Truman, Solomon developed a reputation as a scholar of the law. He is probably best remembered, however, for developing modern trial management techniques; for being, shall we say, “expeditious” in trial and in decision making; and for his temperament—or perhaps better said, his temper. Solomon was a model of efficiency. Many jurists—often from other districts around the country—learned courtroom and procedural techniques from him, which served them well. His ability to get a case to trial and to try it expeditiously was legendary. He was a supporter of the *Federal Rules of Civil Procedure*, which he

considered "the most significant improvement in the conduct of cases in the last century" (p. 112). He was well known for being prepared for hearing and trial and for inviting more extensive briefing when he was faced with an unfamiliar topic.

Unfortunately, Judge Solomon's temper was also legendary, and this, sadly and perhaps unfairly, is how he is best remembered by the storytellers of this reviewer's lawyering youth. As Stein says, "If Solomon had a major failing, his judicial temperament was it" (p. 164). Indeed, Stein devotes an entire section to this topic. Biography often runs the risk of becoming hagiography, and Stein should be credited with writing a fair and full history of Judge Solomon's life, warts and all.

A prospective reader might be forgiven for choosing not to read this book, since it begins with the uninspiring line "Gus Jerome Solomon was born in Portland, Oregon . . ." (p. 1). This would be a mistake. After a chapter on "Early Years," the book quickly moves into Solomon's life in the 1930s as a "Young Lawyer" (ch. 2), a "Grassroots Activist" (ch. 3), and in times of "War and Peace" (ch. 4). As noted, these chapters provide not only insight into the life of Gus Solomon but also a good primer on Oregon history during the 1930s and '40s. The remaining chapters cover Solomon's life as a judge, first chronologically and then, in four of the final five chapters, thematically: "Judging," "Rights," "Opportunities," and "Crime and Punishment." As legal biography, these chapters are the book's best.

Stein uses a remarkably broad range of sources: author interviews, interviews and oral histories collected at the Oregon Historical Society, government records, manuscript sources, published articles, and books. In order to tell the story of a practicing attorney and a practicing trial judge, the author has dug deep. Both the lay reader and the lawyer or judge will be rewarded by this research and by reading this book.

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Law Makers, Law Breakers and Uncommon Trials, by Robert Aitken and Marilyn Aitken. Chicago: ABA Publishing, 2007; 422 pp.; bibliography, index; \$39.95 paper.

From the trial of Charles I to the trials of Rosa Parks, Robert and Marilyn Aitken have written fascinating histories, primarily focusing on trials, some well known, many less so. In addition to trials, they also describe the settings of other legal developments. In describing even those trials of which we are

generally aware, the authors provide a host of detail and specifics about the settings and evidence that make their book of particular value and interest to lawyers. These histories were originally published over more than a decade under the title "Legal Lore" in *Litigation*, the journal of the Litigation Section of the American Bar Association. (Full disclosure: the author of this review and Robert Aitken both serve as members of the editorial board of *California Litigation*, the journal of the Litigation Section of the State Bar of California.)

Among the many captivating items we encounter in the book are the story of the politics surrounding the adoption of the Sedition Act of 1798 and its contribution to the Federalists' loss of political power; the mistake made by Supreme Court Justice John Marshall that resulted in the landmark case of *Marbury v. Madison*; the facts and politics surrounding the *Dred Scott* decision; the evidence, or rather lack thereof, implicating Dr. Samuel Mudd in the assassination of President Lincoln; the case in which Alexander Hamilton and his ultimate killer Aaron Burr co-defended Levi Weeks, an accused murderer; the trials of Jack McCall, the man who killed Wild Bill Hickok; the suit between Robert Schumann and his future father-in-law over Schumann's right to marry Clara; James McNeill Whistler's suit against then-preeminent art critic John Ruskin; and the litigation surrounding James Joyce's novel *Ulysses*.

Most of us have probably read Leon Uris' 1958 novel *Exodus* or seen the motion picture based on the book. But did most of us know that a character identified in the novel as one of the physicians who subjected Auschwitz inmates to horrendous and unnecessary surgeries sued Uris for libel? Most of the names Uris used in describing concentration camp conditions were modifications of real names. But Dr. Wladyslaw Dering, an Auschwitz prisoner-doctor, who was described as having "performed seventeen thousand 'experiments' in surgery without anesthetic," sued Uris in England's High Court of Justice. The Aitkens describe the trial, including absorbing cross-examinations, in detail. Because Uris' *Exodus* contained some untrue items, the court instructed the jury that damages would have to be awarded. The resulting jury verdict: for the plaintiff in the amount of "one ha'penny." As the authors note, "Although the verdict was in favor of Dering, the damages awarded were 'the lowest coin of the realm.'"

Another chapter illustrating a cross-examination that, in all likelihood, determined the outcome of the case deals with the fight of the Irish for their freedom from Great Britain. Letters sent to the *Times* of London implicated Charles Parnell, the Irish Parliamentary Party's leader, with involvement in the murder of Britain's representatives in Ireland. The letters

were forgeries. Outstanding cross-examination by Sir Charles Russell, Parnell's barrister, exposed the author of the forgeries because of the misspelling of a single word. Other sections of the book may serve as templates for devastating presentation of evidence and cross-examination.

Of particular interest to this California reader is the litigation history of U.S. Supreme Court Justice Stephen J. Field, who, before his appointment to that Court, served as a justice on the California Supreme Court. The California chief justice for the first two years of Field's service was David S. Terry. In a dispute involving Justice Terry's wife Sarah, against whom Field had ruled in an earlier case, Terry slapped Field, whereupon Field's bodyguard shot and killed Terry. Field was charged as an accessory to the murder. The case was transferred to the U.S. District Court in San Francisco, where the court ruled that the shooting was justified and the guard's conduct was "commendable." Stephen Field still holds prominence in California as the author of the California Codes, many parts of which remain in effect to this day.

For insight into the judicial processes in the "Wild West," an account of the murder trials of Jack McCall, who shot and killed Wild Bill Hickok—particularly the first trial in a miner's court, which acquitted him—is instructive. Unfortunately for McCall, a federal territorial court, holding that the miner's court lacked jurisdiction to try him, later convicted him and ordered him executed.

These are only a few examples of the many fascinating subjects covered by the Aitkens. Their research was obviously extensive. One small criticism is that, rather than placing their source references in footnotes or endnotes, the authors bury them inside paragraphs of text. Although readers of legal briefs may be used to this method, it is somewhat distracting. But this criticism does not detract from the overall value of the book. It will be of great interest to the general reader and of particular interest to those of us who labor in the fields of the law.

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California Court of Appeal

Perilous Times: Free Speech in Wartime from the Sedition Act of 1798 to the War on Terrorism, by Geoffrey R. Stone. New York: W.W. Norton & Company, 2004; 730 pp.; notes, index; \$35.00 cloth.

The seminal legal cases dealing with free speech principles have been so thoroughly analyzed by so many judges, academ-

ics, and other commentators that Geoffrey R. Stone's effort to cover the ground yet again faces substantial challenges, both in stimulating interest and in advancing understanding. The tragedy of 9/11, and the controversial policies adopted in response to it, have further increased discussion of the tensions between national security and free speech, making it all the more difficult for an author to find something new and informative to say. In this crowded field, *Perilous Times* succeeds admirably in identifying and dissecting the historical episodes that are most likely to be of use in working through the free speech issues presented by the ongoing fight against terrorism.

Stone's thesis is that "the United States has a long and unfortunate history of overreacting to the perceived dangers of wartime" (p. 5), and his goal is to study those episodes perceptively enough to help identify how the country can avoid or minimize similar errors in the future. He observes that "the national government has never attempted to punish opposition to government policies, *except* in time of war" (p. 5), which is significant in light of his estimate that the United States has been at peace for roughly 80 percent of its history (p. 5). Of course, the interludes of war have generated a disproportionate share of our most troubling free speech controversies, and at this juncture it seems likely that, at least to some degree, the post-9/11 pressure to constrain free speech will be an ongoing process rather than a defined interval.

Although Stone makes an effort to frame some of the free speech issues with which the country is currently struggling (pp. 550–57), almost all of the book is devoted to the six principal periods during which a military conflict, or intense pressure equivalent to a shooting war, led to policies that curbed free speech. Each of these major episodes in the military history of the United States—the tensions with France that led to the Sedition Act of 1798, the Civil War, World War I, World War II, the Cold War, and the Vietnam War—becomes the core of a chapter in *Perilous Times*. Although Stone joins other historians and legal scholars in finding much to criticize in the suppression of dissent during each period, he also concludes that, over time, "we have made progress" (p. 533.) Stone ultimately identifies the time periods of the Sedition Act of 1798, World War I, and the Cold War as the "three eras in which the nation most aggressively silenced dissent" (p. 534), and he assigns much of the responsibility to national political leaders who promoted repression by inflaming the tendencies toward intolerance and vigilantism (p. 535).

Stone's discussion of each period includes a careful reconstruction of the social and political circumstances in which the crisis arose, and a multitude of minibiographies give a zesty

energy to the sometimes obscure actors who occupied the First Amendment stage. The seething political struggle in 1798 between President John Adams and the Federalists (generally sympathetic to and aligned with England, and very fearful of the destabilizing effects of the French Revolution), and Vice President Thomas Jefferson and the Republicans (sympathetic to France and to the aspirations of the French Revolution), "as the nation armed for war with France" (p. 19), led to the infamous Sedition Act of 1798, and to the prosecution of Republicans who criticized the administration's policies.

A formative episode in the early development of an independent judiciary in the United States was the failure of the Republicans, once they took power after the election of 1800, to secure the two-thirds Senate majority needed to convict Supreme Court Justice Samuel Chase on impeachment charges and remove him from office. Removal of Chase might well have initiated a tit-for-tat sequence of similar politically motivated impeachments of justices and other federal judges, undermining the life tenure granted by Article III. However, after perusing Stone's engaging descriptions of Justice Chase's excesses in presiding over the Sedition Act trials of Thomas Cooper in Pennsylvania and James Callender in Virginia, the reader may easily understand why the Jeffersonians sought to remove Chase, and why he may well have merited the removal from office that he managed to escape. Justice William Patterson, who, on his own circuit duties, presided over the Sedition Act trials of Matthew Lyon and Anthony Haswell in Vermont, demonstrated similar partisanship, bias, and lack of judicial temperament. Stone presents the sad story of the Federalists' relentless prosecutions under the Sedition Act so fully and so emphatically that, along with him, we breathe a deep sigh of relief when the statute "sunsets" the day before President Jefferson takes office.

Stone describes the "serious abuses" that occurred during the Civil War, such as suspensions of habeas corpus (p. 133), but in light of the extreme challenges that President Lincoln faced, the author concludes that Lincoln "demonstrated an admirable respect for free expression" (p. 133). Although the Civil War period is not a major focus of *Perilous Times*, Stone's discussion is informative, and he provides adequate justification for the conclusions he reaches.

The entry by the United States into World War I triggered another period of intense suppression of dissent. Stone appropriately adjusts his level of magnification to examine in detail the critical period in which the "clear and present danger" test of *Schenck v. United States*, 249 U.S. 47 (1919), was announced and applied.

Stone discusses *Schenck* and the other cases arising under the Espionage Act of 1917, but he does not attempt to add significantly to the enormous literature that has already grown up around the cases and their doctrinal nuances. He effectively summarizes the fascinating discoveries that have been made concerning Justice Holmes' back-channel discussions about the *Schenck* test with Judge Learned Hand and others. As in his reporting on the Sedition Act trials, perhaps Stone's most valuable additions to our understanding are his sketches, in crisp but telling detail, of the histories, personalities, and tactics of the dissenters—Molly Steimer, Eugene V. Debs, Alexander Berkman, Emma Goldman, and Victor Berger. Was there an unusually high number of colorful characters involved in the Espionage Act prosecutions? Stone makes it appear so, as he not only describes the dissenters who faced harsh penalties, but also the few courageous judges who protected free speech and the Justice Department officials who set investigatory and prosecutorial policies. Stone's rich social history of the Great War even includes some law professors, both those who resisted suppression of dissent (Ernst Freund of the University of Chicago and Zechariah Chafee of Harvard) and those who thought the professors opposing the Espionage Act prosecutions should be fired (Dean John Wigmore of Northwestern University Law School).

Because there was little dissent when the United States became involved in World War II, that conflict did not generate any groundbreaking First Amendment precedents. Stone does present *Korematsu v. United States*, 323 U.S. 214 (1944), as an example of wartime excess of another variety, and he also describes the handful of prosecutions brought against fascist leaders.

The Cold War, and especially the witch hunts of the McCarthy period, get exhaustive treatment from Stone, and, once again, much of what is new in his discussion concerns the social and political atmosphere of the times and the intriguing personalities of the protagonists, rather than the court opinions that the controversies generated. President Robert M. Hutchins of the University of Chicago, fired federal employee Dorothy Bailey, HUAC witness Elizabeth Bentley, Alger Hiss, the Hollywood Ten, and Senator Joseph McCarthy himself all make their appearances, along with many others, and Stone uses them to recreate very effectively the oppressive mood of the times. On a lighter note, it may be worth the full price of *Perilous Times* just to know how Justice Hugo Black reacted to Chief Justice Fred Vinson's description, in *Dennis v. United States*, 341 U.S. 494 (1951), of the threat of worldwide communism. He scribbled, "The goblin'll get you" (p. 407).

In examining his sixth and final period of study, the Vietnam War, Stone provides a summary that is quite informative even

to those of us who lived through the controversies. *Pentagon Papers* is treated in detail, as it deserves. That fateful confrontation between the Nixon administration and the press is preceded by a richly textured description of the protests against the Vietnam War that began to gain strength long before Richard Nixon became president. Stone traces the history of the antiwar movement from the nuclear disarmament protests of the fifties (p. 433), through the increasingly strident protests that responded to President Lyndon B. Johnson's escalation of the war, and on to the Chicago convention of 1968, the "Days of Rage" and the moratorium in 1969, and the Kent State killings in 1970.

It would be eerie, and perhaps even a bit disappointing, if a book as ambitious and sweeping as *Perilous Times* did not commit at least one immense error, just to keep readers alert. Stone does not fail on this count, either, since he defends the Supreme Court's decision upholding the conviction of David Paul O'Brien for burning his draft card to protest the Vietnam War, in *United States v. O'Brien*, 391 U.S. 367 (1968). Members of Congress had been outraged by this form of protest, so in 1965 Congress for the first time made destruction of draft cards illegal. Even though the criminalization of draft card burning perfectly illustrates Stone's theme—government overreaction during wartime to punish dissenters in an effort to silence them—Stone defends the Court's decision. He accepts the Court's argument that O'Brien could be punished because he could have conveyed his message in many other ways (p. 475), but of course in almost every other First Amendment context the response to such an observation would be "So what?" A speaker is permitted to choose the message and the way it is to be communicated, unless there are strong reasons for the government to be allowed to regulate. Stone also notes that "the power of draft card burning as a form of symbolic protest" would have been largely destroyed if the Supreme Court had overturned the statute making destruction illegal (p. 475), but it would be very odd to allow concern for the effectiveness of a dissenter's future tactics to become a justification for upholding a conviction based on a protest that had already taken place.

Perhaps someday a full law review article will be written denouncing *O'Brien* as "Chief Justice Earl Warren's Worst Opinion." Suffice it to say, for present purposes, that the application of the *O'Brien* symbolic speech test to the circumstances of the *O'Brien* case itself is deeply flawed. In all the annals of judicial efforts to find an appropriate government justification for suppressing speech—an "important or substantial" interest is needed to satisfy the *O'Brien* test—it would be hard to come up with reasons as preposterous as those used to send David O'Brien to jail. The Court accepted the argument that the

physical card itself formed a vital link in the administrative processes of the Selective Service System. Stone is also willing to absolve Chief Justice Warren and his colleagues from responsibility for closing their eyes to the fact that the 1965 statute under which O'Brien was convicted was by no means an "incidental" restriction on speech. The very powerful members of Congress who promoted the statute did not even attempt to hide the fact that its true purpose was to punish dissenters like O'Brien, yet the Court's decision pretended not to notice.

Perilous Times is a well-researched, deep, and thoughtful book that will serve almost as an encyclopedia to support further discussion of the free speech issues that arise during wartime. Stone covers the nation's entire history and concentrates on those wartime periods when the natural tendency to suppress dissenters was carried to the greatest extremes. His judgments are, as a whole, very sound. Stone very sensibly emphasizes the great progress that has been made since the period from 1798 to 1801 in tolerating dissent during wartime, and his analysis will help to assure greater respect for the First Amendment as new wartime policies are put into place and as future free speech cases arise and are decided.

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Foundations of Justice: Alberta's Historic Courthouses, by David Mittelstadt. Calgary, Alberta: University of Calgary Press, 2005; 360 pp., illustrations, photographs, bibliography, index; \$74.95 cloth.

For Alberta, as for much of North America, the establishment of settled community, both local and provincial, was in large part dependent on the creation of a system of justice. And that process was inextricably tied to the building of courthouses. In *Foundations of Justice*, David Mittelstadt presents a history of the Alberta court system and the buildings it used and built, from the time of the earliest settlements through the Great Depression and World War II. He addresses the social, business, and political culture of the communities in which the courthouses were (and in some cases, were not) built, to show how the interplay of those factors influenced both the choice of court locations, and the design and significance of the courthouses they received.

Although in many ways the civic drive for courthouses was the same throughout the West, for readers unfamiliar with the

Canadian political structure and its system for the financing of public buildings, it is fascinating to discover how political shifts on the national level directly influenced local courthouse construction. During Alberta's territorial era, both the justice system and the construction of public buildings were handled at the national level, first by the minister of justice, then later by the Dominion Department of Public Works. Thus, while in older provinces local and provincial governments were empowered to design and construct their own courthouses, it was eastern bureaucrats—who had little experience in courthouse design—who made decisions regarding courthouses in the West.

When Alberta became a province in 1905, it gained responsibility for its own courts. Initially, the courts used the territorial buildings, which were the property of the dominion. Over time, certain of these were turned over to the province, which paid rent to the dominion until it could purchase the buildings. A top priority for the provincial government was a restructuring of the judicial system to accommodate the increased legal needs of a booming economy, including a need for new courthouses, sometimes in new locations. Local voters pushed for grander buildings that were designed with more care for both the true needs of the court and the cachet the structure could give to the community. Now, with the choice of court location, building site, and design all within the control of the provincial government, funding became the primary factor in courthouse construction. Mittlestadt divides the provincial courthouses into two groups: those constructed between 1905 and 1921 when the Liberal Party was in power, and those built from 1927 to the Depression, when the provincial government was in the hands of the United Farmers of Alberta.

Within each grouping—territorial, Liberal, and UFA—Mittlestadt devotes a chapter to each of the courthouses, providing background on the community and its efforts to obtain a courthouse, as well as the details of its construction, use, and, in some cases, eventual destruction. The author provides rich detail about the plans for the buildings, including those designs eventually rejected by the builders.

The author brings a further human interest to the story of the courthouse buildings through frequent vignettes of events in the courts, including accounts of memorable trials and other proceedings, and tales from the lives of the lawyers and judges. Especially interesting are the stories drawn from the days of the circuit judges, when the entire group of court personnel would descend on a town, taking over the hotel, with judges, lawyers, litigants, and witnesses running into each other in the halls. In one sidebar, the author reports that the court rushed

through the calendar for the autumn assize in Hanna in order to have more time for the fine duck hunting in that region.

Middelstadt concludes with an epilogue concerning the post-World War II shift in public architecture to the international style, and the perhaps resulting loss of public interest in the design and presence of courthouses. *Foundations of Justice* is an enjoyable walk through the history of law in Alberta, providing scholarly detail about the specific communities highlighted in the book, while giving insight into the development of community throughout the West.

The layout and artwork of this volume are a special treat. The wealth of historical photographs, drawn from the Canadian National Archives and museums and archives throughout Alberta, show not just the buildings but many of the major players in the funding, construction, and use of each courthouse. Along with images of both the permanent and temporary courts, important judges and civic leaders, and gatherings of the public at community events significant in the lives of the courthouse, each chapter includes a view of the courthouse from the time of its construction. That image reappears in smaller format as a chapter heading, as a marker for that courthouse in the table of contents, and on the title page, providing a clear map to the structure of the book.

Extensive architectural drawings, showing floor plans, elevations, and detail, enable the reader to gain a three-dimensional sense of the buildings. The end sheets are blueprints of the beautiful architectural details on one of the grander Alberta courthouses. Even for someone who has no great interest in Alberta's history, the artwork in this volume is worthy of attention.

Lynn C. Stutz
San Jose, California

ARTICLES OF RELATED INTEREST

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.

Alexander, Shawn Leigh. "Vengeance Without Justice, Injustice Without Retribution: The Afro-American Council's Struggle Against Racial Violence." *Great Plains Quarterly* 27 (Spring 2007).

American Indian Law Review 31:2 (2006–2007). Special Issue. "Lands, Liberties, and Legacies: Indigenous Peoples and International Law."

Austin, Allan W. "Eastward Pioneers: Japanese American Resettlement during World War II and the Contested Meaning of Exile and Incarceration." *Journal of American Ethnic History* 26 (Winter 2007).

Baker, Carrie N. "The Emergence of Organized Feminist Resistance to Sexual Harassment in the United States in the 1970s." *Journal of Women's History* 19 (Fall 2007).

Ball, Larry D. "That 'Miserable Book': Life of Tom Horn, Government Scout and Interpreter." *Journal of Arizona History* 48:4 (Winter 2007).

Beebe, Rose Marie, and Robert M. Senkewicz, trans. "Tesoros de los Archivos: Revolt at Mission San Gabriel, October 25, 1785." *Boletín: The Journal of the California Mission Studies Association* 24:2 (2007).

Behnken, Brian D. "The 'Dallas Way': Protest, Response, and the Civil Rights Experience in Big D and Beyond." *Southwestern Historical Quarterly* 111 (July 2007).

Berg, Manfred. "Black Civil Rights and Liberal Anticommunism: The NAACP in the Early Cold War." *Journal of American History* 94:1 (June 2007).

Bigler, David L. "The Aiken Party Executions and the Utah War, 1857–1858." *Western Historical Quarterly* 38 (Winter 2007).

Bruno, Paul R. "The Cole-Malley Scandal: Nevada's Political System Revealed." *Nevada Historical Society Quarterly* 50:2 (Summer 2007).

Clarke, Kenneth F., and B.R. Burg. "The Jerome Deportation: A Tale of Vigilantism, Good Cheer, and the Scuttling of Civil Rights." *Journal of the West* 46:4 (Fall 2007).

Clemmons, Linda M. "'Leagued Together': Adapting Traditional Forms of Resistance to Protest ABCFM Missionaries and the Treaty of 1837." *South Dakota History* 37:2 (Summer 2007).

Clow, Richmond L. "A Dream Deferred: Crow Dog's Territorial Trials and the Push for Statehood." *South Dakota History* 37:1 (Spring 2007).

DeJong, David H. "'Abandoned Little by Little': The 1914 Pima Adjudication Survey, Water Deprivation, and Farming on the Pima Reservation." *Agricultural History* 81:1 (Winter 2007).

_____. "'The Sword of Damocles?' The Gila River Indian Community Water Settlement Act of 2004 in Historical Perspective." *Wicazo Sa Review* 22:2 (Fall 2007).

DuVal, Kathleen. "Cross-Cultural Crime and Osage Justice in the Western Mississippi Valley, 1700–1826." *Ethnohistory* 54 (Fall 2007): 697–722.

Eck, Brian D. "Rebel Without a Clause: The Right 'Rights of Students' in *Nixon v. Board of Education* and the Shadow of Freedom under *Harper v. Poway*." *Ave Maria Law Review* 6 (Fall 2007).

Freng, Adrienne. "American Indians in the News: A Media Portrayal in Crime Articles." *American Indian Culture and Research Journal* 31:1 (2007).

Garate, Donald. "Wenceslao (Three-Fingered Jack) Loustaunau: Blacksmith with a Cause." *Journal of Arizona History* 48:2 (Summer 2007).

Goldstein, Robert Justin. "'Raising Cain': Senator Harry Cain and His Attack on the Attorney General's List of Subversive Organizations." *Pacific Northwest Quarterly* 98:2 (Spring 2007).

Gross, Ariela. "'Of Portuguese Origin': Litigating Identity and Citizenship among the 'Little Races' in Nineteenth-Century America." *Law & History Review* 25 (Fall 2007).

Harrison, Gordon S. "Alaska's Constitutional 'Literacy Test' and the Question of Voting Discrimination." *Alaska History* 22:1 & 2 (Spring/Fall 2007).

Heath, Harvard S. "The Reed Smoot Hearings: A Quest for Legitimacy." *Journal of Mormon History* 33 (Summer 2007).

Kelly, Susan, et al. "History of the Rio Grande Reservoirs in New Mexico: Legislation and Litigation." *Natural Resources Journal* 47 (Summer 2007).

Lee, Erika. "The 'Yellow Peril' and Asian Exclusion in the Americas." *Pacific Historical Review* 76:4 (November 2007).

Legan, Marshall Scott. "'Hang by the Neck Until Dead': The Trial and Hanging of a Member of the 22nd Texas Cavalry." *Military History of the West* 37 (2007).

Libecap, Gary D. "The Assignment of Property Rights on the Western Frontier: Lessons for Contemporary Environmental and Resource Policy." *Journal of Economic History* 67 (June 2007).

Mack, John N. "Law and Order on the Southeastern Kansas Frontier, 1866–1870." *Kansas History* 30 (Winter 2007).

McFerrin, Randy, and Douglas Wills. "High Noon on the Western Range: A Property Rights Analysis of the Johnson County War." *Journal of Economic History* 67 (March 2007).

Mead, Robert A. "Cowboys and Lawyers: Ambivalence and Myth in the History and Literature of the Southern Plains." *Kansas History* 30 (Spring 2007).

Miller, Douglas K. "The Salt Lake County Rotary Jail." *Utah Historical Quarterly* 75 (Fall 2007).

Millerd, Frank. "Exclusive Rights in the British Columbia Salmon Fishery." *Land Economics* 83 (February 2007).

Mullen, Kevin J. "Chinatown Squad" Part 2: Policing the Ethnic Underworld of San Francisco." *California Territorial Quarterly* 71 (Fall 2007).

_____. "Chinatown Squad" Part 3: Policing the Ethnic Underworld of San Francisco." *California Territorial Quarterly* 72 (Winter 2007).

Noble, Brian. "Justice, Transaction, Translation: Blackfoot Tipi Transfers and WIPO's Search for the Facts of Traditional Knowledge Exchange." *American Anthropologist* 109 (June 2007).

Parson, Don. "The Decline of Public Housing and the Politics of the Red Scare: The Significance of the Los Angeles Public Housing War." *Journal of Urban History* 33:3 (March 2007).

Paulos, Michael Harold. "Senator George Sutherland: Reed Smoot's Defender." *Journal of Mormon History* 33:2 (Summer 2007).

Reich, Peter L. "Siete Partidas in My Saddlebags: The Transmission of Hispanic Law from Antebellum Louisiana to Texas and California." *Tulane European and Civil Law Forum* 22 (2007).

Robinson, Charles M., III. "Don't Ruin a Good Story with the Facts: An Analysis of Henry Flipper's Account of His Court-Martial in *Black Frontiersman*." *Southwestern Historical Quarterly* 111 (July 2007).

Sandos, James A. "Toypurina's Revolt: Religious Conflict at Mission San Gabriel in 1785." *Boletín: The Journal of the California Mission Studies Association* 24:2 (2007).

Scott, Julie A. "More Than Just Monkey Business: Kansas Newspapers Respond to the Scopes Trial, July 1925." *Kansas History* 30:2 (Summer 2007).

Sohoni, Deenesh. "Unsuitable Suitors: Anti-miscegenation Laws, Naturalization Laws, and the Construction of Asian Identities." *Law & Society Review* 41 (September 2007).

Thompson, William N. "Pork Barrel Comes to White Pine County: My Day with the Senator Casting a Bit of Doubt on that Phrase, 'It Is More Blessed to Give.'" *Nevada Historical Society Quarterly* 50:2 (Summer 2007).

Turner, D.L. "Arizona's Twenty-four Hour War: The Arizona Rangers and the Cananea Copper Strike of 1906." *Journal of Arizona History* 48:3 (Autumn 2007).

Williams, Carol J. "Beyond Illustrations: Illuminations of the Photographic 'Frontier.'" *Journal of the West* 46 (Spring 2007).

Whitehouse-Strong, Derek. "'Everything Promised Had Been Included in the Writing': Indian Reserve Farming and the Spirit and Intent of Treaty Six Reconsidered." *Great Plains Quarterly* 27:1 (Winter 2007).

Young, Neil J. "'The ERA Is a Moral Issue': The Mormon Church, LDS Women, and the Defeat of the Equal Rights Amendment." *American Quarterly* 59 (September 2007).

Ziker, Ann K. "Segregationists Confront American Empire: The Conservative White South and the Question of Hawaiian Statehood." *Pacific Historical Review* 76:3 (August 2007).

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