

WESTERN LEGAL HISTORY

THE JOURNAL OF THE
NINTH JUDICIAL CIRCUIT HISTORICAL SOCIETY

*SPECIAL ISSUE: FIFTIETH ANNIVERSARY OF THE
SOUTHERN DISTRICT OF CALIFORNIA*

VOLUME 28, NUMBER 2 2015

Western Legal History is published semiannually, in spring and fall, by the Ninth Judicial Circuit Historical Society, 125 S. Grand Avenue, Pasadena, California 91105, (626) 795-0266/fax (626) 229-7476. The journal explores, analyzes, and presents the history of law, the legal profession, and the courts—particularly the federal courts—in Alaska, Arizona, California, Hawai'i, Idaho, Montana, Nevada, Oregon, Washington, Guam, and the Northern Mariana Islands.

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

POSTMASTER:

Please send change of address to:

Editor

Western Legal History

125 S. Grand Avenue

Pasadena, California 91105

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

Copyright ©2015, Ninth Judicial Circuit Historical Society

ISSN 0896-2189

The Editorial Board welcomes unsolicited manuscripts, books for review, and recommendations for the journal. Manuscripts (three copies, and one disk in Microsoft Word for Windows, if possible) should be sent to the Editor, *Western Legal History*, 125 S. Grand Avenue, Pasadena, California 91105. Texts, including quotations and endnotes, must be double spaced. Notes must be numbered consecutively and appear in a separate section at the end of the text. Authors are requested to follow the style for citations used in this journal. Manuscripts that are no more than thirty pages in length, not counting notes, charts and tables, and photographs, are preferred. Also preferred are manuscripts not concurrently under consideration by another journal.

Whether because of prejudice or custom, writers in earlier times often used language considered strange or offensive today. Because *Western Legal History* publishes articles that present the historical record as accurately as possible, it occasionally publishes quotations containing such language. The publication of such is not to be construed as representing the attitudes of either the authors or *Western Legal History*.

Communication with the editor is encouraged before submission of any manuscript. At that time, other guidelines for the preparation and publication of an article may be discussed. Consultation about punctuation, grammar, style, and the like is made with the author, although the editor and the Editorial Board are the final arbiters of the article's acceptance and appearance.

Articles published in this journal are abstracted and indexed in *America: History and Life*; *Historical Abstracts*; the *Index to Legal Periodicals*; and the *Legal Resources Index*.

NINTH JUDICIAL CIRCUIT HISTORICAL SOCIETY

BOARD OF DIRECTORS

GARETH T. EVANS, ESQ.
Chair

PAUL T. FRIEDMAN, ESQ.
Vice Chair

RITA M. HAEUSLER, ESQ.
Treasurer

WILLIAM I. EDLUND, ESQ.
Secretary

JEFFREY M. FISHER, ESQ.
Immediate Past Chair

SETH ARONSON, ESQ.

JEROME I. BRAUN, ESQ.

JOHN CARSON, ESQ.

HON. DAVID O. CARTER

HON. RICHARD R. CLIFTON

ROBERT H. FAIRBANK, ESQ.

DONALD L. GAFFNEY, ESQ.

GERSHAM GOLDSTEIN, ESQ.

KIRY K. GRAY

PETER F. HABEIN, ESQ.

DEBORAH K. KRISTENSEN, ESQ.

ROBERT D. LOWRY, ESQ.

THOMAS J. McDERMOTT, JR., ESQ.

HON. M. MARGARET McKEOWN

HON. WILLIAM ORRICK III

JEFFREY R. PORTNOY, ESQ.

HON. MANUEL L. REAL

HON. PAUL G. ROSENBLATT

HON. MARY M. SCHROEDER

MARC M. SELTZER, ESQ.

HON. MILAN D. SMITH, JR.

HON. CHRISTINA ANN SNYDER

HON. SIDNEY R. THOMAS

DEAN A. ZIEHL, ESQ.

ADVISORY COUNCIL

J. BRUCE ALVERSON, ESQ.

LADD A. BAUMANN, ESQ.

HON. MARSHA S. BERZON

BETH MARY BOLLINGER, ESQ.

HON. CHRISTINE W. BYRD

A. MARISA CHUN, ESQ.

DANIEL P. COLLINS, ESQ.

HON. MORRISON C. ENGLAND, JR.

PARKER C. FOLSE III, ESQ.

FREDERICK P. FURTH, ESQ.

HELKEI S. HEMMINGER, ESQ.

ERNEST A. HOIDAL, ESQ.

HON. PROCTER HUG, JR.

HON. SUSAN Y. ILLSTON

PROF. COLIN JONES

B. ANN KEITH, ESQ.

KENNETH N. KLEE, ESQ.

RON MAROKO, ESQ.

SONIA R. MARTIN, ESQ.

HOWARD G. McPHERSON, ESQ.

DIANE M. MYERS, ESQ.

TERRY NAFISI

HON. RANDALL NEWSOME

HON. DIARMUID F. O'SCANNLAIN

WILLIAM D. PICKETT, ESQ.

PER A. RAMEFJORD, ESQ.

ARTHUR F. ROECA, ESQ.

JOY SHOWMAKER

GAIL MIGDAL TITLE, ESQ.

ROBERT S. WARREN, ESQ.

DOUGLAS R. YOUNG, ESQ.

MERYL L. YOUNG, ESQ.

WESTERN LEGAL HISTORY

BRADLEY B. WILLIAMS, EDITOR
BETHANY PHILLIPS, COPY EDITOR
JUDITH FORMAN, PRODUCTION EDITOR
S. DEBORAH KANG, BOOK REVIEW EDITOR

EDITORIAL BOARD

JUDITH AUSTIN
Boise

MICHAL BELKNAP
California Western
School of Law

ELIZABETH J. CABRASER, ESQ.
San Francisco

LAWRENCE M. FRIEDMAN
Stanford Law School

CHRISTIAN G. FRITZ
University of New Mexico
School of Law

DALE GOBLE
University of Idaho
School of Law

PAUL BRYAN GRAY, ESQ.
Claremont

MICHAEL GRIFFITH, PH.D.
Oakland

ARTHUR D. HELLMAN
University of Pittsburgh
School of Law

KATRINA JAGODINSKY
University of Nebraska,
Lincoln

DAVID J. LANGUM
Samford University
Cumberland School of Law

R. JAMES MOONEY
University of Oregon
Law School

PAULA PETRIK, PH.D.
George Mason University

PETER L. REICH
Whittier Law School

JOHN PHILLIP REID
New York University
School of Law

HARRY N. SCHEIBER, PH.D.
University of California
Boalt Hall School of Law

MOLLY SELVIN, PH.D.
Santa Monica

ROBERT S. WOLFE, ESQ.
Santa Ana

WESTERN LEGAL HISTORY
VOLUME 28, NUMBER 2
SUMMER/FALL 2015

CONTENTS

Introduction <i>Janis L. Sammartino</i>	153
The Creation of the United States District Court for the Southern District of California <i>Brittany Torbert</i>	161
Judge Judith Nelsen Keep and Her Legacy in the Southern District of California <i>Jessica Wallach</i>	181
Border Crossings, Internal Checkpoints, and the Fourth Amendment in the Southern District <i>Seve Gonzales</i>	203
De Luz Canyon: Human Tragedy at the Intersection of the Media, Jurisdiction, and Murder <i>Crystal Vasalech</i>	223

Cover photo: The James M. Carter and Judith N. Keep United States Courthouse in San Diego, California, was completed in 2012. (Courtesy of the General Services Administration and the Southern District of California)

"Strippergate": Political Corruption in America's Finest City <i>Katherine Brown</i>	253
Book Reviews	279
Articles of Related Interest	289
Memberships, Contributions, & Grants	293

INTRODUCTION

JANIS L. SAMMARTINO

I am pleased to introduce this special edition of *Western Legal History*. The issue contains five student works to celebrate the fiftieth anniversary of the Southern District of California. The court invited the deans of our three local law schools—California Western, Thomas Jefferson, and the University of San Diego—to select students to write scholarly articles. The law students selected topics based on their personal interests, exploring some of the extraordinary individuals and significant cases in our district's history.

This special issue is only the start of our effort to engage and educate the community about the contributions the federal courts make to society. I am grateful to the Ninth Judicial Circuit Historical Society for its support of this endeavor, and to the Ninth Circuit Attorney Admissions Committee for purchasing the photographs from the San Diego History Center.

We begin with Brittany Torbert's article on the creation of the Southern District. While those of us in San Diego refer to 1966 as the birth of the Southern District of California, it is more accurate to describe it as the year when San Diego and Imperial Counties separated from the shadow of their big, cosmopolitan sister to the north, Los Angeles County.¹ Torbert's article describes the mechanics of the formation of the Southern District, but her article is not a dry legislative history. She captures human interest stories that bring the past fifty years to life.

¹Prior to 1966, our court operated as the southern division of the Southern District. For a full history of the federal districts in California, see George Cosgrave, "Early California Justice: The History of the U.S. District Court for the Southern District of California 1849–1895," *Western Legal History* 2 (Winter/Spring 1989): 191; Hon. William Howatt, Jr., "History Brief: How the Southern District Came to Be," *San Diego Lawyer* (March/April 2016): 41–42.

Janis L. Sammartino is a United States district judge in the Southern District of California.

As Torbert reports, one of the primary motivating factors to add the Southern District was the region's substantial criminal caseload. In the early years, court sessions were long. Judge Edward Schwartz recalls handling 156 law and motion matters in one long, thirteen-hour day.² He took ten minutes for lunch and finished his criminal calendar at 9:30 that evening. While he took guilty pleas and imposed sentences for a week, his only colleague, Judge Howard B. Turrentine, would try a short criminal case or two. The next week, the two judges switched duties. "Howard Turrentine and I operated as a highly efficient team and were able to hold the fort, so to speak, until the appointment of additional judges for our district."³ "Our calendars were horrendous."⁴ A typewritten copy of Judge Turrentine's July 20, 1970, calendar lists eighteen trial-ready cases and another nineteen trial settings.⁵ These were all criminal matters. During Judge Schwartz's first three years, only one civil case went to a jury. For that urgent matter—"a young man [who] had been very seriously injured, and his medical bills were mounting at an astronomical rate"—the court enlisted the help of a judge from the District of Hawaii to preside at trial.⁶

Despite the stress of an unrelenting criminal docket, our court has consistently been one of the most collegial in the country. As chief judge, Ed Schwartz's warm personality set a high standard for comradery. He fostered the friendly atmosphere by holding regular Monday meetings at a nearby Chinese restaurant.⁷ There the hardworking team would plan the week ahead—either volunteering to take a trial for a colleague or agreeing to invite a judge from another district. Judge William B. Enright "can remember no time where there was any discord or disharmony."⁸ "[W]e reached consensus on all the problems confronting the court. . . . We're a much larger court now, and we have main-

²Edward J. Schwartz (judge, United States District Court for the Southern District of California), oral history memoir, Sept. 10, 1997, transcript, 11, Ninth Judicial Circuit Historical Society (on file with Southern District of California, San Diego).

³Ibid.

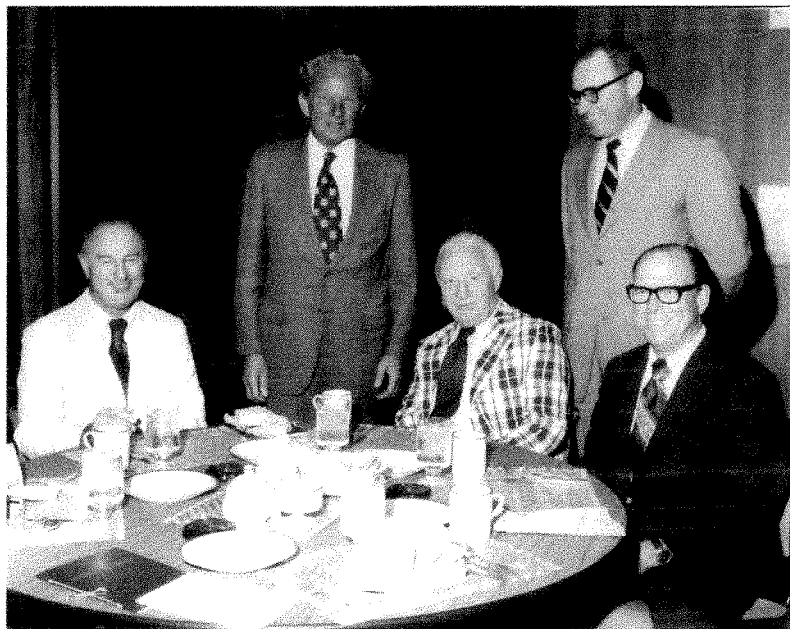
⁴Ibid.

⁵On file with the U.S. Courts Library, San Diego.

⁶Schwartz, oral history memoir, Oct. 7, 1998, 4.

⁷William B. Enright (judge, United States District Court for the Southern District of California), oral history memoir, sixth interview, transcript, 13, Ninth Judicial Circuit Historical Society (on file with Southern District of California, San Diego).

⁸Ibid., 13–14.



(Left to right) Chief Judge Edward J. Schwartz; Judge Leland C. Nielsen, Judge Howard B. Turrentine, Judge William B. Enright, and Judge Gordon Thompson, Jr., in the judges' dining room at the federal building (circa 1976). (Courtesy of Southern District of California)

tained our collegiality."⁹ In his opinion, "we still have all the harmony that I think is envied throughout the Ninth Circuit. . . . I think we're . . . unique in that aspect of our relationship. So it's always been a very, very happy court and very good hardworking court."¹⁰ Today, those Monday meetings are held in the sixteenth floor conference room of the James M. Carter and Judith N. Keep United States Courthouse.

In the next article, Jessica Wallach profiles Judge Judith Nelsen Keep. Wallach focuses on Judge Keep's skill at managing the crushing caseload during her seven-year tenure as chief judge, and her concern that every individual receive a fair sentence under the strict confines of the U.S. Sentencing Guidelines.

One of the youngest appointees to the federal bench, Judge Keep did not survive to enjoy the benefits of taking senior status. Sadly, she died of ovarian cancer in 2004, at the age of 60.

⁹Ibid., 14.

¹⁰Ibid.

Judy Keep's life and legacy coincide with the fifty-year history of our district. In the fall of 1966, she began her professional career as a teacher in San Diego. In the spring of 2015, just shy of our fiftieth anniversary, we gathered to name the new courthouse in her honor.

I had the privilege of succeeding to Judge Keep's seat in this district. In 2007, I joined two other female district judges: Judge Marilyn L. Huff and Judge Irma E. Gonzalez. Both women have served as chief judge of our district. While reading the "Oral History Memoirs," I learned that Judge Lee Nielsen hired the first female law clerk of our district, Linda Landers, immediately upon his appointment in May 1971. "Gender was not an issue. I had interviewed quite a large number, and she had the personality and what I thought was the brains to do the job, and it turned out she did have it. I didn't consciously think of gender at all."¹¹ Judge Howard Turrentine followed suit by hiring Linda Cory. "I hired her because I thought she'd make a great law clerk. And she did."¹² Judge William Enright hired Melanie Aronson for the 1974–75 term. It was a newsworthy event, as the local newspaper sent a reporter to interview the judge and the law clerk.¹³ Today, the presence of women lawyers in the judicial corridors is not a novelty. I estimate that more than half of our law clerks are women, and I share the fourth floor with Judge Cathy A. Bencivengo and our newest jurist, Judge Cynthia A. Bashant.

By far the most significant feature of the Southern District is that we share an international border with the United Mexican States. Our location defines our caseload. Our district has grappled with large numbers of immigration and drug smuggling crimes, and it always will. The next student author, Seve Gonzales, explores one aspect of this by surveying the law governing border searches.

Gonzales discusses the *Baca* decision by Judge Turrentine. His oral history memoir reveals a different relationship with Mexico. Judge Turrentine, a third-generation resident of Escondido, was born in 1914. His earliest childhood memory is

¹¹Leland C. Nielsen (judge, United States District Court for the Southern District of California), oral history memoir, Sept. 14, 1995, transcript, 39–40, Ninth Judicial Circuit Historical Society (on file with Southern District of California, San Diego).

¹²Howard B. Turrentine (judge, United States District Court for the Southern District of California), oral history memoir, May 16, 1996, transcript, 33–34, Ninth Judicial Circuit Historical Society (on file with Southern District of California, San Diego).

¹³The *San Diego Union*, photographic assignment sheet, Jan. 27, 1975 (on file with Judge William B. Enright).



Standing on the rooftop of the new, sixteen-story Carter-Keep Courthouse during construction are (left to right) Judge Anthony J. Battaglia, Judge Jeffrey T. Miller, unknown, Judge Marilyn L. Huff, Judge Dana M. Sabraw, Judge William B. Enright, Judge William Q. Hayes, Judge Janis L. Sammartino, Judge Rudi M. Brewster, Judge John A. Houston, and David G. Allen. (Courtesy of Judge Janis L. Sammartino)

the church bells ringing to celebrate the armistice at the end of World War I.¹⁴ At that time, the principal crop in the small farming community was wine grapes. A few years later, the Eighteenth Amendment banned the manufacture and sale of alcoholic beverages. Then a high school student, Howard Turrentine worked “every afternoon and Saturday mornings” in his uncle Lawrence N. Turrentine’s law practice in downtown San Diego.¹⁵ He recalls that lawyers gladly commuted from Los Angeles. “They all liked to come to San Diego, and the judges were accommodating. It was during [P]rohibition.

¹⁴Turrentine, oral history memoir, March 19, 1996, 13–14.

¹⁵*Ibid.*, March 26, 1996, 5 (“I delivered papers, bought stamps, ran errands for the office. I got a dollar a week.”). Lawrence N. Turrentine became a San Diego Superior Court judge in 1930. Leland G. Stanford, *Footprints of Justice . . . In San Diego and Profiles of Senior Members of the Bench and Bar* (San Diego, 1960), 158–59.

If a man came down from Los Angeles, he was always first on the calendar."¹⁶ That enabled him to enjoy a beer or whiskey in Tijuana and return to the United States before the border closed at 6:00 p.m.

Our court handles thousands of "border bust" cases each year. As Judge John Rhoades said in his oral history memoir, there are no "routine little" cases. "To that person or those people involved in the case, it's the biggest case in the world."¹⁷ That sentiment is especially true for a murder case.

Murder trials are rare on the federal docket. Our statistics show just fifteen murder cases in the last fifty years. Our next student, who wrote her law review article on the admissibility of autopsy reports as the victim's last statement, narrates one of our high-profile murder cases.¹⁸ Crystal Vasalech, a masterful storyteller, describes the human tragedy of the murder of eighty-two-year-old Otto Bloomquist.

The trial and sentencing judge was the Honorable William B. Enright. Judge Enright is our district's most senior judge. He brought a breadth and depth of experience in criminal law to the *LaFleur/Holm* case. During his three years as a deputy district attorney and eighteen years as a criminal defense attorney, Enright tried 223 cases to juries throughout the state.¹⁹ Between Thanksgiving and Christmas 1962, he was defense counsel in three consecutive first-degree murder trials.²⁰

The prosecutor was Larry Burns, now a colleague on the bench. In closing argument at LaFleur's trial, he emphasized the devastating impact a murder case has on the victim's family and on the community. As a federal judge, Burns has presided over other notable cases. In 2012, he accepted Jared Loughner's guilty plea to the mass shooting in Tucson, Arizona. The nineteen charges included the murder of district judge John S. Roll, a nine-year child, and four other individuals; and

¹⁶*Ibid.*, 15–16.

¹⁷John S. Rhoades [judge, United States District Court for the Southern District of California], oral history memoir, Feb. 13, 1997, transcript, 24, Ninth Judicial Circuit Historical Society (on file with Southern District of California, San Diego).

¹⁸Crystal Vasalech, "Autopsy Reports Are a Victim's Last Statement: The Residual Exception and Surrogate Testimony," *Thomas Jefferson Law Review* 37 (Spring 2015): 504–505.

¹⁹Hon. James Lorenz, "A Lasting Legacy," *San Diego Lawyer* (March/April 2014): 27.

²⁰*Ibid.*; William B. Enright, "223 Jury Trials" (handwritten list on file with U.S. Courts Library, San Diego).

the attempted murder of congresswoman Gabrielle Giffords.²¹ That case reverberated across the nation.

Closer to home, Judge Burns also handled the newsworthy corruption case of congressman Randy "Duke" Cunningham. In 2007, Cunningham admitted he had taken over \$2.4 million in bribes from defense contractors.²² The nature of the offense leads to our fifth student article.

The final article in this commemorative volume recounts one of our district's trials involving bribery of public officials. Katherine Brown draws on themes discussed in Professor Lawrence Friedman's book, *The Big Trial as Public Spectacle*, to explore the story and impact of one of the city's infamous corruption cases. Tagged by the media as "Strippergate," the criminal case captured local attention, with a line of spectators waiting for seats in the gallery during the trial. The case arose during the time that a *New York Times* article christened San Diego as "Enron-by-the-Sea" due to a series of financial and political scandals.²³ The *Inzunza* case is, unfortunately, one in a long line of corruption cases tried in the Southern District of California. Our judges have presided over many interesting cases involving fraud and deceit in the last fifty years. In addition to the Cunningham matter, there was the bribery trial of five state court judges and the Ponzi scheme by J. David Dominelli and his codefendant, Nancy Hoover, who had been the mayor of Del Mar.

This volume is just a sample of the intriguing events in the Southern District of California's past. The project begins our commitment to preserve the rich stories of our district. In particular, I am determined to pursue a complete prosopography of the San Diego judges. Dean Stephen Ferruolo, who came into the law with a Ph.D. in history, proposed this project. Although the biographical survey was too large for any one student to undertake for this volume, I hope that it will be written in the near future. It would highlight important firsts, such as President Carter's appointment of Judge Earl Gilliam in 1980. Judge Gilliam was the first African American jurist to join our court, and he tried the "J. David" criminal case, which his obituary called an "era-defining" case "that reached far into the lo-

²¹Richard A. Serrano, "Guilty Plea in Tucson Mass Shooting," *Los Angeles Times*, Aug. 8, 2012.

²²Onell R. Soto, "'Overwhelming case forced Cunningham to accept deal," *San Diego Union-Tribune*, Nov. 30, 2005.

²³John M. Broder, "Sunny San Diego Finds Itself Being Viewed as a Kind of Enron-by-the-Sea," *New York Times*, Sept. 1, 2004.



Chief Judge Edward J. Schwartz (right) administers the oath of office to Judge Earl B. Gilliam. The first African American judge in the Southern District of California, Gilliam was appointed by President Jimmy Carter in 1980. (Courtesy of the San Diego History Center)

cal power structure."²⁴ Until we find authors to explore and memorialize the stories of these notable characters and trials, please enjoy this collection of five articles.

²⁴Lisa Petrillo, "Judge Earl Gilliam, county's 1st black jurist, dies," *San Diego Union-Tribune*, Jan. 29, 2001.

THE CREATION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

BRITTANY TORBERT

INTRODUCTION

September 16, 2016, marks the date that the United States District Court for the Southern District of California celebrates its fiftieth anniversary. This anniversary gives the federal court and the San Diego legal community an opportunity to celebrate San Diego's evolution from a small, isolated town at the time of statehood in 1850 to a culturally rich metropolitan city.¹ While much has changed since the district's inception, the culture of camaraderie and collegiality in the Court has remained unchanged.² Today, the Southern District remains one of the busiest in the nation.³

In 1966, in response to the heavy caseload in San Diego and Imperial Counties, Congress created the Southern District of California for those counties and reconfigured California into

¹Jesse Hamlin, *Jacob Weinberger United States Courthouse* (San Francisco, 1999), 8.

²2005/2006 *Annual Report*, 66.

³*Ibid.*, 2; U.S. Department of Justice, Offices of the United States Attorneys, Southern District of California, "District History"; <http://www.justice.gov/usao-sdca/district-history>.

Brittany R. Torbert earned her juris doctorate from California Western School of Law in San Diego. She served as a judicial extern for Judge Anthony J. Battaglia at the United States District Court for the Southern District of California and is currently beginning her career in civil litigation and health law.

three other court districts.⁴ Together, San Diego and Imperial Counties cover more than 8,500 square miles. The western boundary of the district lies on the Pacific Ocean. The southern boundary borders Mexico for more than 175 miles.⁵ There are seven international ports of entry,⁶ with San Ysidro the busiest port of entry in the world.⁷ Each year, over 170,000 people are apprehended at these border checkpoints for entering the United States illegally.⁸

As a major city, San Diego experiences a significant amount of drug-related crime, violent crime, and white-collar crime.⁹ In addition, because the district is on the international border, a significant portion of criminal cases involve illegal immigration and drug trafficking. The largest concentration of U.S. Navy and Marine Corps installations in the world, eighteen Native American tribes, a major port, and thousands of acres of federal land are located in San Diego and Imperial Counties. For this reason, more federal criminal cases are filed in San Diego than in any other city.¹⁰

Although the current configuration of the Southern District of California is young relative to other federal districts, it has come a long way to be the modern district it is today. In an earlier era, the cities of San Diego and Los Angeles were both located in a single district.¹¹ The U.S. Post Office and Customs House in San Diego, which was constructed on an old army corral, was used as a satellite court for judges and lawyers on a rotating basis. The scene was barren. There was no federal courthouse on Broadway. The Hotel San Diego was used for additional courtrooms.¹² The clerk of court entered matters into a

⁴Office of the Clerk of the Southern District of California, *2005/2006 Annual Report: 40th Anniversary* (San Diego, 2006), 5. For simplicity, this article refers to September 1966 as the creation or birth of the Southern District. Section 3 gives a more detailed history of the district from the time California became a state.

⁵*Ibid.*, 2.

⁶Department of Homeland Security, U.S. Customs and Border Protection, "San Diego"; <http://www.cbp.gov/contact/ports/field-office/san-diego>.

⁷"District History."

⁸*2005/2006 Annual Report*, 51.

⁹*Ibid.*, 2; "District History."

¹⁰"District History."

¹¹*2005/2006 Annual Report*, 6.

¹²*John Rhoades Federal Judicial Center Historical Walking Tour, United States District Court for the Southern District of California* (San Diego, 2015); Howard B. Turrentine, "40th Anniversary Celebration History of the U.S. District Court Southern District of California" (2006) (transcript of speech on file with United States Courts Library, San Diego).

book by hand.¹³ The law library was located in a dusty basement.¹⁴ Even in the beginning the criminal caseload was large, and defendants had to be handcuffed together and walked down the street to the courthouse.¹⁵

Today San Diego has its own district, with thirteen active Article III judges and four senior Article III judges.¹⁶ Nine full-time magistrate judges work in San Diego, and a tenth works in El Centro.¹⁷ The U.S. Post Office and Customs House has been renovated and is now the fully functioning Jacob Weinberger United States Courthouse, a historic landmark and home to four bankruptcy judges.¹⁸ The Hotel San Diego is no more; in its place stands the recently constructed, tall and sleek James M. Carter and Judith N. Keep U.S. Courthouse, overlooking a stunning skyline. The nearby twenty-three story Metropolitan Correctional Center houses 1,034 inmates.¹⁹ Using the internet, attorneys can file their documents with the court twenty-four hours a day.²⁰ To understand how the district evolved, it is helpful to examine San Diego's history and the people who contributed to the district's growth over the more than 150 years of the court's development and expansion.

THE EARLY YEARS

In 1850, Congress organized California into two districts, each with one judgeship. San Francisco was designated as a place for holding court in the Northern District and Los Angeles for the Southern District. In 1866, for a variety of reasons, Congress combined the Northern and Southern Districts into one. Twenty years later, in 1886, California was again divided into two districts with one judgeship each and remained that way, although additional judgeships were authorized over time,

¹³2005/2006 Annual Report, 2.

¹⁴Jeff Stickney, "Lawyering in Prehistoric San Diego," *Dicta*, Nov. 1977), 25.

¹⁵2005/2006 Annual Report, 5; Turrentine, "40th Anniversary Celebration."

¹⁶U.S. Code 28 (2014), §84.

¹⁷United States District Court, Southern District of California, "Court Biography," <https://www.casd.uscourts.gov/Court%20Info/SitePages/CourtBiography.aspx>.

¹⁸Historical Walking Tour; Turrentine, "40th Anniversary Celebration"; Hamlin, *Jacob Weinberger*, 26.

¹⁹Historical Walking Tour; Federal Bureau of Prisons, "MCC San Diego," <https://www.bop.gov/locations/institutions/sdc>.

²⁰2005/2006 Annual Report, 3.

until the redistricting of 1966. In 1867, developer Alonzo Horton laid out "new" San Diego along the waterfront, away from the town's original center near the old Spanish and Mexican presidio. This new site became today's downtown San Diego. The arrival of the railroad in the 1880s spurred additional growth as many newcomers arrived, and the city began to take shape.²¹

During the Spanish-American War, many U.S. Navy ships entered San Diego Bay, and in 1904, the navy established a coaling station at Point Loma, the first navy installation in the city, but certainly not the last.²² San Diego civic leaders hoped that the completion of the Panama Canal might make San Diego into a center for commerce and tourism.²³ Led by Senator George C. Perkins, California's congressional delegation sought a new federal building to serve as the U.S. Post Office and Customs House in San Diego in order to handle the increase in trade and immigration. Without an adequate building, federal agencies were forced to use rented space in a range of hotels and buildings throughout the city. By 1906, enough money was raised to start construction of a new federal building, and construction was completed in 1913.²⁴ Little information is available about federal judicial business in San Diego in the early twentieth century. On March 19, 1946, Jacob Weinberger became a judge of the Southern District assigned to Los Angeles, and three years later he became the first federal judge permanently assigned to San Diego. In 1988, San Diego's first federal courthouse, which had opened in 1913, was named in his honor.²⁵

Because of the city's proximity to the border, cases involving the smuggling of drugs and illegal immigrants loaded Judge Weinberger's docket. According to Judge William Enright, a significant case for Judge Weinberger in the 1950s would have involved "fifteen pounds of pot; now it's kilos of heroin or cocaine. Then, it was two or three people in the trunk of a car, not 118 aliens in a giant truck."²⁶

Judge Weinberger, who had immigrated to the United States when he was a child, was proud to devote significant time to conducting naturalization ceremonies for new American citi-

²¹Ibid.

²²"Chronology: The Navy in San Diego," *San Diego Union-Tribune*, July 4, 2014.

²³Roger Showley, "San Diego: 1st port of call," *San Diego Union-Tribune*, May 30, 2015, <http://www.sandiegouniontribune.com/news/2015/may/30/balboa-1915-portofcall-30may15>.

²⁴Hamlin, *Jacob Weinberger*, 2, 9–10, 13.

²⁵2005/2006 *Annual Report*, 6.

²⁶Quoted in Hamlin, *Jacob Weinberger*, 21.



San Diego evolved from a small, isolated town at the time of California statehood in 1850 to a culturally rich metropolitan city. The aerial photo above was taken in 1911. (Courtesy of the San Diego History Center)

zens.²⁷ He remained the only resident judge in San Diego until 1956, when Judge James Carter was assigned to the bench.²⁸

Judge Carter gave San Diego's federal court an excellent reputation in the federal judicial system.²⁹ As Judge Enright shared at the "Passing of the Gavel" ceremony on January 20, 2012, "Judge Carter was a towering, commanding presence on the bench of this court. I tried cases in his court as a lawyer. He was the most creative, innovative, and dynamic judge I have ever known. To me, he was a force of nature. He created this district."³⁰ After joining the court, Judge Carter worked with the probation office, the U.S. marshal's office, and the clerk of court to create a high standard for the Southern District of California.³¹

In addition, Judge Carter established the Federal Defenders Office in San Diego.³² The first office was opened in the courthouse's basement, and they were the predecessors of the current Federal Defenders of San Diego.³³ Prior to its creation, if a lawyer was present in the courtroom during an indigent

²⁷*Ibid.*

²⁸2005/2006 *Annual Report*, 6.

²⁹"The Passing of the Gavel Ceremony" transcript (San Diego, 2012), 6 (on file with United States Courts Library, San Diego).

³⁰*Ibid.*

³¹Turrentine, "40th Anniversary Celebration."

³²*Ibid.*

³³"Passing of the Gavel," 5.

defendant's arraignment, that lawyer might be appointed immediately to represent the defendant.³⁴ The Federal Defenders Office has grown, but its dedication to superb representation remains unchanged.³⁵

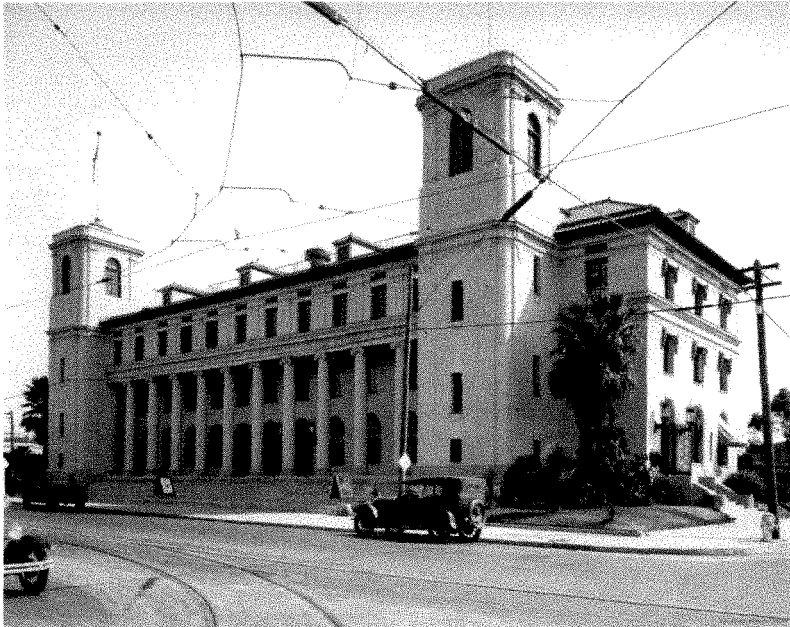
In 1958, when Judge Weinberger assumed senior status, Judge Fred Kunzel was appointed to fill his seat. As the San Diego court became busier, Judge Carter and Judge Kunzel each managed over 500 cases a year.³⁶ For some time, the federal court had to accommodate litigants by holding hearings in the state court building across the street.³⁷ Judge Kunzel is credited with relieving the overcrowded docket by reaching out to judges in other

³⁴Turrentine, "40th Anniversary Celebration."

³⁵2005/2006 *Annual Report*, 52-53.

³⁶Turrentine, "40th Anniversary Celebration."

³⁷"The Passing of the Gavel," 8.



The United States Post Office and Custom House, above, was completed in 1913. In 1988, it was named for Jacob Weinberger, the first federal judge permanently assigned to San Diego. (Courtesy of the San Diego History Center)

districts, while working with Judge Carter to develop procedures that would help the court become more efficient.³⁸

On March 2, 1966, United States congressman Don Edwards noted that "redistricting of the federal courts in California is long overdue."³⁹ California's economy was booming, and the state was experiencing a tremendous population growth, resulting in an increase in litigation.⁴⁰ Further, Congress amended the immigration laws to give entrance priority to relatives of United States citizens, to impose annual limits on the number of immigrants, and to end a temporary farm worker program.⁴¹ Yet individuals continued to cross the border into California to find work. In 1966, more than 6,000 illegal immigrants were arrested at the El Centro Port of Entry.⁴² In addition, as civil rights cases were being filed across the nation at an increasing rate, these kinds of cases took up a large share of those filed in San Diego.⁴³

THE BIRTH OF A NEW SOUTHERN DISTRICT OF CALIFORNIA

Prior to 1966, numerous bills had been introduced in Congress attempting to increase the number of districts in California. One proposal would have created a district in the Sacramento and San Joaquin Valleys, while another would have added a district in the central coast. Yet another proposal recommended a district to be composed of San Diego and Imperial Counties. However, chairman Emanuel Celler of the House Judiciary Committee insisted that only one new district would be permitted.⁴⁴ By 1966, San Diego was hearing upward of 800

³⁸*Ibid.*, 7–8.

³⁹Bradley B. Williams, "When California's Southern District Became Central: A Brief Look at the Historical Context of the Central District in 1966," *Southwestern University Law Review* 36 (2007): 175.

⁴⁰*Ibid.*

⁴¹*Ibid.*, 181–82.

⁴²*Ibid.*, 182.

⁴³"House Approves Bill to Create New Judgeships," *Los Angeles Times*, March 3, 1966; Williams, "When California's Southern District Became Central," 176–78.

⁴⁴Gene Blake, "Scramble On for New U.S. Court District," *Los Angeles Times*, June 4, 1962; Robert W. Conyers, *Supplemental Report of the San Diego Bar Association to Establish a Separate Federal Judicial District for San Diego and Imperial Counties* 1 (San Diego County Bar Association, 1958): 1 (on file with United States Courts Library, San Diego).

cases a year.⁴⁵ With a tremendous criminal caseload, San Diego and Imperial Counties had a fair chance at separating into their own federal district.⁴⁶

In 1966, Senate Bill 1666, providing for additional districts in California, was submitted to the House Judiciary Committee and also was presented to the attorney general for comment. The State Bar Board of Governors had previously endorsed the bill, and it had passed the Senate twice. Senate Bill 1666 was the first omnibus judgeship bill in over five years.⁴⁷

The Department of Justice and the Judicial Conference opposed the bill,⁴⁸ arguing that new judicial districts were unnecessary because larger districts were more efficient.⁴⁹ Due to the large number of criminal cases on the docket, however, the court rarely had time to hear civil cases.⁵⁰ According to Judge Howard Turrentine's recollection of events, Judge Carter ultimately convinced Chief Judge Richard Chambers, the Ninth Circuit's representative to the Judicial Conference, to retract the conference's opposition.⁵¹ Congressmen Bob Wilson and Lionel Van Deerlin of California pushed for the bill in Congress and ultimately prevailed.⁵² President Lyndon B. Johnson signed it on March 18, 1966.⁵³ Public Law 89-372 took effect six months later.⁵⁴

The legislative report for the bill stated the basis of the decision, pointing to the increase in litigation due to population growth, increased industrialization, and the nation's civil rights issues. As the legislative history reflects, "[d]espite numerous efforts and various techniques to alleviate the problem of court congestion, the need for additional judges continues. While the search for a solution must continue, the acute gravity of the problem demands the furnishing of immediate judicial man-

⁴⁵Hamlin, *Jacob Weinberger*, 21.

⁴⁶Blake, "Scramble On for New U.S. Court District."

⁴⁷Williams, "When California's Southern District Became Central," 185.

⁴⁸M. Hall Peirson to Aubrey Gasque, 15 June 1960 [letter on file with United States Courts Library, San Diego].

⁴⁹Turrentine, "40th Anniversary Celebration."

⁵⁰"Efficient Justice Requires U.S. Judicial District Here," *San Diego Evening Tribune*, Feb. 3, 1953.

⁵¹Turrentine, "40th Anniversary Celebration."

⁵²*Ibid.*

⁵³Williams, "When California's Southern District Became Central," 185.

⁵⁴House Committee on the Judiciary, *Additional Federal Judges and Districts*, 89th Cong., 2d sess., 1966, H. Rep. No. 1277, 2040; Public Law 89-372, codified at U.S. Code 28 (1966), §84.

power to stem the increase in the backlog of dockets in the course of new litigation."⁵⁵ Specific to California, the report continued, "[t]he rapid growth in the State of California in population, production, and economy requires a realignment of the geographical boundaries of the judicial districts. Your committee is of the opinion that there is a need, justified by facts, which warrants the additional costs involved."⁵⁶

Public Law 89-372 provided for forty-five additional judgeships around the country and doubled the number of California's district courts from two to four.⁵⁷ The law created new districts in California, the Central and Eastern Districts, and a newly constituted Southern District based in San Diego. Public Law 89-372 allotted the Northern District two new judgeships, and the Central District three, bringing the total of authorized judgeships to thirteen.⁵⁸

The old Southern District of California, headquartered in Los Angeles, continued its work for the interim six months; then Judge Carter, Judge Kunzel, and Senior Judge Weinberger were assigned to the new United States District Court for the Southern District of California in San Diego.⁵⁹ However, these additions only provided for California's immediate needs.⁶⁰ With San Diego's ever-expanding population and growth, the district would soon request that Congress authorize additional judgeships.⁶¹

The United States District Court for the Southern District of California, now headquartered in San Diego, celebrated its birth by holding a ceremony in Judge Carter's courtroom. Ninth Circuit judge Walter Ely, Jr., Judge Carter, Judge Kunzel, Judge Weinberger, and Judge Luther Youngdahl (a visiting jurist from Washington, D.C.) were present, along with many attorneys and members of the public.⁶² After Judge Carter swore in clerk of court William Luddy and U.S. marshal Wayne Burrell Colburn, the San Diego County Bar Associa-

⁵⁵House Committee on the Judiciary, *Additional Federal Judges*, 2046.

⁵⁶*Ibid.*, 2053-54.

⁵⁷Public Law 89-372.

⁵⁸*Ibid.*

⁵⁹*Ibid.*

⁶⁰Williams, "When California's Southern District Became Central," 186; "Easing the Federal Court's Caseload," *Los Angeles Times*, Feb. 15, 1966.

⁶¹"Proposed Ceremony in Court for the New District" (1966) (program on file with U.S. Courts Library, San Diego); Williams, "When California's Southern District Became Central," 186; "Easing the Federal Court's Caseload," *Los Angeles Times*.

⁶²Williams, "When California's Southern District Became Central," 188; Turrentine, "40th Anniversary Celebration."

tion hosted a luncheon. At the luncheon, attorney J. Clifford Wallace called for the building of a new federal courthouse and the appointment of a third resident judge.⁶³ Bar president Alec L. Cory recognized everyone who had worked for more than thirteen years to make the split from Los Angeles happen, and Judge Ely described it as a proud day for the citizens of San Diego and Imperial Counties.⁶⁴

THE GROWTH OF THE NEW SOUTHERN DISTRICT

During its first year, the district's caseload remained demanding, with a total of 2,348 cases filed. The district ranked as the busiest in the nation, with 1,030 criminal filings per judgeship.⁶⁵ Judge Edward Schwartz was appointed to fill the vacancy created in March 1968, when Judge Carter was elevated to the Ninth Circuit Court of Appeals.⁶⁶ That year, someone broke into the courthouse and set fire to Judge Schwartz's and Judge Kunzel's courtrooms, as well as the U.S. attorney's file room, destroying court records.⁶⁷ Although investigators were able to determine that it was arson, the reason for the fire remains a mystery today.⁶⁸ After Judge Kunzel died in November 1969, Judge Schwartz became the sole remaining judge in the district, and his courtroom was "standing room only." Judge Enright recalled that it was as crowded a courtroom as he had ever seen. Judge Schwartz had to rely on visiting judges from other districts, who were called the "blood bank of the Ninth Circuit," to preside over jury trials.⁶⁹

In 1970, Judge Turrentine was appointed to replace Judge Kunzel.⁷⁰ As Judge Turrentine recalls, "Judge Schwartz and I kept the court on a steady course, and our Monday calendars took us into the evening hours, sometimes as late as 8:00 p.m."⁷¹ That year, case filings increased to 3,245, and Congress

⁶³Williams, "When California's Southern District Became Central," 188.

⁶⁴Ibid.

⁶⁵2005/2006 *Annual Report*, 28.

⁶⁶Turrentine, "40th Anniversary Celebration."

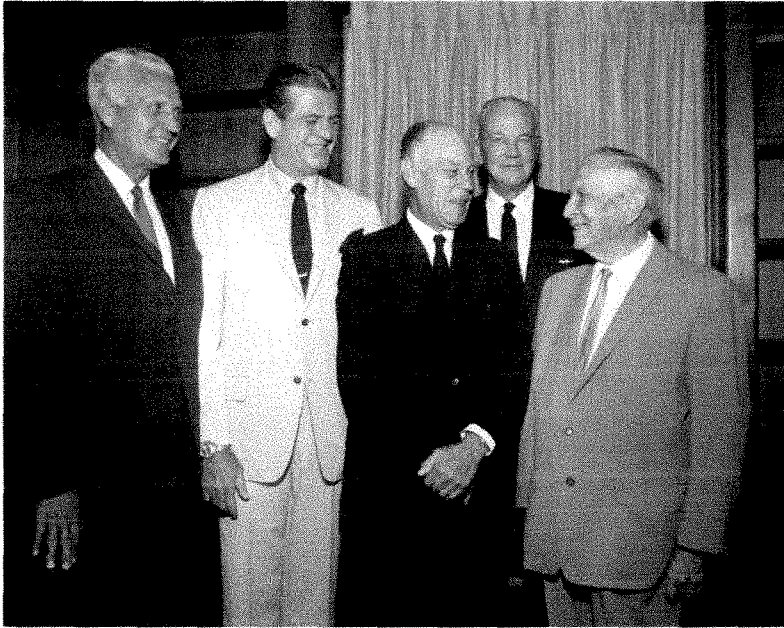
⁶⁷2005/2006 *Annual Report*, 28–29; Turrentine, "40th Anniversary Celebration."

⁶⁸2005/2006 *Annual Report*, 29; Turrentine, "40th Anniversary Celebration."

⁶⁹"The Passing of the Gavel," 8.

⁷⁰Turrentine, "40th Anniversary Celebration."

⁷¹Ibid.



On September 16, 1966 (left to right) Judge Luther Youngdahl (visiting from the District of Columbia), Ninth Circuit judge Walter Ely, district judge Fred Kunzel, district judge James M. Carter, and senior district judge Jacob Weinberger presided over the official ceremony to celebrate the establishment of the Southern District of California. (Courtesy of the San Diego History Center)

created three new judgeships for San Diego.⁷² Judges Gordon Thompson, Jr., and Clifford Wallace were sworn in in October 1970, and Judge Leland Nielsen took the oath of office in May 1971.⁷³ Judge Wallace served as a district judge from October 1970 until 1972, when he was appointed to the Ninth Circuit and was replaced by Judge William Enright.⁷⁴

With five sitting judges in the 1970s, this “tight-knit group” was able to bring the civil case calendar up to date and try criminal cases in an appropriate timeframe. Judge Turrentine recalls, “Our calendars were such that we were home on Monday nights to view the opening kick-off of Monday Night

⁷²2005/2006 Annual Report, 7–8.

⁷³Turrentine, “40th Anniversary Celebration.”

⁷⁴2005/2006 Annual Report, 15.

Football."⁷⁵ However, the district court still ranked the busiest in the federal judiciary, with criminal filings of 565 per judgeship,⁷⁶ and the courthouse could not accommodate all of the judges.⁷⁷ To accommodate Judge Nielsen, the General Services Administration placed a mobile trailer in the parking lot of the courthouse, with the living room and kitchen serving as his courtroom and chambers.⁷⁸

Clearly, the court required more space to provide for the efficient administration of justice in the city with the nation's highest caseload.⁷⁹ Thus, plans for the construction of a new federal complex, including a new courthouse, began in 1972.⁸⁰ A ribbon-cutting ceremony was held, and all five judges received hard hats and shovels to break ground for the new building.⁸¹ The added judgeships and new courthouse set the stage for what would become the contemporary Southern District of California.

THE CONTEMPORARY SOUTHERN DISTRICT

Over the past fifty years, court record-filing methods have evolved from handwritten dockets, to typewritten, to computer-generated, and finally to internet electronic filing and docketing by litigants and court staff.⁸² In 1977, the Southern District of California began a pilot program known as "Courtran," which was an automated docketing system for criminal cases. Previously, all docketing was created manually on typewriters and then filed in docket books. In 1983, the clerk's office obtained its first computer, at a cost of \$10,000. In 1989, the court received personal computers for judges and chambers staff, and began using the Integrated Case Management System (ICMS) for civil cases. For three months, while the court converted to the new system, there was a tremendous backlog in docketing and paperwork. In 2006, the court did away with ICMS and introduced the Case Management/Elec-

⁷⁵Turrentine, "40th Anniversary Celebration."

⁷⁶2005/2006 *Annual Report*, 28.

⁷⁷"The Passing of the Gavel," 10; 2005/2006 *Annual Report*, 8.

⁷⁸Turrentine, "40th Anniversary Celebration."

⁷⁹2005/2006 *Annual Report*, 8.

⁸⁰Turrentine, "40th Anniversary Celebration."

⁸¹*Ibid.*

⁸²*Ibid.*

tronic Case-Filing (CM/ECF) system. After transferring 100,000 case records, and scanning 1.5 million images, on September 5, 2006, the system that the court uses today was finally up and running. The first case filed over the internet occurred on September 18, 2006. One month later, a total of 2,455 documents had been e-filed.⁸³

In 1980, the Southern District increased in size from five judges to seven, with the addition of Judge Judith N. Keep and Judge Earl B. Gilliam. Even with the new judges, the district retained the highest caseload in the nation, with more than 6,500 cases filed every year.⁸⁴ In 1982, Judge Howard Turrentine became chief district judge, followed by Judge Thompson in 1984. Judge Keep was the youngest judge to be appointed in the district and became its first female chief judge, serving in that capacity from 1991 to 1998. As Judge Rudi M. Brewster put it, "All of our chiefs have shared a common philosophy of our court since it was inaugurated as a district court, and that philosophy basically was to be responsive and user friendly to those who desired our services, on the one hand, and on the other to develop a sense of mutual collegiality and respect for the judges and colleagues on the bench." Judge Brewster said Judge Keep "preserved and strengthened those philosophical bonds" and was "the symbol perhaps for a transformational court."⁸⁵

In 1998, Judge Marilyn Huff was appointed chief judge, an appointment she held until 2005. Judge Huff is credited with exhibiting great leadership and tenacity by single-handedly securing five new judgeships for the district.⁸⁶ She also created the full-time magistrate position in El Centro and convinced Congress to fund the El Centro Courthouse, which was completed in 2003.⁸⁷ In addition, Judge Huff served on the Ninth Circuit's Public Information and Community Outreach Committee. She and the San Diego County Bar Association co-sponsored a poster contest for high school students for artwork depicting the theme "We, the people."⁸⁸ Several of those posters have been displayed along the courthouse's first-floor windows on Broadway.⁸⁹ Judge Huff was instrumental in the planning for

⁸³2005/2006 Annual Report, 29.

⁸⁴Ibid.

⁸⁵"The Passing of the Gavel," 14, 21–27.

⁸⁶Ibid., 27–28.

⁸⁷Ibid., 28–29.

⁸⁸Ibid., 30.

⁸⁹Ibid.; *Historical Walking Tour*.

the new courthouse annex as well. The Hotel San Diego was torn down to make way for construction of the new courthouse in April 2005.⁹⁰

Judge Irma Gonzalez became chief judge of the district on January 22, 2005. She was the first Mexican-American female judge in the United States, as well as the first magistrate to become a chief judge.⁹¹ With Judge Gonzalez's support, the Federal Bar Association of San Diego and a team of judges, led by Judge Anthony Battaglia, developed the Judith N. Keep Federal Civil Practice Seminar in 2005. This annual program brings together judges, court staff, and lawyers to discuss practicing law in the federal court.⁹² In addition, Judge Gonzalez was instrumental to the construction of the Carter-Keep Courthouse.⁹³ During the financial crisis of 2008, the construction budget was limited, and Judge Gonzalez and the Administrative Office of the Courts had to change the building plans.⁹⁴ Additionally, after the Hotel San Diego was demolished, the crater left behind became filled with stagnant water due to a lack of funds to move forward (although it was given the nickname "Lake Rhoades" in honor of Judge John Rhoades' dedication to the construction). After much effort, Judge Gonzalez finally convinced Congress to fund the courthouse.⁹⁵

Additionally, Judge Gonzalez is credited with gracious and resourceful responses to an unfortunate series of disasters. In 2007, San Diego County wildfires destroyed 1,360 homes, and 500,000 people were evacuated. In 2008, three pipe bombs exploded in the courthouse, shattering glass in the lobby, shooting shrapnel into the ceiling, and creating a hole in a fifth-story window across the street. In 2010, a 7.2 magnitude earthquake caused damage to the El Centro federal courthouse. In 2011, a power outage left millions of people without electricity for two days, and the blackout closed the courts. Time and time again, Judge Gonzalez marshaled the court's resources in order to handle emergency situations and maintain the court's administration of justice.⁹⁶

⁹⁰"The Passing of the Gavel," 29.

⁹¹*Ibid.*

⁹²2005/2006 *Annual Report*, 56; "The Passing of the Gavel," 34.

⁹³"The Passing of the Gavel," 31–32.

⁹⁴*Ibid.*, 32.

⁹⁵*Ibid.*

⁹⁶*Ibid.*, 34.

COURTHOUSES OF SOUTHERN DISTRICT

Edward J. Schwartz United States Courthouse

Construction of a new federal office building and United States courthouse began in 1972, and the building was opened for operations by 1976.⁹⁷ In its initial design, the building had corridors that opened to Front Street.⁹⁸ But Judge Schwartz ordered that the corridors be enclosed with glass after a disappointed litigant jumped from a third-floor window.⁹⁹ In addition, the building survived a bombing in 1990 when an explosion occurred on the front steps.¹⁰⁰ Fortunately, there were no injuries, but, as with the earlier courthouse fire in 1968, the cause of the bombing remains a mystery today.¹⁰¹

On September 16, 1994, Chief Judge Keep led the ceremony renaming the building the Edward J. Schwartz United States Courthouse in honor of the Judge Schwartz's efforts on the project.¹⁰² Interestingly enough, the site of the federal office building was once home to Franklin Elementary School, a school Judge Schwartz attended.¹⁰³ The cornerstone of the Schwartz Courthouse includes a copper time capsule containing newspaper clippings about the building's progress, the cover sheet to its building contract, the program from the renaming ceremony, a court calendar, photos of the building, then-current postage stamps, and seeds from the trees growing near the complex. In addition, the front of the property includes the Edward J. Schwartz Courthouse Plaza, which serves as an open space off Broadway and a scene for protests and free speech.¹⁰⁴

Jacob Weinberger United States Courthouse

What used to be the U.S. Post Office and Customs House, and then the old U.S. Courthouse, is now named the Jacob

⁹⁷2005/2006 Annual Report, 8–9; Turrentine, "40th Anniversary Celebration."

⁹⁸"The Passing of the Gavel," 10.

⁹⁹*Ibid.*, 10–11.

¹⁰⁰2005/2006 Annual Report, 29–30.

¹⁰¹*Ibid.*, 30.

¹⁰²*Ibid.*, 9.

¹⁰³"The Passing of the Gavel," 9.

¹⁰⁴*Historical Walking Tour.*



Early in the twentieth century, a young Ed Schwartz attended Franklin Elementary School, shown above in 1903. The Edward J. Schwartz Federal Office Building and U.S. Courthouse was constructed on the site in the 1970s, while Schwartz served as chief judge of the Southern District of California. (Courtesy of the San Diego History Center)

Weinberger United States Courthouse, and serves as the United States Bankruptcy Court in San Diego.¹⁰⁵ In 1976, when the Edward Schwartz Courthouse opened, the old courthouse building was essentially abandoned.¹⁰⁶ In the mid-1980s, the old courthouse housed the Immigration and Naturalization Service. The effort to restore the old courthouse building did not begin until 1986, when Judge John Rhoades, Jr., took the bench and agreed to help Judge Richard Chambers of the Ninth Circuit in his restoration efforts. At that time, the courthouse walls were covered in graffiti, and the inside was empty. Judge Rhoades ultimately convinced Congress and the General Services Administration to provide funding to refurbish the building.¹⁰⁷

In 1988, after \$5.4 million was spent to restore the building, it was renamed the Jacob Weinberger United States Court-

¹⁰⁵Hamlin, *Jacob Weinberger*, 1; *Historical Walking Tour*.

¹⁰⁶Hamlin, *Jacob Weinberger*, 27; *2005/2006 Annual Report*, 25.

¹⁰⁷Hamlin, *Jacob Weinberger*, 25; *ibid.*

house.¹⁰⁸ On September 22, 2005, at a ceremony honoring Judge Rhoades for his part in preserving the historic landmark, the court unveiled a portrait of him.¹⁰⁹ As Judge Rhoades said, "We don't have a lot of history here . . . [and] there are so few old buildings in San Diego. I thought it was important that the Court have a history, and this building provided a connection with the past."¹¹⁰ Judge Schwartz remembered playing hopscotch on the building's stairs and recalled, "The courthouse pretty much stood alone. It was a very important building, the symbol of the federal government."¹¹¹

James M. Carter and Judith N. Keep Courthouse

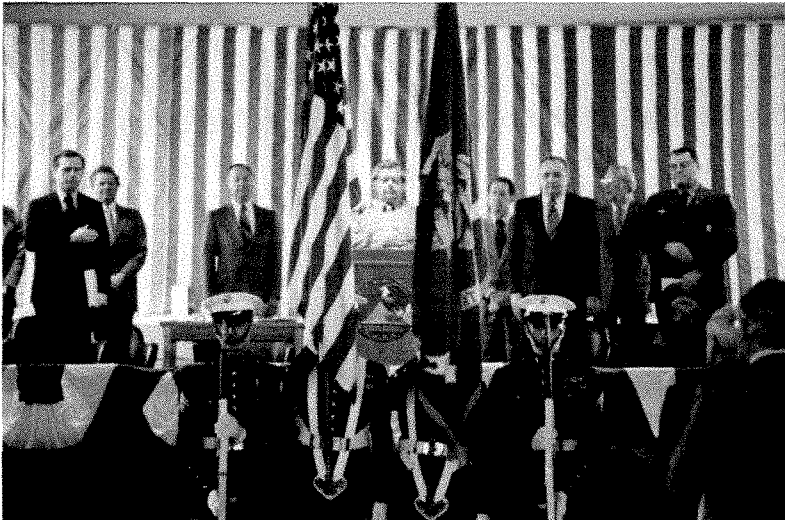
In 2012, Judge Turrentine applauded the efforts of Judge Huff, Judge Gonzalez, and Judge Rhoades in working to ensure the creation of the new courthouse annex, which he hoped

¹⁰⁸Hamlin, *Jacob Weinberger*, 26; *ibid.*

¹⁰⁹2005/2006 *Annual Report*, 25.

¹¹⁰Hamlin, *Jacob Weinberger*, 26; 2005/2006 *Annual Report*, 25.

¹¹¹Hamlin, *Jacob Weinberger*, 17.



During construction, on October 29, 1974, officials and guests, as well as a colorguard, gathered for a ceremony to lay the cornerstone of the new federal office building that would later be named in honor of Judge Edward J. Schwartz. (Courtesy of the San Diego History Center)

would open before the celebration of the district's fiftieth anniversary.¹¹² On April 15, 2006, the Hotel San Diego, adjacent to the Edward Schwartz United States Courthouse, was demolished to make way for a new federal courthouse. Judge Rhoades had the honor of pushing the button to ignite the explosives.¹¹³

Before 1914, the Albany Hotel, with a restaurant famous for its oysters, stood where the Carter-Keep building is now located. During the construction of the courthouse, several truckloads of oyster shells had to be removed from the site.¹¹⁴ On August 25, 2006, the court held a ribbon-cutting ceremony to acknowledge those who had helped secure the funds from Congress to build the new courthouse.¹¹⁵

In 2015, the sixteen-floor tower was completed, and a naming ceremony was held in honor of Judge Carter and Judge Keep. Today, one can take a short walk in and around the federal courthouses and view the wonderful art and design that have been added since 1966.¹¹⁶ From the Edward J. Schwartz Courthouse Plaza, one can view the well-known Edward Schwartz Courthouse and Federal Office Building, the twenty-three story Metropolitan Correctional Center, the newly renovated Jacob Weinberger United States Courthouse, and the beautiful high-rise architecture of the James M. Carter and Judith N. Keep Courthouse.

Thanks to the Art-in-Architecture Program, the complex includes the Front Street design pieces at the federal building.¹¹⁷ The windows on Broadway display quotes and art based on the theme of "Freedom, Liberty, Equality, and Justice for all." One piece, *Axial Incidence*, is a large crystal elevated on a pedestal. Outside the courthouse, the *Excalibur* steel sculpture resembles a pyramid stretching toward the sky. The 9/11 Memorial Garden, created by the United States Attorney's Office, recognizes the victims and first responders of the September 11, 2001, terrorist attack.¹¹⁸

In the lobby of the Carter-Keep building stands the Acrylic Prism, a once-abandoned piece of architectural art that provides spectacular light and design inside San Diego's new

¹¹²Turrentine, "40th Anniversary Celebration."

¹¹³"The Passing of the Gavel," 32; *Historical Walking Tour: 2005/2006 Annual Report*, 58.

¹¹⁴*Historical Walking Tour*.

¹¹⁵*2005/2006 Annual Report*.

¹¹⁶*Ibid.*

¹¹⁷*Ibid.* This program dedicates 0.5 percent of construction funds for the purchase of public art.

¹¹⁸*Ibid.*

courthouse. In addition, the courthouse is filled with colorful abstract murals by a local artist. The Hedge Wedge, a long, concrete ramp leading to the Carter-Keep Courthouse, was designed as a living sculpture by world-renowned artist Robert Irwin. Here the viewer can see the Schwartz and Carter-Keep cornerstones, paying tribute to the history and construction of the buildings. Out of sight are the underground passageways connecting the buildings.¹¹⁹

CONCLUSION

The forgoing stories of judges and courthouses outline the development of the Southern District of California over the past fifty years. San Diego is no longer a small border town. As one of the biggest and most populated cities in the nation, with a thriving legal community, San Diego has escaped the shadow of Los Angeles. With the fiftieth anniversary of the United States District Court for the Southern District of California, the legal community celebrates both the spirit of the city of San Diego and the district, which features a Community Outreach Program and a strong Federal Bar Association whose lawyers and judges are committed to excellence in serving the San Diego community.¹²⁰ Ten years ago, Judge Enright said that the Southern District of California left a legacy of camaraderie, professionalism, and dedication to service. Today that legacy continues, and the United States District Court for the Southern District of California remains one of the busiest and most highly regarded courts in the United States.¹²¹

¹¹⁹*Ibid.*

¹²⁰2005/2006 *Annual Report*, 59–60.

¹²¹*Ibid.*, 66.

JUDGE JUDITH NELSEN KEEP AND HER LEGACY IN THE SOUTHERN DISTRICT OF CALIFORNIA

JESSICA WALLACH

“Thank you, your Honerous,” one lawyer hesitantly responded from beneath the stately bench where Judge Judith Keep sat.¹ A vibrant and familiar laugh captivated the courtroom as Judge Keep defused any potential unease. People—practitioners and parties alike—were unsure how to respond to the presence of a woman on the bench.

In 1980, a time when women were just beginning to enter law school in significant numbers, President Carter appointed Judge Keep to the United States District Court for the Southern District of California. Because she was the first woman to sit on this bench, Judge Keep’s appointment stands as a token of the changing tide of the civil rights movement. Tokenism aside, Judge Keep inherited the managerial responsibilities of one of the heaviest caseloads in the country as the first female chief judge in the Southern District.

Keep ushered the district into the modern era, playing a transformative role in cultivating change in the Southern District. Tracing her appointment and the state of the bench at that time, this article seeks to demonstrate the methods through which Judge Keep tackled some of the “shaping” issues of the district, including the role of women in the legal profession; the challenges arising out of proximity to the U.S.-Mexico border; her insightful reaction to the shortcomings of the federal sentencing guidelines; and her work to enhance the wellness of her fellow judges. In the words of Judge M. Margaret McKeown

¹Leo E. Laurence, “Profile on Federal District Judge Judith N. Keep,” *Dicta*, January 1984, 1.

Jessica Wallach obtained her law degree from the University of San Diego School of Law in 2016 and will practice civil litigation at Cooley LLP in San Diego.



Judge Keep met President Jimmy Carter at a reception for the National Association of Women Judges, October 3, 1980. (Courtesy of Russell L. Block, White House photograph)

of the Ninth Circuit Court of Appeals, "[p]eople won't tell you she was a great woman judge. . . . They'll tell you she was a great judge."²

PRESIDENT CARTER'S DIVERSIFICATION OF JUDICIAL NOMINATIONS

President Carter's affirmative action approach to judicial appointments fundamentally changed the composition of the bench of the district court. Federal judges are appointed by the president and confirmed by the consent of the Senate, a process that involves all three branches of government.³ This amounted to "politics as usual," as each judicial appointment carried with it life tenure and a chance for the appointing party

²Anne Krueger, "First female federal judge in S.D. called inspirational," *San Diego Union Tribune*, September 15, 2004, http://www.sandiegouniontribune.com/uniontrib/20040915/news_7m15keep.html.

³Sen. John Tunney, "The Judicial Appointment Process," *Pepperdine Law Review* 34:2 (2007): 4.

to influence law and policy far beyond its term.⁴ The result was the continued selection of candidates who aligned politically and socially to a given administration's platform. When Carter took office in 1977, six different presidents, spanning forty-two years, had appointed only eight women to Article III judgeships.⁵

President Carter's success in naming women to the federal courts resulted from his reform of the judicial appointment process. Historically, senators of the president's party named new judicial candidates.⁶ Politicians viewed this as a senatorial perk to reinforce party allegiance within the judiciary. This generated a self-perpetuating trend of senators nominating overwhelmingly white, male candidates to federal judgeships. According to Carter, the palpable asymmetry of the federal bench threatened the integrity of the entire judicial branch. Rather than deferring to the "old boys club" for direction,⁷ Carter pledged to diversify the federal bench and to select candidates "solely on the basis of merit."⁸

In 1977, Carter negotiated a compromise with the chair of the Judiciary Committee. Through this compromise, he replaced the "senatorial preeminence" to identify judicial candidates for the federal courts of appeal with a new nominating commission for each circuit.⁹ The new procedure replaced the traditional, more informal and partisan methods of appointment that led to such an imbalance on the federal bench.¹⁰ Executive Order 11972 required each of these new commissions to include "members of both sexes, members of minority groups, and approximately equal numbers of lawyers and non-lawyers."¹¹

At the district court level, Carter lobbied individual senators to implement similar appointment reforms in their home

⁴Stephanie K. Seymour, "Judicial Appointment Process: How Broken Is It," *Tulsa Law Review* 39:3 (2007): 691, 696.

⁵Mary L. Clark, "Carter's Groundbreaking Appointment of Women to the Federal Bench: His Other 'Human Rights' Record," *American University Journal of Gender, Social Policy & the Law* 11:3 (2003): 1131-63.

⁶*Ibid.*, 1135.

⁷*Ibid.*

⁸Margaret Garrard Warner, "Judges Reserve Verdict: Five on Federal Bench Here Look at Carter Judicial Expansion," *San Diego Union Tribune*, April 15, 1979.

⁹Seymour, "Judicial Appointment Process," 696, 692n4.

¹⁰See Bill Ott, "Two Tabbed for New U.S. Court Seats," *San Diego Union Tribune*, May 21, 1979.

¹¹Exec. Order 11972, 42 Fed. Reg. 9659 (February 14, 1977).

states.¹² This included handwritten letters urging senators to develop similar merit selection committees.¹³ However, Carter's efforts were initially frustrated by the outmoded rating system of the ABA Standing Committee.¹⁴ Traditionally, the appointing president would forward his candidates to the committee for review. The committee forwarded to the Senate the candidates it determined to be "qualified" and abandoned those who fell short. The qualities stressed by the committee greatly hindered the appointment of the women and minority candidates selected through Carter's diversity-focused initiatives. At this time, these candidates were outsiders to the legal profession, and thus lacked experience and expertise comparable to that of white, male candidates.¹⁵

However, officials from the Carter administration urged the ABA committee to revise its rating schedule or risk having Carter bypass the committee review process altogether. The ensuing compromise required that the committee modify its ratings criteria "to recognize non-traditional practice settings and value diversity in judicial candidates' backgrounds."¹⁶

Fortuitously, Carter's diversity-focused platform and the revised rating system converged with the largest expansion of the federal judiciary in United States history. Under the Omnibus Judgeship Act, Congress created 152 new national judgeships in 1978, two of which were allocated to the Southern District of California.¹⁷

Prior to Judge Keep's appointment, a cast of "all-white, all-male" judges presided over the Southern District. The bench conspicuously lacked the diversity that was characteristic of the population of the district. Irrespective of their qualifications, these judges reflected the nearly unanimous race and gender preferences of preceding presidential administrations. This uniformity made the district "a prime target" for Carter's plan.¹⁸

Carter's promise soon materialized on the bench of the Southern District in a dramatic fashion. Shortly after the Omnibus Judgeship Act became law, Senator Alan Cranston recommended Judith Keep to President Carter for nomination

¹²Clark, "Carter's Groundbreaking Appointment of Women to the Federal Bench," 1143, 1132n5.

¹³Ibid.

¹⁴Ibid., 1144.

¹⁵Ibid.

¹⁶Ibid.

¹⁷Warner, "Judges Reserve Verdict."

¹⁸Ibid.

to the court.¹⁹ In 1980, Carter acted on this recommendation and appointed Judith Keep. Keep joined five all-white male counterparts who had been appointed by a process that reflected a "fundamentally different political climate."²⁰ Each of these five men had been appointed in a "quiet, relatively private process"—the "old-fashioned political process of knowing someone" that resulted in a nomination for a seat on the bench.²¹ Carter's merit selection panels thrust that process into the public and political limelight.

Notwithstanding the differences in procedure and Carter's diversity-focused initiatives, the qualities important to the position remained the same in the eyes of the existing five judges on the bench. Among those factors—a judicial wish list of sorts—were "excellence . . . someone who can be fair and kind to people," according to Judge Edward Joseph Schwartz, and "substantial academic credentials, dedication, administrative ability, and, preferably, some judicial experience," according to Judge Gordon Thompson. Judge Leland Chris Nielsen confronted the focus of the nomination panels head-first: "as long as they're qualified, I don't care what their race or sex is. . . . I expect to get along with anybody."²²

Judge Judith Nelsen Keep embodied every quality on that judicial wish list. Despite being the first woman on the bench of the Southern District, Keep veiled her qualifications in humility. "It's obvious I got the position because I'm a woman," she acknowledged, describing her 1980 appointment as a mere "product of the times."²³ This federal appointment was not the first time the climate shrouding these "times" affected her legal career. In 1976, only six years out of law school, Keep seized the opportunity provided by the nationwide movement toward judicial diversity and applied for a position on the San Diego Municipal Court. Governor Jerry Brown and the California State Legislature, in a statewide movement paralleling Carter's diversity-based initiatives, actively recruited women and minorities for judgeship positions on state courts.²⁴

When she got the call from the legal affairs advisor to Governor Brown, she thought it was a prank. "I thought it was the

¹⁹Ott, "Two Tabbed for New U.S. Court Seats," B6.

²⁰Warner, "Judges Reserve Verdict." These men who pioneered the Southern District are Judge William B. Enright, Judge Leland C. Nielsen, Judge Howard B. Turrentine, Chief Judge Edward Schwartz, and Judge Gordon Thompson, Jr.

²¹Ibid.

²²Ibid.

²³Daily Journal Judicial Profile, 1981 (on file at U.S. Courts Library, San Diego).

²⁴Ibid.



Judge Judith N. Keep shares a light moment with Chief Judge Edward J. Schwartz on the day she took the oath of office, July 9, 1980. (Courtesy of San Diego History Center)

district attorney I'd been handling a murder case with calling me as a joke." Keep had her secretary contact the governor's office to confirm that the call and the offer for a seat on the municipal court were real.²⁵

In hindsight, such skepticism seems misplaced. But at the time, women in the legal field generally—let alone women in the judiciary—were few and far between.²⁶ Judge Keep was part of a nominal 3.5 percent of women enrollees in ABA-accredited law schools during the 1960s.²⁷ Keep enrolled in the University of San Diego School of Law in 1967, after graduating summa

²⁵Ibid.

²⁶San Diego attorney Elisabeth Semel describes the state of women in the legal profession in 1970: "At that time, you could count the number of women criminal-defense lawyers practicing in San Diego County on one hand." Patrick Radden Keefe, "The Worst of the Worst," *The New Yorker*, September 14, 2015, <http://www.newyorker.com/magazine/2015/09/14/the-worst-of-the-worst>.

²⁷Susan Ehrlich Martin and Nancy C. Jurik, *Doing Justice, Doing Gender: Women in Legal and Criminal Justice Occupations* (Thousand Oaks, CA, 2007), 115, http://www.sagepub.com/sites/default/files/upm-binaries/12634_Chapter5.pdf.

cum laude from Scripps College in 1966 and teaching English at the Bishop's School in La Jolla. What was the purpose behind such a bold career shift? Keep described her decision to move into law as simply a desire to "keep the most options open."²⁸

Keep seized every option that came before her. After graduating as valedictorian of her class in 1970, she worked as a court-appointed lawyer trying cases for Federal Defenders, Inc. In 1973, she moved into private practice with two former colleagues from Federal Defenders. Her career as a judge on the San Diego Municipal Court began only three years later.²⁹ Keep presided over cases there until 1980, when Carter called her up to the federal bench. She was not only the first woman to sit on this bench, but she was also the Southern District's youngest appointee.³⁰

By the time he left office in 1981, Carter had appointed over forty women to the federal bench, twenty-nine at the district court level and eleven at the court of appeal level.³¹ This proactive commitment to diversity dislodged any lingering semblance of "tokenism." San Diego—and the federal judiciary nationwide—finally began to reflect the populations over whom the judges presided.

THE CHALLENGE TO THE LEGAL PROFESSION'S GENDER NORMS

Keep's bravery and persistence paved the way for other women seeking access to the legal profession. Although San Diego stood as the organizational hub for furthering California's ratification of the Equal Rights Amendment, the city generated a rather inhospitable environment for women in the legal profession in the early 1970s. Few women braved the traditional constraints of the classic "old boys' club" to test the profession for themselves.³² Women lacked a comparable "old girls' club"

²⁸Pamela Wilson, "Keep Gets Ready for a New Role as Chief Judge," *San Diego Daily Transcript*, October 22, 1990.

²⁹Marty Graham, "Profile of Judge Judith N. Keep, U.S. District Court-Southern," *The Daily Journal*, January 28, 1998, 98-1.

³⁰Richard Carlton, "Addressing Disability and Promoting Wellness in the Federal Courts," *Judicature* 90:1 (2006): 26, 28.

³¹Ruth Bader Ginsburg and Laura W. Brill, "Women in the Federal Judiciary: Three Way Pavers and the Exhilarating Change President Carter Wrought," *Fordham Law Review* 64:2 (1995): 281, 287.

³²Lawyers Club of San Diego, "History," <http://www.lawyersclubsandiego.com/?page=LCHistory>.

to which they could turn for support—few women worked in firms, for the court, or in positions of power.³³

The combined forces of the lack of opportunity and institutionally entrenched constraints perpetuated this blatant gender imbalance within the legal profession. The Grant Grill, San Diego's place for power lunch, stood as the physical embodiment of law's gender hierarchy.³⁴ Furnished with mahogany booths and the scent of cigars, the Grant Grill (commonly referred to as "the Grill") serviced the business-lunch needs of San Diego's bankers, lawyers, writers, and businessmen. As Lynn Schenk described, "[T]his was the place where all the movers and shakers had lunch and we were left outside."³⁵ Until 1969, the restaurant policy guaranteed that the Grill would serve "men only" until 3:00 p.m. daily.³⁶

Those few women who persisted in the male-dominated forums and offices were removed from the more informal methods of business dealing and office collegiality. The "founding mothers" of the Lawyer's Club—Lynn Schenk, Judith McConnell, and Elaine Alexander—took special offense to the brass "men only" sign looming over the Grill's entryway, located near the superior court.³⁷ "You would think that once we were members of the bar, we could participate in activities," said Schenk. "Not so." Most organizations and bar committees did not permit women to join because "they had already met their quota of one or two women." Schenk added, "This impeded our ability to practice law, to make business connections, to network, to do all things we'd be able to do as lawyers with a ticket to practice."³⁸

Granted—where to eat lunch paled in comparison to the other offenses these women encountered. But the Grant Grill became symbolic of these larger affronts, of everything that was wrong with the legal profession at the time. Every day, the "men only" sign leered at them and reminded all women of their place in the legal world. In what has become known

³³See, generally, Brenda D. Frink, "The persistence of the no-problem problem," Stanford University, The Clayman Institute for Gender Research, January 31, 2011, <http://gender.stanford.edu/news/2011/persistence-no-problem-problem>.

³⁴See *The Best of San Diego Restaurants*, "The Grant Grill," <http://www.grant-grill.com/best-of-san-diego-restaurants/>. See also Lawyers Club, "The Grant Grill Invasion of 1971: A Look Back," Vimeo video, 3:33, accessed March 16, 2016, <http://www.lawyersclubsandiego.com/?page=LCHistory>.

³⁵"Grant Grill Invasion" video, 4:47.

³⁶*The Best of San Diego Restaurants*, "Grant Grill."

³⁷*Ibid.*

³⁸"Grant Grill Invasion" video, 3:46.

as the "Grant Grill Invasion," these three women violated the restaurant's express policy and arranged a lunch at the Grill during the "men only hours." After some resistance, Schenk finally convinced the nervous maître d' to seat them with the help of a non-precedential, New York antidiscrimination case.³⁹ The three sat, ordered, and ate at the Grill, tolerating hostile remarks and judgmental stares throughout. The next time they returned for lunch, the "men only" sign was gone.

Such movements characterized the social context in which Judge Keep emerged into the legal profession when she graduated from law school in 1970.⁴⁰ Describing a woman's search for a job in the legal profession at that time as difficult would be a gross understatement. Despite her serving on the law review board and graduating as head of her class, her professors had to give her name as "J. Keep" just so she could get a foot in the door to many interviews. When she walked through the door, Keep recalled, "first they were very shocked. In one interview, the very first question I had was 'Do you take birth control pills?'" In another, she "lost the job but got propositioned."⁴¹

Most women seeking entry into the male-dominated legal world faced similar experiences; women were perceived to lack the backbone required for the profession and were not given serious consideration as potential new hires. The appearance of the "bar bunnies," a tradition of the San Diego County Bar Association's annual dinner, demonstrates the extent of this perception.⁴² Every year the bar association invited the local bench and bar to a celebration.⁴³ The bar dinner committee invited women paralegals to dress up as "Playboy bunnies" for presentation on stage at the outset of the dinner.⁴⁴ The presence of the "bar bunnies," as they were dubbed, became a tradition of the bar association dinners.⁴⁵ But this tradition fostered uneasiness

³⁹*The Best of San Diego Restaurants*, "Grant Grill."

⁴⁰In fact, Judge Keep and Lynn Schenk were roommates throughout law school. *Naming the Carter-Keep Courthouse*, video, accessed August 21, 2015 (on file at U.S. Courts Library, San Diego).

⁴¹Pat Zaharopoulos and Wayne Alan Hughes, "Municipal Court Judge Judy Keep," *Dicta* 23:6 (1976): 21, 22.

⁴²Judith Copeland, email interview by Karen Hughes, March 15, 2016 (on file with author).

⁴³Kelly Rand, "Lawyers Club Presidents of the 1980s," *Lawyers Club News*, March 2012, 12, 13, <https://c.ymcdn.com/sites/lawyersclubsandiego.site-ym.com/resource/resmgr/Newsletters/Mar.2012Newsletter.pdf>.

⁴⁴*Ibid.*, 13.

⁴⁵*Ibid.*

amongst women attendees after they began to join in greater numbers, and the Lawyers Club unsuccessfully sought to end the tradition. In response, several female members of the Lawyers Club decided to "take control of the situation," instead offering several of their members to appear as the bar bunnies that year.⁴⁶ The bar dinner committee was "thrilled and tickled beyond belief" by the offer.

When the dinner arrived, the master of ceremonies introduced the parade of bunnies. As always, applause and whistles filled the room in anticipation of the presentation of the bunnies.⁴⁷ Instead of provocative Playboy outfits, three members of the Lawyers Club emerged, completely covered in fuzzy brown bunny suits.⁴⁸ The room fell silent, with the exception of the uproarious laughter of Judge Keep.⁴⁹ Today, the annual bar association dinner still stands, but the bar bunnies, in Playboy or Easter bunny suits, have never made another appearance.

Humor aside, women serving in professional roles traditionally reserved for men faced heightened skepticism from their peers. Keep stated in an interview that she felt "a certain responsibility" as a female judge.⁵⁰ "If a man is a bad judge, he's a bad judge. But, if a woman is a bad judge, it reflects on other women and affects their chances."⁵¹ Keep's commitment to both her gender and the bench recast society's skepticism of gender diversity on the bench in a positive light. The twenty-one-year span of female leadership in the Southern District that followed Keep's term as chief judge is testament to this legacy—Marilyn Huff served as chief of the Southern District from 1998 until 2005, with Judge Irma Gonzalez following suit, managing the district until 2012.⁵²

Judge Gonzalez, appointed in 1992 during Keep's tenure as chief, reminisced about their time on the bench together: "It was such a small district to have three women on the bench."⁵³ While acknowledging the time and effort Keep must have ex-

⁴⁶Copeland interview.

⁴⁷Rand, "Lawyers Club Presidents of the 1980s," 13.

⁴⁸*Ibid.*

⁴⁹Hon. Cynthia Ann Bashant, interview by Jessica Wallach, September 13, 2015 (on file with author).

⁵⁰Rand, "Lawyers Club Presidents of the 1980s," 13.

⁵¹Zaharopoulos and Hughes, "Municipal Court Judge Judy Keep," 22.

⁵²Amanda C. Fitzsimmons, "Hon. Irma E. Gonzalez District Judge for the Southern District of California," *The Federal Lawyer* (September 2012): 36.

⁵³Hon. Irma Gonzalez (ret.), interview by author, September 21, 2015 (on file with author).



The seven judges of the Southern District of California in 1980 were (standing, left to right) Judge Judith N. Keep, Judge Leland C. Nielsen, Judge William B. Enright, and Judge Earl B. Gilliam; (seated, left to right) Judge Howard B. Turrentine, Chief Judge Edward J. Schwartz, and Judge Gordon Thompson, Jr. (Courtesy of the Southern District of California)

pendent to adapt to her new role, Gonzalez notes that the interplay of an already-collegial bench with Keep's unique warmth and bravery prepared the way for her. "She had such grace, personality, and showed such deference, she won them over. She may have been the chief but she always took into consideration the rules and advice of the older men who had been there longer." Eventually, the novelty of this shift became the norm. Gonzalez said, "The other judges got accustomed to a woman leader. . . . By the time my turn rolled around, being a woman was no big deal."⁵⁴ Keep jumped headfirst into a man's world to solidify not only a place for a woman on the bench, but to create opportunities for the women of the Southern District, particularly those within the legal profession, of a previously unattainable stature.

⁵⁴Ibid.

MANAGING THE NATION'S MOST DEMANDING CASELOAD

Judge Keep led the district into its modern era while balancing the managerial duties of one of the heaviest caseloads in the country. Her appointment may have helped meet an implicit diversity quota, but she inherited very real responsibilities, including judicial duties over 9,008 square miles of land and the people residing within that area. The district encompasses San Diego County, which includes San Diego—the second largest city in California and the sixth largest in the U.S.—and Imperial County.⁵⁵ The southern boundary of the Southern District aligns with over 140 miles of the U.S.-Mexico border, containing multiple international ports of entry.⁵⁶ With more than 50,000 vehicles and 25,000 pedestrians crossing into the United States each day, the San Ysidro port is the busiest land port of entry in the entire Western Hemisphere.⁵⁷

The U.S.-Mexico border presents a host of challenges to administrative efficacy and judicial efficiency. This unique geographic configuration has forced the district to serve as the gatekeeper between Mexico and California, and molds both the nature and quantity of cases that come before the court. The smuggling of goods and people across this border has yielded a vast number of reactive criminal prosecutions.⁵⁸ So many, in fact, that the Southern District of California manages the largest criminal caseload per active judge in the country.⁵⁹

"Our case load stinks," remarked Keep in her seventh "State of the Federal Judiciary" speech in 1996. "I concede that

⁵⁵U.S. Attorney's Office, Southern District of California, U.S. Department of Justice, "America's finest city!" <https://www.justice.gov/usao-sdca>.

⁵⁶U.S. Marshals Service, U.S. Department of Justice, "Southern District of California Area of Service," <http://www.usmarshals.gov/district/ca-s/general/area.htm>.

⁵⁷U.S. General Services Administration, "San Ysidro Land Port of Entry," <http://www.gsa.gov/portal/content/104872>.

⁵⁸See, generally, Alan D. Bersin and Judith S. Feigin, "The Rule of Law at the Margin: Reinventing the Prosecution Policy in the Southern District of California," *Georgetown Immigration Law Journal* 12:285 (1997): 287.

⁵⁹*Ibid.*, 297n4. See also San Diego County Bar Association, "Hon. Judith Nelsen Keep, Criminal Justice Memorial," <https://www.sdcbca.org/index.cfm?pg=CriminalJusticeMemorial#keep> (noting that the doubling in size of the U.S. Attorney's Office is one factor behind the exponential increase in criminal filings during Keep's term).

'stinks' is not a judicial word, but it is the most apt word."⁶⁰ During Keep's early years on the bench, the U.S. attorney's staff more than doubled in size, and U.S. Customs and Border Patrol followed suit. Referring to the "hourglass analogy" raised by U.S. Supreme Court Chief Justice William Rehnquist, Keep noted that "politicians appear willing to pour ever-increasing funds into our law enforcement but expect the growing caseload to squeeze through a nearly static court system."⁶¹ The "aptness" of Keep's non-judicial word choice is even more apparent in light of the approximately 2,500 criminal cases filed in the Southern District in 1996, an increase of 12 percent from those in 1995. In 1995 approximately 2,200 cases were filed, a substantial jump from the 1,400 filings in 1994.⁶² In fact, from 1994 to 2000, the filing of criminal cases in the Southern District of California increased by 112 percent.⁶³

Chief Judge Keep steered the district court through the exponential vertical jump in border-driven criminal case filings.⁶⁴ All federal courts share the same goal of providing each person his or her day in court in a "fair and expeditious manner." However, the vast—and ever-increasing—caseload morphs this goal into an unworkable standard. The sheer number of filings per judge provides a tangible demonstration of such unworkability: while the national average of weighted filings—civil and criminal—nears 479 cases per federal judge, the average for the Southern District is 978 cases per judge.⁶⁵ Judge Keep described the border-corollary as a "constant pressure to keep cases moving as fast as possible."⁶⁶

As if the number of criminal filings was not sufficiently paralyzing in its own right, the Southern District gained no additional judgeships to assist with the rising caseload.⁶⁷ Judge Keep further commented on that pressure in a memorandum to the Federal Courts Study Committee: "[e]verybody's taut. . . .

⁶⁰Marty Graham, "Federal Judge Decries Case Load, Credits Bench with Keeping Pace," *Los Angeles Daily Journal*, January 17, 1996, 3.

⁶¹Pamela Wilson, "Keep Gets Ready for a New Role as Chief Judge," *San Diego Daily Transcript*, October 22, 1990, 1.

⁶²Graham, "Federal Judge Decries Case Load," 3.

⁶³Ken Hudnall, *No Safe Haven: Homeland Insecurity* (El Paso, TX, 2004).

⁶⁴Graham, "Federal Judge Decries Case Load," 3. Keep stated, "There is no question our case load is border driven. . . . This court serves six million people in this megalopolis—three million in San Diego and three million in Mexico." *Ibid.*

⁶⁵Hudnall, *No Safe Haven*; Graham, "Federal Judge Decries Case Load," 3.

⁶⁶Sanford H. Kadish, "Comment: The Folly of Overfederalization," *Hastings Law Journal* 46 (1994): 1247, 1250–51.

⁶⁷Fitzsimmons, "Hon. Irma E. Gonzalez District Judge," 37.

You try to stay as efficient as you would be if everybody who should be here were here. And after a while you get very tired." She warned that criminal cases might cease to allow the judges to chip away at a rising civil backlog,⁶⁸ noting that the court tries less than fifty of the thousands of civil cases per year. According to Keep, her court was "sinking in a mire of criminal cases" and expending 70 percent of its time on adjudication of "routine drug and gun cases."⁶⁹ She cautioned that, after civil cases get the boot, the court would have to "start dismissing criminal cases that we cannot get tried. . . . It is as simple as that. And as awful."⁷⁰

But Keep managed more than the district's criminal caseload. Judge Irma Gonzalez recalls how "despite the court's struggle with its heavy docket, Judge Keep managed to foster a collegial culture amongst the district judges."⁷¹ Gonzalez states that Judge Keep's role as a leader of both the court and the district was immediately apparent.⁷² Keep held meetings with the other judges every Monday in her chambers. Undoubtedly, camaraderie is an expected consequence of regularly cramming colleagues together in a relatively small room. Gonzalez remarks that "it was very empowering to see how the men listened to her. . . . We all looked to [Judge Keep] as a leader, even the older men who had been on the bench since its creation."⁷³ Judge Keep nurtured this camaraderie to build a bench united in ambition and ready to address the challenges of the day.

According to Judge William Enright, who was appointed to the Southern District in 1972, only six years after its inception, it was during Judge Keep's tenure that "the federal bench finally started to more closely resemble the community it served." During her tenure, new courtrooms were constructed in the existing courthouse, and a total of twelve new judges were appointed—five to the district court, including Judges Huff and Gonzalez, and seven magistrate judges.⁷⁴

⁶⁸Brent Stinski, "Why Is Lady Justice Wearing Rags," *The Judges Journal* (1993): 12, 14.

⁶⁹Kadish, "Comment: The Folly of Overfederalization," 1250.

⁷⁰Stinski, "Why Is Lady Justice Wearing Rags," 14.

⁷¹Fitzsimmons, "Hon. Irma E. Gonzalez District Judge," 37.

⁷²Gonzalez interview.

⁷³*Ibid.*

⁷⁴Cheryl Dunn Soto, Esq., "Judge Gonzalez 'Passes the Gavel' to Chief Judge Moskowitz in a Ceremony Celebrating the History of the Southern District," *Federal Bar Association Newsletter*, San Diego Chapter, 1, 8 https://issuu.com/boblipton/docs/spring_2012_fba_newsletter.

Judge Keep was known to be “even-tempered but still in charge of her courtroom,” and “not afraid to call them the way she sees them.”⁷⁵ Federal court practitioners—civil and criminal, prosecution and defense alike—looked up to her as a “credible and intimidating judge.”⁷⁶ “Nutty about her calendar,” Keep complemented her command over the courtroom with her lively personality and sense of humor. Beyond the bench, the community responded in kind. She was “very animated on the bench,” “a characteristic that can strike fear into the heart of attorneys.”⁷⁷ According to former prosecutor and newest member of the bench, Judge Cynthia Bashant, “Prosecutors wanted to be in front of her because she was no-nonsense. She was strict and tough, but kind and compassionate, and particularly compassionate toward defendants.”⁷⁸

Keep felt that the core responsibility for all judges was to account for the real life impact of their decisions: “[A] judge must appreciate all facets of the case, including the practical consequences of rulings. . . . [Y]ou are more mindful of each party in the court room.”⁷⁹

ATTEMPTS TO HUMANIZE THE SENTENCING GUIDELINES

Judge Keep’s commitment to justice continued even amidst statutory changes that undermined a judge’s ability to consider the practical impact of her decisions. Formally adopted in 1987, the Federal Sentencing Guidelines sought to establish a uniform sentencing policy for individuals convicted of felonies and Class A misdemeanors.⁸⁰ Supreme Court justice Stephen Breyer, a member of the original sentencing commission that devised the guidelines, stated that the commission sought to enable “greater fairness and honesty in sentencing” through the guidelines. Pursuing this end, Congress acted in “bipartisan fashion” intending to respond to complaints of “unreasonable

⁷⁵Daily Journal Judicial Profile, 1981 (on file at U.S. Courts Library, San Diego).

⁷⁶*Naming the Carter-Keep Courthouse*, video, accessed August 21, 2015 (on file at U.S. Courts Library, San Diego).

⁷⁷Wilson, “Keep Gets Ready for a New Role as Chief Judge,” 1.

⁷⁸Bashant interview.

⁷⁹Zaharopoulos and Hughes, “Municipal Court Judge,” 23.

⁸⁰United States Sentencing Commission, “2015 Chapter 1: Introduction, Authority, and General Application Principles,” <http://www.ussc.gov/guidelines/2015-guidelines-manual/2015-chapter-1> (accessed May 21, 2016).

disparity in sentencing." "Congress recognized that the personality of a judge mattered in a criminal case," and the fact that different judges imposed different sentences for largely similar offenses was seen as a problem in need of a remedy.⁸¹

The proposed remedy came in the form of a new sentencing system that categorized offenders through offense and offender characteristics. Each offense-offender combination then corresponded to a sentencing range.⁸² The "offender characteristics" were based on "typical past practice." In essence, the defendant's prior criminal convictions and criminal record could increase the sentence imposed. With respect to the "offense characteristics," the sentencing judge looked at the specific actions taken by the defendant in carrying out the offense.⁸³ Moreover, the guidelines often required mandatory lengthy minimum sentences for first-time offenders. No particular characteristics of the offender or offense, no matter how mitigating, could be used to reduce the sentence below the prescribed minimum.⁸⁴ As described by Judge Keep in a 1990 interview with the *San Diego Daily Transcript*, "it's just the crime and the record that gives you the points, and the points determine the sentence. . . . [I]t's so inhumane."⁸⁵

The guidelines required the judge to abide by the sentence range "in any typical case." It endowed the sentencing judge with discretion to deviate from the guidelines "*in any unusual case*, as long as the judge explained in writing why the case was unusual."⁸⁶ While the statute permitted deviation for unusual cases, judges "do so at [their] peril," commented Keep. The statute also enabled appellate review of sentencing decisions, inherently—arguably unintentionally—increasing the risk borne by the judge who ordered a sentence outside of the guidelines. According to Keep, the fear of laying a basis for appeal "made it awkward for all of us."⁸⁷

Keep's colleague, Judge J. Lawrence Irving, resigned in 1990 solely in opposition to the new guidelines.⁸⁸ "If I remain on the

⁸¹Justice Stephen Breyer, "Federal Sentencing Guidelines Revisited," *Federal Sentencing Report* 11:4 (1999): 180.

⁸²*Ibid.*

⁸³*Ibid.*, 181.

⁸⁴Alan Abrahamson, "Resigning Federal Judge Irving to Help Former Law Partner's San Diego Firm," *Los Angeles Times*, December 2, 1990, http://articles.latimes.com/1990-12-02/local/me-8000_1_san-diego-firm.

⁸⁵Wilson, "Keep Gets Ready for a New Role as Chief Judge," 1.

⁸⁶Breyer, "Federal Sentencing Guidelines Revisited," 180 (*italics in original*).

⁸⁷Wilson, "Keep Gets Ready for a New Role as Chief Judge," 1.

⁸⁸*Ibid.*

bench, I have no choice but to follow the law," commented Irving following his resignation. "I just can't, in good conscience, continue to do this."⁸⁹ To illustrate the harshness of the new guidelines, Judge Irving referred to a "split-sentencing" decision he had made under the old rules for a nineteen-year-old man charged with possession and intent to distribute. Under the old rules, the judge was able to craft a sentence in which the defendant served six months in prison with five years' probation. If he were to violate probation, he would serve the remainder of the term in prison. "He did his six months, and after that he remained free of drugs—we know this because of regular testing. . . . [H]e completed his education, got married, had a child and became a productive, tax-paying member of society." Under the new guidelines, however, this man would have been sentenced to twenty years in prison with no possibility of parole.⁹⁰

Keep's commitment to justice and faith in human nature opposed the act of reducing a human defendant to a series of numbers on a statutorily defined chart. Referring to the guidelines, Keep said, "You cannot factor the human qualities of a defendant into a sentence. . . . I find that repugnant to any notion of justice."⁹¹ The sheer number of criminal cases filed in the Southern District served as constant reminders of this unfairness. And in a district congested with border-driven drug smuggling and immigration cases, where the defendants were often "terribly poor and desperate to support their children," the punishments generated by the guidelines do not always seem to fit the crime. Now these people, often parents, would be sent away for a minimum of five- or ten-year terms, while the sentencing judge was left to "wonder who will take care of the children."⁹²

While she was still an assistant U.S. attorney, Judge Bashant recalls presenting a rather unusual plea agreement to Judge Keep.⁹³ The deal at issue involved a woman who had smuggled drugs across the U.S.-Mexico border to feed her heroin addiction. After being placed in custody for this offense, the woman found out she was pregnant. Rather than sending her back to

⁸⁹"Criticizing Sentencing Rules, U.S. Judge Resigns," *New York Times*, September 30, 1990, <http://www.nytimes.com/1990/09/30/us/criticizing-sentencing-rules-us-judge-resigns.html>.

⁹⁰*Ibid.*

⁹¹Wilson, "Keep Gets Ready for a New Role as Chief Judge," 1; Graham, "Federal Judge Decries Case Load," 3.

⁹²Graham, "Federal Judge Decries Case Load," 3.

⁹³Bashant interview.

federal custody during her pregnancy, Keep accepted a “working deal” through which the defendant was able to stay out of custody, on probation, if she completed a drug rehabilitation program. Her continued freedom was conditioned upon her staying clean; the defendant agreed to accept the maximum sentence should she test positive. Several months later and still out of custody, the defendant gave birth to a healthy, drug-free baby girl. Bashant recalls Keep’s reaction at seeing the defendant in court for a checkup of the woman’s probationary status: “[S]he told the woman she looked so beautiful standing here today.”⁹⁴ Within moments, all three women—the defendant, Bashant from the prosecution’s table, and Judge Keep from the bench—shed tears of relief for the reformation.

This sentencing anomaly was as prophetic as it was sympathetic. In October 2015, Congress passed H.R. 3713, or the Sentencing Reform and Corrections Act. In a “bipartisan breakthrough,” this act eases certain sentencing guidelines for drug- and gun-related crimes and applies those reductions retroactively to persons already convicted under the old guidelines.⁹⁵ Whether these changes are enough to significantly reaffirm the judicial discretion that was so blatantly undermined by the former version of the guidelines is beyond the scope of this article. But for now, this change highlights Keep’s ability to both foresee and embrace the direction in which the evolution of the district was headed.

PROVIDING FOR THE HEALTH AND WELFARE OF HER COLLEAGUES

Despite the overwhelming administrative challenges Keep faced while managing the Southern District, she took proactive measures to ensure the well-being of her colleagues on the bench. In 1999, Judge Keep helped establish the Judicial Wellness Task Force, which “paved the way for groundbreaking efforts to promote health and wellness among judges.”⁹⁶ Through this task force, the Ninth Circuit sought to “humanize” the justice system in the West by offering judges assistance with

⁹⁴Ibid.

⁹⁵GovTrack.US, “Summaries for the Sentencing Reform and Corrections Act of 2015,” <https://www.govtrack.us/congress/bills/114/s2123/summary>.

⁹⁶Richard Carlton, “Pioneering work in judicial wellness: A Tribute to the Honorable Judith N. Keep,” *Judicature* 90:1 (2006): 26, 28.

any health or psychological challenges.⁹⁷ No one was better suited for the job of uplifting fellow judges, colleagues, and friends than Judge Keep. Her hallmark smile and empathetic approach to the sensitive issue yielded not only informative results, but practical solutions to the problem.

The judges of the Southern District knew it was “all hands on deck” to prevent the court from drowning in the ever-expanding caseload, which forced every judge to take on a full calendar and resulted in an increased reliance on senior judges. Rather than retiring when eligible, many federal judges elect to take “senior status” instead. Senior judges are permitted to carry a smaller caseload.⁹⁸

With an average age of seventy, senior officers on the federal bench are afflicted with a host of age-related problems. According to a Ninth Circuit Task Force report from 2000, “the judiciary needs these judges to continue working, because the number of authorized judicial officers has not kept pace with the increasing caseloads. . . . [T]he federal judiciary encourages, and is dependent on, men and women over the age of sixty-five to handle its crushing caseloads.”⁹⁹ In an attempt to anticipate and mitigate these challenges, the Judicial Council of the Ninth Circuit embarked on a special study of the “connection between health and judicial performance.”¹⁰⁰ With Judge Keep as chair, the newly created task force set off to find the unique problems that each court experienced with judicial disability and address them head on. Keep chaired a group of experienced circuit, district, bankruptcy, and magistrate judges who researched problems associated with aging judges.¹⁰¹

Unlike their colleagues in state court, federal judges are appointed for life.¹⁰² The Constitution assured lifetime appointment to prevent federal judges from sacrificing independence for public approval. In 1787, when the Constitution was signed, however, the average life expectancy was less than forty

⁹⁷Mary M. Schroeder, “Judging With A Difference,” *Yale Journal of Law & Feminism* 14:2 (2002): 258.

⁹⁸*Ibid.*

⁹⁹Carlton, “Pioneering work in judicial wellness.”

¹⁰⁰Schroeder, “Judging With A Difference,” 259.

¹⁰¹*Ibid.*

¹⁰²Sudhin Thanawala, “9th Circuit addresses senility among federal judges head on,” *AP News*, Nov. 7, 2015, <http://bigstory.ap.org/article/06a3f21c133b4dfca8b0bde71f739d8a/9th-circuit-addresses-senility-among-federal-judges-head>. “The U.S. Constitution guaranteed federal judges lifetime appointments to maintain judicial independence by preventing the easy removal of judges for unpopular decisions. But life expectancy when the Constitution was signed in 1787 was under 40. It is now about 79.” *Ibid.*

years. Now that expectancy has increased to seventy-nine.¹⁰³ The only procedure to remove a "disabled" judge is through a formal complaint filed with the Circuit Judicial Council. If the council finds disability, it reassigns the judge's cases. Critics argue this "is a process designed for punishment, not therapy."¹⁰⁴

Judge Keep's task force found that "seventy-nine percent of persons who are over 70 have at least one of the following conditions: arthritis, hypertension, heart disease, diabetes, respiratory disease, stroke, or cancer."¹⁰⁵ However, it is what the task force failed to find that proved the most sobering: there were virtually no assistance programs available to judges, in any jurisdiction.¹⁰⁶ The task force's 2000 report and subsequent proposals advanced the promotion of judicial health and wellness throughout the federal judiciary. Its legacy includes a 24/7 hotline where judges and staff can obtain advice on how to address signs of dementia. Additionally, the task force proposed annual seminars to teach chief judges about the warning signs of mental or cognitive impairment.¹⁰⁷ According to Judge Mary Schroeder of the Ninth Circuit Court of Appeals, it comes as no surprise that women judges were the first to push the federal courts forward in this area.¹⁰⁸ She recounts the "credo" of Mary Robinson, the first woman to serve as president of Ireland: "[T]he role of women judges is not to feminize the courts but to humanize them."¹⁰⁹ The findings of the task force chaired by Judge Keep have enabled judges and their peers to seek guidance confidentially on age-related afflictions without undermining the credibility of their former cases. Under Judge Keep, the "human" aspect of the work of the courts again trumped tradition.

But even the champion of judicial health and wellness herself faltered under a serious illness. Judge Keep continued her work for the task force and the district even after she was diagnosed with cancer. She had an assistant deliver briefs to her home when she was too ill to come to chambers.¹¹⁰ Judge Keep lost her battle with cancer in September 2004 and left a lasting

¹⁰³Ibid.

¹⁰⁴Schroeder, "Judging With A Difference," 259.

¹⁰⁵Ibid.

¹⁰⁶Ibid., 258.

¹⁰⁷Thanawala, "9th Circuit addresses senility among federal judges head on."

¹⁰⁸Schroeder, "Judging With A Difference," 260.

¹⁰⁹Ibid., 255.

¹¹⁰Anne Krueger, "First female federal judge in S.D. called inspirational."

void on the bench and with her colleagues, friends, family, and all who knew her.

CONCLUSION

Today, Judge Keep's name has been monumentalized on the newly constructed federal courthouse for the Southern District. Legislators deferred to the San Diego legal community to select a name fitting for such a unique monument. In an overwhelming response, the community returned the names of Judge Judith Keep and Judge James M. Carter, the first chief judge of the Southern District.¹¹¹ Just as these two remarkable judges left a lasting impression on the San Diego community, the Carter-Keep courthouse will continue to further the growth and evolution of the Southern District.

Built to maximize natural light, the elegant, sixteen-story tower houses six new courtrooms and is architecturally distinct from the surrounding buildings. Yet many still hurry by without taking exceptional notice, as the monument synthesizes into the downtown city skyline. That such a unique building can so easily assimilate into the classic San Diego skyline seems to expose a paradox. But this phenomenon, too, is a testament to Keep's pioneering spirit and legacy. Shortly after her appointment to the district court, Keep stated that "[she] looks forward to the day when being a woman on the bench won't be noteworthy."¹¹² Just as women are now inherently a part of the legal world, the modern Carter-Keep Courthouse blends seamlessly into the traditional San Diego skyline. Keep's role provided women in the Southern District with genuine access to the legal profession. Thanks to her enduring courage and electric spirit, the female presence has become part of the norm for all facets of the legal profession, rather than just a "noteworthy" event.

Judge Mary Schroeder said, "Women are less accepting than men of the traditional ways of running courts."¹¹³ Judge Keep fostered tradition where it mattered, like the collegiality set in motion by her predecessors, but severed its ties wherever it hindered equity. Beyond her positive influence on women, Keep worked unrelentingly to better the bench and the San Diego

¹¹¹Diane Bell, "Federal court to get extra-long name," *San Diego Union Tribune*, December 15, 2014, <http://www.sandiegouniontribune.com/news/2014/dec/15/federal-courthouse-name-judge-congress-bill-passes/>.

¹¹²Zaharopoulos and Hughes, "Municipal Court Judge Judy Keep," 22.

¹¹³Schroeder, "Judging With a Difference," 255.

community. She kept an overflowing case calendar moving forward, yet simultaneously nurtured the interdependent bond among members of the bench. While the excessive criminal caseload compounded the apparent unfairness of the federal sentencing guidelines, Keep never ignored the human aspect of law and the practical implications of her rulings. Reinforcing the collegiality set in motion by her predecessors, Keep and the Judicial Wellness Task Force developed programs to ensure the continued welfare of district courts across the Ninth Circuit.

The combined impact of Judge Keep's accomplishments served to humanize the law and legal profession. Reflecting on her years in the municipal court, Judge Keep said, "I miss the contact with clients—even the traffic tickets and small claims cases. They were sometimes very funny, pathetic, or just plain human. I miss that."¹¹⁴ Her appreciation of the human aspect of the law, no matter how mundane, permeated all of her work and left a lasting impact on the bench and community of the Southern District. For those who pass the Carter-Keep Courthouse, pause, and appreciate one woman's pursuit of progress.

¹¹⁴Laurence, "Profile on Federal District Judge," 9.

BORDER CROSSINGS, INTERNAL CHECKPOINTS, AND THE FOURTH AMENDMENT IN THE SOUTHERN DISTRICT

SEVE GONZALES

INTRODUCTION

On March 18, 1966, the 89th Congress of the United States divided California into four judicial districts: the Northern, Eastern, Central, and Southern Districts. Congress defined the Southern District as consisting of Imperial and San Diego Counties.¹ Together, these counties account for the entire border between California and Mexico.²

Along this border lie six United States Ports of Entry (POE).³ At each POE, United States Customs and Border Protection (CBP) screens foreign visitors, returning American citizens, and

¹Act of March 18, 1966, Public Law 89-372, *U.S. Statutes at Large* 80 (1966): 75-76 (providing for the appointment of additional circuit and district judges).

²According to the United States Geological Survey, the length of the International Boundary between California and Mexico is estimated to be 140.4 miles, while the length of the entire U.S.-Mexican border is estimated at 1,933 miles. Janice C. Beaver, "U.S. International Borders: Brief Facts," *CRS Report for Congress*, <https://www.fas.org/sgp/crs/misc/RS21729.pdf>.

³The San Ysidro Port of Entry, Otay Mesa Port of Entry, Tecate Port of Entry, Calexico West Port of Entry, Calexico East Port of Entry, and Andrade Port of Entry. See "Locate a Port of Entry," *U.S. Customs and Border Protection*, <https://www.cbp.gov/contact/ports/CA>.

Seve Gonzales graduated from California Western School of Law in San Diego. He will be clerking for Judge Lynn Leibovitz, presiding judge, Criminal Division, Superior Court of the District of Columbia.



Pedestrians and passengers wait in line to be inspected by United States officials at the San Ysidro Port of Entry on September 21, 1969. (Courtesy of San Diego History Center)

imported cargo entering the United States.⁴ The largest of these ports is in San Ysidro, positioned between San Diego and Tijuana. The San Ysidro POE is not only the largest POE in California, it is also the busiest land border crossing in the world; thousands of people cross into the United States through San Ysidro every day.⁵

In addition to managing the ports of entry, CBP is tasked with maintaining internal traffic checkpoints directed at deterring illegal immigration and smuggling activities that may have gone undetected at official border crossings.⁶ Unlike POEs, these checkpoints are situated in the interior United States, and affect domestic as well as international travelers. Several checkpoints in the Southern District are situated on

⁴See "At Ports of Entry," *U.S. Customs and Border Protection*, <http://www.cbp.gov/border-security/ports-entry> (accessed March 18, 2016).

⁵"John Rhoades Federal Judicial Center Historical Walking Tour," *United States District Court Southern District of California*, <https://www.casd.uscourts.gov/Court%20Info/Lists/General%20Court%20Information/Attachments/10/Southern%20District%20of%20California%20Walking%20Tour%20Brochure.pdf> ["[O]ver 14 million vehicles and 40 million people legally enter the U.S. each year" through the San Ysidro Port of Entry].

⁶"San Clemente Station," *U.S. Customs and Border Protection*, <http://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors/san-diego-sector-california/san-clemente-station> (accessed March 19, 2016).

major highways and thus regulate a high volume of traffic. While drivers are usually waved through these checkpoints and only delayed a moment, they can be stopped, questioned, and delayed for much longer if the CBP officer on duty suspects illegal aliens might be in the car.

The Southern District's border with Mexico, and the resulting federal law enforcement presence, has largely influenced the district's criminal docket. Over the past fifty years, the judges of the Southern District have presided over thousands of cases brought by law enforcement efforts at ports of entry and internal checkpoints. In several instances, these cases reached the Supreme Court and became seminal decisions in the Court's Fourth Amendment jurisprudence.⁷ The legal doctrines that arose from these cases continue to impact the lives of the millions of people who live and travel in the U.S. border regions, as well as the lives of the hundreds of thousands of people who travel into the United States every day.⁸ It is fitting then, that a historical review of the Southern District includes an exploration of these cases and the unique characteristics of the district that produced them.

This article focuses on Fourth Amendment cases out of the Southern District involving vehicle searches at the border and vehicle stops at internal checkpoints.

GAS TANKS AND SPARE TIRES: SEARCHING VEHICLES AT THE BORDER

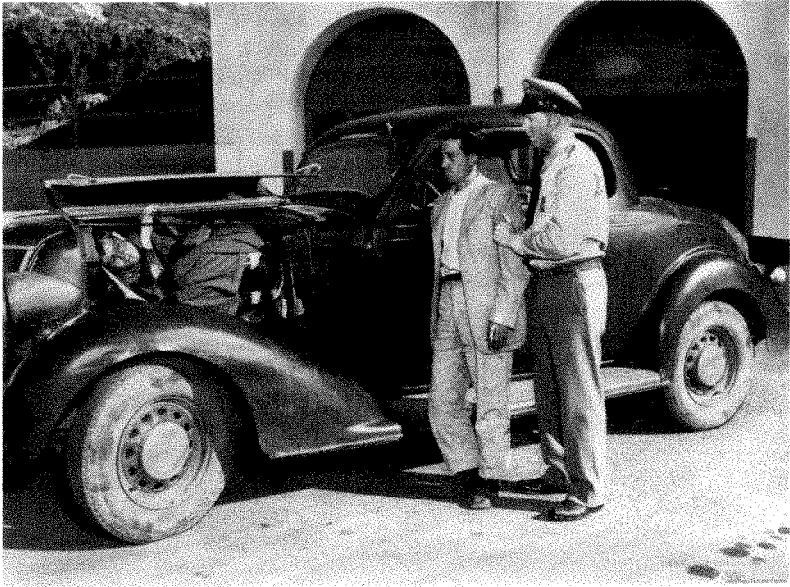
The Fourth Amendment to the U.S. Constitution protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."⁹ The Supreme Court has long held that "[w]here a search is undertaken by law enforcement officials . . . reasonableness generally requires the obtaining of a judicial warrant,"¹⁰ and "[i]n the

⁷E.g., *United States v. Flores-Montano*, 541 U.S. 149 (2004); *Almeida-Sanchez v. United States*, 413 U.S. 266 (1973); *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976); *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975).

⁸See, generally, "Border Crossing/Entry Data: Query Detailed Statistics," *Bureau of Transportation Statistics*, http://transborder.bts.gov/programs/international/transborder/TBDR_BC/TBDR_BCQ.html (last updated September 2015).

⁹U.S. Const. amend. IV.

¹⁰*Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 653 (1995).



An illegal immigrant hides in the engine compartment while the driver is detained by an agent at the San Ysidro Port of Entry on May 13, 1954. (Courtesy of San Diego History Center; *Union Tribune*)

absence of a warrant, a search is reasonable only if it falls within a specific exception to the warrant requirement.¹¹

One of these specific exceptions is for searches conducted at the border—CBP officers may search those seeking entry into the United States without a warrant, or even reasonable suspicion.¹² As Chief Justice Rehnquist explained,

The Government's interest in preventing the entry of unwanted persons and effects is at its zenith at the international border. Time and again, [the Court has] stated that 'searches made at the border, pursuant to the longstanding right of the sovereign to protect itself by stopping and examining persons and property crossing

¹¹*Riley v. California*, 134 S. Ct. 2473, 2482 (2014) (holding that officers must generally secure a warrant before conducting a search of a cell phone under the warrant exception for search incident to arrest) (citation omitted).

¹²See *United States v. Montoya de Hernandez*, 473 U.S. 531, 538 (1985).

into this country, are reasonable simply by virtue of the fact that they occur at the border.¹³

Thus, CBP officers have broad authority to conduct routine searches of entrants and their luggage without any requirement of reasonable suspicion, probable cause, or a warrant.¹⁴ The government's border search authority, however, is not limitless. The Supreme Court has recognized that some searches may be so intrusive or destructive as to require reasonable suspicion,¹⁵ but the Court has never precisely defined the dimensions of such searches.¹⁶

As a result of the broad authority granted CBP, alien and drug smugglers often go to great lengths to avoid detection, hiding illicit drugs, and even human beings, in hidden vehicle compartments. In 2004, the Supreme Court decided a case involving the search of a vehicle's fuel tank at the Otay Mesa POE.¹⁷ At issue was the extent of the government's authority to conduct suspicion-less border searches of vehicles.¹⁸

United States v. Flores-Montano

On February 12, 2002, at approximately four p.m., Manuel Flores-Montano attempted to enter the United States at the Otay Mesa POE driving a 1987 Ford Taurus station wagon.¹⁹ At a secondary inspection station, customs inspector Jovito Pesayco tapped the station wagon's gas tank and noticed that the tank sounded solid.²⁰ Subsequently, a mechanic under contract with customs removed the gas tank from the vehicle.²¹ Inspector Pesayco discovered that the top of the gas tank was sealed with bondo. Upon removing the seal, he found thirty-seven kilo-

¹³*United States v. Flores-Montano*, 541 U.S. 149, 152–53 (2004) (quoting *United States v. Ramsey*, 431 U.S. 606, 616 [1977]).

¹⁴*Montoya de Hernandez*, 473 U.S. at 538.

¹⁵*Flores-Montano*, 541 U.S. at 152, 156.

¹⁶See *United States v. Cotterman*, 709 F.3d 952, 963 (9th Cir. 2013).

¹⁷*Flores-Montano*, 541 U.S. at 149.

¹⁸See *ibid.*

¹⁹*Ibid.*, 150; Government's Response and Opposition to Defendant's Motion to: Suppress Evidence Based on Alleged Non-Routine Border Search Together with Statement of Facts, Memorandum of Points and Authorities, and Attached Declarations and Motion Exhibits, *United States v. Flores-Montano*, 2002 WL 34387315 (S.D. Cal. June 10, 2002) (No. 02CR0536-IEG).

²⁰Government's Response and Opposition.

²¹*Flores-Montano*, 541 U.S. at 151.

grams of marijuana bricks.²² The removal procedure and search of the tank, including a twenty- to thirty-minute wait for the mechanic, took approximately one hour to complete.²³

Two weeks later, Flores-Montano was indicted on federal drug charges.²⁴ The case was assigned to district judge Irma Gonzalez.²⁵ On June 4, 2002, Flores-Montano moved to suppress the thirty-seven kilograms of marijuana recovered from his gas tank.²⁶ Relying on a recent decision by a divided Ninth Circuit panel,²⁷ Judge Gonzalez granted Flores-Montano's motion, holding that "the search of the gas tank . . . was 'non-routine' and therefore reasonable suspicion was required to justify the search."²⁸ A Ninth Circuit panel summarily affirmed Judge Gonzalez's ruling,²⁹ and the United States appealed.³⁰

The issue before the Supreme Court was whether the Fourth Amendment forbade the search of the fuel tank absent reasonable suspicion. In a unanimous decision delivered by Chief Justice Rehnquist, the Court held that the search of the fuel tank did not require reasonable suspicion.³¹ The Court discussed the government's broad border search authority and emphasized that the government has a "paramount interest"

²²Government's Response and Opposition, 4 ("Bondo is a putty-like substance that hardens and is used to seal openings and adhere to surfaces").

²³See *Flores-Montano*, 541 U.S. at 151.

²⁴*Ibid.* ("[a] grand jury for the Southern District of California indicted [Flores-Montano] on one count of unlawfully importing marijuana, in violation of 21 U.S.C. §952, and one count of possession of marijuana with intent to distribute, in violation of §841(a)(1)"); Indictment, *United States v. Flores-Montano*, 2002 WL 34387316 (S.D. Cal. February 27, 2002) (No. 02CR0536-IEG).

²⁵"Nominated by President George H.W. Bush and confirmed by the U.S. Senate in 1992, Gonzalez became the first Mexican-American woman in the nation to be appointed as a United States District Judge. Judge Gonzalez's parents grew up on opposite sides of the Arizona-Mexico border, her father a citizen of the United States and her mother a citizen of Mexico." "Nine Alumni Honored with Lifetime Achievement Awards," *The University of Arizona James E. Rogers College of Law*, October 22, 2015, <https://law.arizona.edu/lifetime-achievement-awards-2015>.

²⁶*United States v. Flores-Montano*, No. 02CR0536-IEG, 2002 WL 34110168, at *1 (S.D. Cal. June 20, 2002), *aff'd*, 2003 WL 22410705 (9th Cir. Mar. 14, 2003), *rev'd*, 541 U.S. 149 (2004).

²⁷See *United States v. Molina-Tarazon*, 279 F.3d 709 (9th Cir. 2002).

²⁸*Flores-Montano*, 2002 WL 34110168, at *1.

²⁹*United States v. Flores-Montano*, No. 02-50306, 2003 WL 22410705, at *1 (9th Cir. March 14, 2003), *rev'd*, 541 U.S. 149 (2004).

³⁰See *United States v. Flores-Montano*, 541 U.S. 149 (2004).

³¹*Ibid.*, 150.

in protecting its territorial integrity.³² As an illustration of that interest, the Court pointed to evidence of frequent attempts to smuggle contraband into the United States by concealing it in fuel tanks:

Over the past 5½ fiscal years, there have been 18,788 vehicle drug seizures at the southern California ports of entry. . . . Of those 18,788, gas tank drug seizures have accounted for 4,619 of the vehicle drug seizures, or approximately 25%. . . . In addition, instances of persons smuggled in and around gas tank compartments are discovered at the ports of entry of San Ysidro and Otay Mesa at a rate averaging 1 approximately every 10 days.³³

Flores-Montano argued that the suspicion-less disassembly of his fuel tank was an invasion of his privacy and a significant deprivation of his property interests because the process could have damaged his vehicle. Chief Justice Rehnquist responded, "We have long recognized that automobiles seeking entry into this country may be searched. . . . It is difficult to imagine how the search of a gas tank, which should be solely a repository for fuel, could be more of an invasion of privacy than the search of the automobile's passenger compartment."³⁴ Chief Justice Rehnquist then noted,

[Flores-Montano] does not, and on the record cannot, truly contend that the procedure of removal, disassembly, and reassembly of the fuel tank in this case or any other has resulted in serious damage to, or destruction of, the property. According to the Government, for example, in fiscal year 2003, 348 gas tank searches conducted along the southern border were negative (i.e., no contraband was found), the gas tanks were reassembled, and the vehicles continued their entry into the United States without incident.³⁵

Accordingly, the Court concluded that the government has the authority, absent reasonable suspicion, to remove, disassemble, and reassemble a vehicle's fuel tank at the border.³⁶

³²*Ibid.*, 153.

³³*Ibid.*, 153–54 (citation omitted).

³⁴*Ibid.*, 154.

³⁵*Ibid.*, 154–55 (citation omitted).

³⁶*Ibid.*, 155.

United States v. Cortez-Rocha

Several months after the decision in *Flores-Montano*, the Ninth Circuit expanded on the Supreme Court's ruling in a similar case out of the Southern District regarding the search of a vehicle at the border.³⁷ On February 16, 2003, Julio Cortez-Rocha entered the United States at the Calexico Port of Entry³⁸ driving a 1979 Chevy pickup.³⁹ Before he reached the primary inspection booth, a narcotics detector dog⁴⁰ alerted to the rear area of Cortez-Rocha's truck. Cortez-Rocha was referred to secondary inspection where a customs inspector placed a density meter against the side of the truck's spare tire. The meter registered a high reading, and the customs inspector removed the tire from underneath the truck. The customs inspector then proceeded to cut the tire open. Inside, he found ten brick-shaped packages containing approximately forty-two kilograms of marijuana.⁴¹

Cortez-Rocha was arrested and indicted for the illegal importation and possession of marijuana with intent to distribute.⁴² He moved to suppress the marijuana, arguing it was obtained in violation of the Fourth Amendment.⁴³ On May 27, 2003,

³⁷*United States v. Cortez-Rocha*, 394 F.3d 1115 (9th Cir. 2005).

³⁸Now the Calexico West Port of Entry.

³⁹*Cortez-Rocha*, 394 F.3d at 1118.

⁴⁰Narcotics detector dogs have been used at the border since 1987, when, following an alarming increase in narcotics seizures, U.S. Border Patrol implemented its first canine program. The program consisted of four canine teams. Today, the Customs and Border Protection Canine Program plays a much larger role in "protecting the United States from those that would do her harm." After crossing into the United States, but before reaching primary inspection, vehicles are often approached by CBP canine teams. These canines are taught to detect the odors of controlled substances, such as marijuana, as well as concealed humans. "Canine Program History," U.S. Customs and Border Protection, <http://www.cbp.gov/border-security/along-us-borders/canine-program/history-3>.

⁴¹*Cortez-Rocha*, 394 F.3d at 1118.

⁴²*Ibid.*

⁴³*Ibid.*

district judge Thomas J. Whelan⁴⁴ held a hearing on Cortez-Rocha's motion. At the hearing, the government chose not to argue that the search was based on reasonable suspicion. Instead, the government argued that the search was a routine border search that did not require reasonable suspicion. At the time of the hearing, the Supreme Court had not decided *Flores-Montano*, but the Ninth Circuit had already affirmed Judge Gonzalez's decision holding that the search of a gas tank is a "non-routine" border search. In that context, Judge Whelan denied the motion to suppress and found that cutting open the truck's spare tire was a routine border search and thus did not require reasonable suspicion.⁴⁵ Cortez-Rocha then entered a conditional plea of guilty, preserving his right to appeal Judge Whelan's denial of his motion to suppress.⁴⁶

While Cortez-Rocha's appeal was pending before the Ninth Circuit Court of Appeals, the Supreme Court handed down its opinion in *Flores-Montano*. Subsequently, the Ninth Circuit affirmed Judge Whelan's decision, reasoning that while the Supreme Court indicated in *Flores-Montano* that certain border searches may be so destructive as to be unreasonable, "the search of a vehicle's spare tire, which neither damages the vehicle nor decreases the safety or operation of the vehicle, is not. . . ."⁴⁷

As a result of *Flores-Montano* and *Cortez-Rocha*, it is clear today that, at the border, CBP has the authority to search hidden vehicle compartments and even cut open spare tires without reasonable suspicion, so long as the procedure does not significantly damage or destroy the vehicle.⁴⁸ *Flores-Montano* and *Cortez-Rocha* have undoubtedly led to the apprehension and prosecution

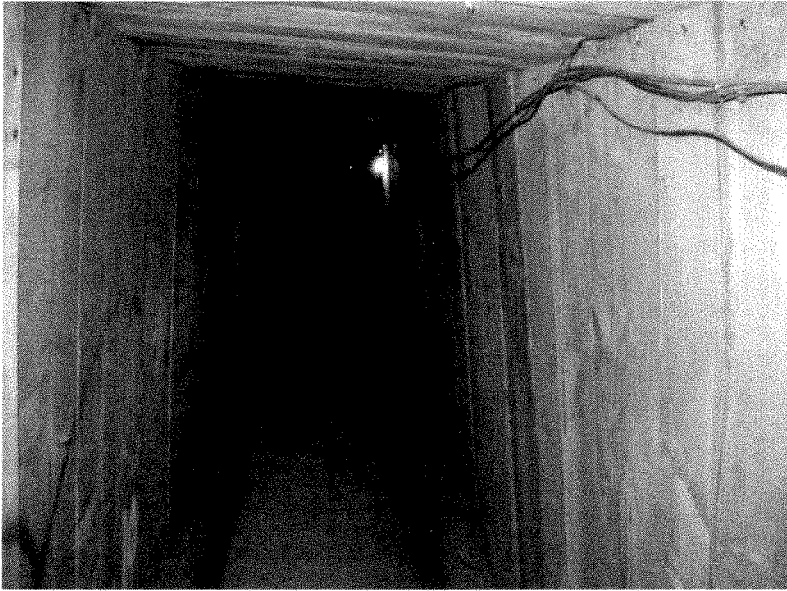
⁴⁴Judge Whelan worked as a deputy district attorney for twenty-one years before being appointed by Governor George Deukmejian to the San Diego Superior Court in 1990. Only six months after his appointment, Judge Whelan presided over the infamous double homicide trial of Betty Broderick, who shot her ex-husband, a prominent attorney, and his new young bride in their home. After eight years as a superior court judge, Whelan was nominated by President Bill Clinton to fill a vacancy in the U.S. District Court for the Southern District of California. Judge Whelan assumed senior status in 2010. "District Judge Thomas J. Whelan," *Daily Journal Judicial Profile*, 1999 [on file at U.S. Courts Library, San Diego].

⁴⁵Brief for Appellee United States, *United States v. Cortez-Rocha*, 394 F.3d 1115, No. 03-50491, 2004 WL 5469226, at *4 (9th Cir. 2005).

⁴⁶*United States v. Cortez-Rocha*, 394 F.3d 1115, 1118 (9th Cir. 2005).

⁴⁷*Ibid.*, 1119. Interestingly, circuit judge Stephen Trott went on to discuss terrorist exploitations of border vulnerabilities and the September 11 terrorist attacks to highlight the importance of border security in the twenty-first century. *Ibid.*, 1123-24.

⁴⁸See *Flores-Montano*, 541 U.S. 149 (2004); *Cortez-Rocha*, 394 F.3d 1115.



In recent years, some drug smugglers have resorted to building elaborate and expensive tunnels between Mexico and California for their illicit purposes. (Courtesy of United States Attorney's Office, Southern District of California)

of many drug and alien smugglers in the Southern District. Naturally, however, while many smugglers continue to hide contraband in their vehicles, others have become more innovative.

In recent years, some drug smugglers have attempted to avoid contact with CBP altogether. These smugglers have resorted to using maritime vessels, ultralight aircraft, and even elaborate cross-border tunnels to smuggle drugs into the United States.⁴⁹ Since taking firm control of Baja California smuggling corridor in 2006, Joaquin Guzman, a.k.a. El Chapo, and his Sinaloa Cartel have been credited with the construction of several elaborate drug tunnels between Mexico and the Southern District.⁵⁰ According to United States attorney for the Southern District Laura Duffy, drug cartels "have spent years

⁴⁹Liam Dillon and Ian Lovett, "Tunnel for Smuggling Found under U.S.-Mexico Border; Tons of Drugs Seized," *New York Times*, October 31, 2013, http://www.nytimes.com/2013/11/01/us/tunnel-for-smuggling-found-under-border-tons-of-drugs-seized.html?_r=0.

⁵⁰Sandra Dibble, "Major Drug Tunnel Shut Down at Otay Mesa," *San Diego Union Tribune*, October 22, 2015, <http://www.sandiegouniontribune.com/news/2015/oct/22/otay-suspected-drug-tunnel-mexico-otay-mesa/>.

and tens of millions of dollars trying to create a secret underworld of passages so they can move large quantities of drugs." These sophisticated tunnels can cost upwards of one million dollars to build and require the use of professional engineers and architects.⁵¹

As recently as October 21, 2015, a Homeland Security Investigations (HSI) agent working undercover discovered a half-mile drug tunnel between Tijuana and San Diego. The tunnel featured a ventilation system, electric lighting, and a rail transportation system capable of moving large loads of drugs across the border. According to the *San Diego Union Tribune*, this tunnel was only one of eighty cross-border smuggling tunnels discovered by U.S. authorities between 2010 and 2015.⁵²

It seems that border security will remain a relevant issue in the Southern District for years to come. As smuggling tactics continue to evolve, and as new technologies continue to challenge our perceptions of privacy, the judges of the Southern District will undoubtedly continue to play a vital role in the future of search and seizure law at the border.

THE SECOND LINE OF DEFENSE: RESOLVING UNCERTAINTY AT INTERNAL CHECKPOINTS IN THE 1970S

Although U.S. Customs and Border Protection (CBP) personnel work diligently to prevent illegal immigration and drug trafficking at the border, some illegal aliens and illicit drugs unavoidably make it into the United States undetected. As a second layer of defense, CBP operates several internal border checkpoints throughout the Southern District. In operation since at least 1927, these checkpoints have played a vital role in deterring illegal immigration throughout the Southern

⁵¹Dillon and Lovett, "Tunnel for Smuggling Found."

⁵²Dibble, "Major Drug Tunnel Shut Down at Otay Mesa."

District's history.⁵³ In 1973, Judge Howard Turrentine⁵⁴ gave a detailed description of typical checkpoint operations:

When the checkpoints . . . are in operation, an officer standing at the "point" in full dress uniform on the highway will view the decelerating oncoming vehicles and their passengers, and will visually determine whether he has reason to believe the occupants of the vehicle are aliens (i.e., "breaks the pattern" of usual traffic). If so, the vehicle will be stopped (if the traffic at the checkpoint is heavy, as at the San Clemente checkpoint⁵⁵ the vehicle will be actually directed off the highway) for inquiries to be made by the agent. If the agent does not have reason to believe that the vehicle approaching the checkpoint is carrying aliens, he may exchange salutations, or merely wave the vehicle through the checkpoint.

If, after questioning the occupants, the agent then believes that illegal aliens may be secreted in the vehicle (because of a break in the "pattern" indicating the possibility of smuggling) he will inspect the vehicle by

⁵³See *United States v. Baca*, 368 F. Supp. 398, 406-07 (S.D. Cal. 1973).

⁵⁴A native San Diegan, Judge Turrentine served the community as a judge for four decades. He graduated from law school in 1939 and, in 1940, began his legal career as an assistant city prosecutor in San Diego. However, in the spring of 1941, he was called to active duty in the U.S. Navy, where he served through the end of World War II. Following the war, Turrentine entered private practice before being appointed to the superior court in 1968 by then-governor Ronald Reagan. Two years later, President Richard Nixon appointed Judge Turrentine to the U.S. District Court for the Southern District of California. Turrentine rose to chief judge in 1982 and assumed senior status in 1984. While senior status entitled him to work a reduced schedule, Turrentine continued to work an active calendar for twenty-three years. He retired in 2007 due to declining health and passed away on August 20, 2010. He is remembered not only for his breadth of knowledge, but also for his compassion. A former law clerk recalled a case in which "two USC students . . . were facing a four-year sentence for smuggling. Judge Turrentine suspended their sentence on condition they maintain a B average at USC, which they did. . . . 'He could have destroyed their lives, but he realized these were kids who had made a mistake. That was the kind of real justice that he was involved in besides putting people behind bars.'" Caroline Dipping, "Judge Spent 40 Years on Bench," *San Diego Union Tribune*, August 24, 2010, <http://www.sandiegouniontribune.com/news/2010/aug/24/judge-spent-40-years-on-bench/2/?#article-copy>.

⁵⁵The San Clemente checkpoint is located on the northbound lanes of Interstate 5, approximately sixty-six miles north of the San Ysidro Port of Entry. All motorists traveling up the coast from San Diego to Los Angeles must pass through the San Clemente checkpoint. See "San Clemente Station," U.S. Customs and Border Protection, <http://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors/san-diego-sector-california/san-clemente-station> (accessed March 19, 2016).

giving a cursory visual inspection of those areas of the vehicle not visible from the outside (i.e., trunk, interior portion of camper, etc.).⁵⁶

In the early years of the modern Southern District Court, the constitutionality of these checkpoint operations was called into question following the Supreme Court's decision in *Almeida-Sanchez v. United States*.⁵⁷

*Almeida-Sanchez v. United States*⁵⁸

On June 25, 1970, Condrado Almeida-Sanchez was convicted of transporting illegally imported marijuana after a jury trial in the Southern District in front of then-newly reassigned⁵⁹ Central District judge Irving Hill.⁶⁰ Almeida-Sanchez appealed his conviction, arguing that the search of his vehicle by a roving patrol north of the Mexican border, absent probable cause, consent, or a warrant, violated his right to be free from unreasonable searches and seizures.⁶¹ The Ninth Circuit affirmed his conviction, but in a plurality decision, the Supreme Court reversed, finding that the search of Almeida-Sanchez's vehicle was not a border search or its "functional equivalent," and thus, because it was executed without a warrant, probable cause, or consent, it violated the Fourth Amendment.⁶²

The search at issue in *Almeida-Sanchez* did not occur at an internal checkpoint, but the language and reasoning of the plurality appeared to cast doubt on whether searches conducted at internal checkpoints were considered border searches for immigration purposes, and thus were permissible absent a warrant or probable cause.⁶³

⁵⁶*Baca*, 368 F. Supp. at 406–407.

⁵⁷*Ibid.*, 408.

⁵⁸*Almeida-Sanchez v. United States*, 413 U.S. 266 (1973).

⁵⁹Following the 1966 judicial redistricting, Judge Irving was reassigned to the newly created Central District, but he continued to preside over his remaining Southern District cases. See, generally, Act of March 18, 1966, Public Law 89-372 U.S. Statutes at Large 80 (1966): 75.

⁶⁰Brief for the United States, *Almeida-Sanchez v. United States*, 413 U.S. 266 (1973), No. 71-6278, 1972 WL 135753, at *4.

⁶¹*Almeida-Sanchez*, 413 U.S. at 267.

⁶²*Ibid.*, 275.

⁶³*Baca*, 368 F. Supp. at 408.

United States v. Baca

In the late summer and early fall of 1973, the Ninth Circuit remanded several cases to the Southern District to consider the impact of the *Almeida-Sanchez* decision.⁶⁴ At the time, there were more than twenty cases pending in the Southern District that raised legal questions potentially affected by the Supreme Court's decision.⁶⁵ To sift through this uncertainty, the judges of the Southern District ordered "that a comprehensive factual hearing be held to evaluate the consequences, if any, of *Almeida-Sanchez* on the checkpoints operated by the border patrol within this District."⁶⁶ With this somewhat uncommon procedural posture, the cases were consolidated,⁶⁷ and on November 19, 1973, Judge Turrentine began what would be a three-day evidentiary hearing to help evaluate the impact of *Almeida-Sanchez* on checkpoint operations in the Southern District.⁶⁸

Over the course of the three-day hearing, the parties called six witnesses and submitted more than sixty exhibits for the court's consideration. Among the exhibits admitted were several INS border patrol reports, numerous photos of checkpoints and border patrol activities in the district, detailed maps of San Diego and Imperial Counties, a copy of the *Border Patrol Handbook*, a 1972 report on traffic volumes, and transcripts from a 1971 congressional subcommittee hearing on illegal aliens.⁶⁹ The evidentiary hearing concluded on November 21, just before the Thanksgiving holiday, and two weeks later Judge Turrentine filed an extensive opinion detailing the factual findings and legal conclusions of the court.⁷⁰

⁶⁴*Ibid.*, 401.

⁶⁵*Ibid.*

⁶⁶*Ibid.*, 401–402.

⁶⁷Order Consolidating Cases, *United States v. Baca*, 368 F. Supp. 398 (S.D. Cal. 1973) (Nos. 14654, 14964, 15803, 15850, 15813, 15991, 14344, 15410, 16245, 15666, 15463, 15847, 15046, 15650, 16360, 15606, 15651) (the issues under consideration were felt throughout the entire court—the consolidated cases came from every district judge: Judge Turrentine, Judge Schwartz, Judge Nielsen, Judge Thompson, and Judge Enright).

⁶⁸*Baca*, 368 F. Supp. at 402.

⁶⁹Four of the witnesses were called by the government; two were called by the defense. Interestingly, one of the witnesses for the defense was Southern District magistrate judge Harry McCue. Minutes of the Almeida-Sanchez Hearing, *United States v. Baca*, 368 F. Supp. 398 (S.D. Cal. 1973) (Nos. 14654, 14964, 15803, 15850, 15813, 15991, 14344, 15410, 16245, 15666, 15463, 15847, 15046, 15650, 16360, 15606, 15651).

⁷⁰See *Baca*, 368 F. Supp. at 398.

Judge Turrentine began his opinion by discussing "the illegal alien problem."⁷¹ He acknowledged that many illegal Mexican aliens are "industrious, proud and hard-working people" who enter the United States as a result of poor economic conditions in Mexico. At the time he wrote the opinion, the "estimated . . . per capita income of the poorest 40 percent of the Mexican population, the strata most likely to leave their homeland in search of employment in the United States, [was] less than \$150 per year."⁷² But while Judge Turrentine acknowledged the economic externalities that had fueled illegal immigration in the Southern District, he did not ignore the consequences of such increased illegal immigration.⁷³ Judge Turrentine found that illegal immigration from Mexico caused "suffering by the aliens who are frequently victims of extortion, violence and sharp practices, displacement of American citizens and legally residing aliens from the labor market, and irritation between two neighboring countries."⁷⁴

After detailing the extent and effects of the increase in illegal immigration in the Southern District, Judge Turrentine then turned to what he dubbed the resulting "law enforcement problem": how does the United States best enforce its immigration laws without infringing upon the rights of the people?⁷⁵ In this second section of the opinion, Judge Turrentine reviewed some of the tools used by border patrol to reduce the flow of illegal immigration, particularly in the Southern District where, while it encompasses only 3 percent of the total land borders in the United States, 30 percent of all deportable alien apprehensions occur.⁷⁶ Ultimately, his review focused on the use of internal traffic checkpoints. In a detailed accounting, Judge Turrentine described the history of the checkpoints, their purpose, the criteria used to select their locations, how they are operated, and their ultimate impact on illegal immigration.⁷⁷ In a resolute tone, Judge Turrentine concluded his factual review by stating, "The evidence before this court clearly establishes that there is no reasonable or effective alternative method of

⁷¹*Ibid.*, 402–403.

⁷²*Ibid.*, 402.

⁷³"Since 1970, the number of illegal Mexican aliens in the United States who have been apprehended has been growing at a rate in excess of 20 percent per year." *Ibid.*

⁷⁴*Ibid.*, 403.

⁷⁵*Ibid.*, 403–408.

⁷⁶*Ibid.*

⁷⁷*Ibid.*, 406–408.

detection and apprehension available to the border patrol in the absence of the checkpoints. . . ."⁷⁸

With these factual findings as a backdrop, Judge Turrentine then turned to the ultimate task at hand: determine what impact, if any, the *Almeida-Sanchez* decision had on the constitutionality of operations at internal checkpoints in the Southern District.⁷⁹ This, however, was no easy task. The *Almeida-Sanchez* plurality indicated that only a border search rationale could justify warrantless searches by immigration officers without probable cause. But the plurality made clear that border searches could take place not only at the border, but also at its "functional equivalents."⁸⁰ Unfortunately, they never clearly defined the parameters of functional equivalency.

Aware of the murky nature of this concept, Judge Turrentine forged forward, acknowledging that it was the district court's obligation to give substance to the term *functional equivalency*.⁸¹ Drawing inferences from examples given by the Supreme Court, Judge Turrentine ultimately deduced that "under *Almeida-Sanchez*, border searches are those which take place at the first effective point of entry subject to the tests of intrusiveness and reasonable relation to the end pursued and to due consideration for geographic characteristics and available manpower resources."⁸² Measured against these criteria, Judge Turrentine analyzed the particular characteristics and operating procedures of each checkpoint in the Southern District.⁸³ Having given due consideration to each checkpoint, Judge Turrentine concluded that each qualified as "the functional equivalent[s] of the border for immigration purposes."⁸⁴

Judge Turrentine's concerted attempt to clarify the proper application of the Fourth Amendment at fixed internal checkpoints has played a significant role in the development of this area of the law. Although his legal conclusions did not bind other courts, his factual findings have been continually cited in cases and law review articles regarding the Fourth Amendment

⁷⁸*Ibid.*, 408.

⁷⁹See *ibid.*

⁸⁰*Almeida-Sanchez v. United States*, 413 U.S. 266, 272 (1973).

⁸¹*Baca*, 368 F. Supp. at 409.

⁸²*Ibid.*, 415.

⁸³See *ibid.*, 409–18.

⁸⁴*Ibid.*, 415–18.

at internal checkpoints.⁸⁵ In fact, only three years after Judge Turrentine handed down the *Baca* opinion, the Supreme Court decided another checkpoint case originating with Judge Turrentine in which the Court cited the *Baca* findings and finally brought some clarity to the Fourth Amendment's application at internal checkpoints.⁸⁶

United States v. Martinez-Fuerte

In *United States v. Martinez-Fuerte*, the Supreme Court considered "whether a vehicle may be stopped at a fixed checkpoint for brief questioning of its occupants even though there is no reason to believe the particular vehicle contains illegal aliens."⁸⁷ Writing for the majority, Justice Powell weighed the public interest in controlling the flow of illegal aliens with the Fourth Amendment interests of individual travelers:

Our previous cases have recognized that maintenance of a traffic-checking program in the interior is necessary because the flow of illegal aliens cannot be controlled effectively at the border. . . . These checkpoints are located on important highways; in their absence such highways would offer illegal aliens a quick and safe route into the interior. Routine checkpoint inquiries apprehend many smugglers and illegal aliens who succumb to the lure of such highways. And the prospect of such inquiries forces others onto less efficient roads that are less heavily traveled, slowing their movement and making them more vulnerable to detection by roving patrols.

A requirement that stops on major routes inland always be based on reasonable suspicion would be impractical, because the flow of traffic tends to be too heavy to allow the particularized study of a given car that would enable officers to identify it as a possible carrier of illegal aliens. In particular, such a requirement would largely eliminate any deterrent to the conduct of well-disguised smuggling operations, even though smugglers are known to use these highways regularly.

While the need to make routine checkpoint stops is great, the consequent intrusion on Fourth Amendment

⁸⁵E.g., *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976); Alfredo Mirandé, "Is There a 'Mexican Exception' to the Fourth Amendment?" *Florida Law Review* 55 (2003): 365.

⁸⁶See *Martinez-Fuerte*, 428 U.S. 543.

⁸⁷*Ibid.*, 545.

interests is quite limited. The stop does intrude to a limited extent on motorists' right to free passage without interruption, and arguably on their right to personal security. But it involves only a brief detention of travelers during which all that is required of the vehicle's occupants is a response to a brief question or two and possibly the production of a document evidencing a right to be in the United States.⁸⁸

In support of his analysis, Justice Powell repeatedly referenced Judge Turrentine's *Baca* findings.⁸⁹ In the opening section of the opinion, Justice Powell directly quoted Judge Turrentine's description of operations at the San Clemente checkpoint.⁹⁰ Later, Justice Powell cited the immigration and law enforcement statistics compiled by Judge Turrentine, as well as the economic conditions he highlighted as contributing factors to the increase in illegal immigration from Mexico.⁹¹ Justice Powell also referenced Judge Turrentine's findings regarding checkpoint location criteria.⁹² With this information in hand, the Court found in favor of the government's interest and held that "stops for brief questioning routinely conducted at permanent checkpoints are consistent with the Fourth Amendment" and "may be made in the absence of any individualized suspicion at reasonably located checkpoints."⁹³

The Supreme Court, with the aid of the *Baca* findings, eliminated the uncertainty surrounding checkpoint operations. Today, *Martinez-Fuerte* remains the leading case relating to stops at internal checkpoints. As a result of the Court's decision, those traveling in border regions across the United States are subject to vehicle stops at fixed checkpoints, regardless of whether there is reason to believe the vehicle contains illegal aliens.⁹⁴ While many people view these checkpoints as an unnecessary hassle, they remain a valuable tool for law enforcement personnel.

⁸⁸*Ibid.*, 557–58 (citations and quotations omitted).

⁸⁹*Ibid.*, 546, 551, 553, n.9.

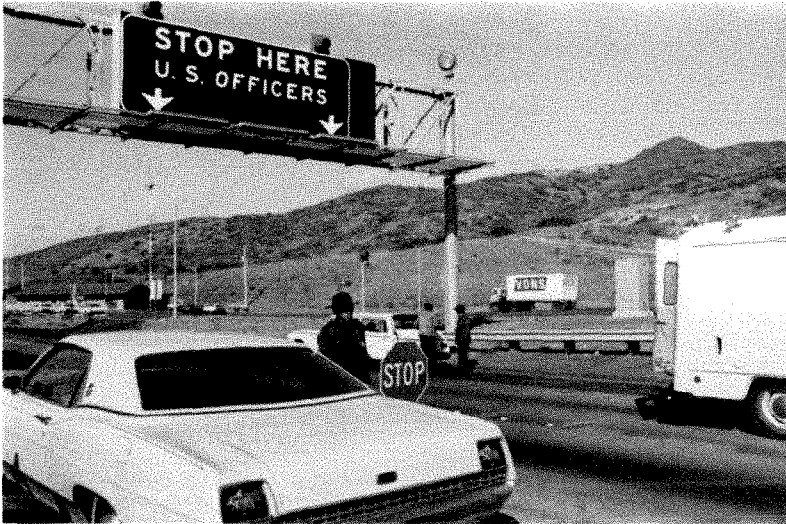
⁹⁰*Ibid.*, 545–46.

⁹¹*Ibid.*, 551–53.

⁹²*Ibid.*, 553.

⁹³*Ibid.*, 562, 566.

⁹⁴*Ibid.*, 566.



Judge Powell wrote that checkpoints located on important highways, such as the one shown above in San Clemente in 1971, can prevent illegal aliens from using these roads as safe routes into the interior. (Courtesy of San Diego History Center)

CONCLUSION

This brief survey of Fourth Amendment cases adjudicated in the Southern District over the past fifty years represents only a small portion of the district's rich history. However, these few cases tangibly impact the lives of millions of people every day and thus are worth remembering.

DE LUZ CANYON: HUMAN TRAGEDY AT THE INTERSECTION OF THE MEDIA, JURISDICTION, AND MURDER

CRYSTAL VASALECH

"A brutal execution-style murder is what brings us together in this courtroom today. . . . This is a case about murder: willful, deliberate, and premeditated murder committed during the course of a robbery and a kidnapping of an elderly man."¹

On the morning of January 10, 1989, Larry Wayne LaFleur and Nick Michael Holm watched eighty-two-year-old Swan Otto Bloomquist waiting in his car in the Carlsbad, California, mall for his wife to return from shopping so they could eat lunch. The two approached Bloomquist's car, displayed their guns, and kidnapped him. LaFleur drove the three of them to a desolate, unguarded area on Camp Pendleton known as De Luz Canyon. Forced to walk at gunpoint down a dirt path, Bloomquist prayed and begged for his life before LaFleur and Holm shot him five times and left him there to die alone. The two men then drove up to Oregon to start a new life, but were forced to abandon that plan and make their way separately back to San Diego County. Bloomquist's car was found several days later abandoned at the Oceanside Transit Center, with evidence linking both men to the murder.

The horrendous nature of the crime led to massive media coverage both locally and nationally. The callous kidnapping and

¹These were the first words spoken by the prosecutor in his opening statement. *United States v. LaFleur*, 971 F.2d 200, 206 (9th Cir. 1991); Trial Transcript, 466, June 21, 1989.

Crystal Vasalech received B.A. and M.A. degrees in anthropology. She earned her J.D. from Thomas Jefferson School of Law, with a focus on criminal prosecution.

murder of an elderly man caused an uproar in the community. The story about Bloomquist and his wife of fifty-nine years being so tragically torn apart tugged at everyone's heartstrings.

Nora Bloomquist was twenty-two years old when she noticed Swan Bloomquist was "kind of handsome" at his high school graduation ceremony in 1928 in Momence, Illinois.² He was twenty years old at the time and worked as a chef at the Dixie Highway restaurant, where Nora was a waitress. They married in April 1930, and were employed at the Dixie Highway restaurant for twenty years before becoming the owners of the restaurant for six years. They then bought a farm in Illinois, where they lived for more than ten years until Bloomquist retired and they moved to Vista, California, for the sunshine.

THE UNHAPPY CHILDHOODS OF LAFLEUR AND HOLM

Both LaFleur and Holm had less-than-idyllic childhoods. LaFleur's early life was covered extensively during his trial, while the little that is known about Holm's childhood stems mainly from a psychiatric interview.

Larry LaFleur

LaFleur was born in 1966 and was in and out of foster care in the San Diego area as a child. His parents divorced, and when LaFleur was in third or fourth grade his mother met Craig LaFleur and married him after about one week.³ His stepfather began sexually abusing him on fishing trips when he was ten years old, where they would "fish and drink beer and look at dirty magazines" about one to three weekends a month.⁴ LaFleur began having behavioral problems; he turned to drugs and alcohol while still in junior high school and was put in his second foster home for the summer after eighth grade.⁵ Initially, his mother did not believe him when he told her about the abuse, but Craig LaFleur pleaded guilty to sexually abusing

²Valerie Alvord, "Killers Did Not Dim Widow's Memories; Now Lonesome, She Recalls the Years of Work and Love," *San Diego Union-Tribune*, Oct. 5, 1989.

³*LaFleur*, Trial Transcript, 492, 1342.

⁴*Ibid.*, 1349-50.

⁵*Ibid.*, 1145, 1201.

Larry in 1980.⁶ He received probation and was out of the house for about five months at the beginning of Larry's freshman year in high school, but soon returned to the home while Larry was still living there.⁷

Larry LaFleur was placed in his third foster home after he ran away. He lived with Connie and Joel Humphreys in Oakland, California, from his sophomore year of high school in 1983 until he graduated.⁸ Once he was in this nurturing, supportive environment, LaFleur stopped using drugs and alcohol, became an honors student, and joined a church. He was a strong student athlete, even winning first place in the state championships for track-and-field in his senior year, in addition to playing basketball and running cross-country. He also worked all three summers that he lived with the Humphreys.

After he graduated from Oakland High School, LaFleur attended George Fox College in Portland, Oregon, on an athletic scholarship for one semester before dropping out.⁹ He moved back in with the Humphreys for three months until he joined the United States Marine Corps in February 1986. LaFleur was stationed at Camp Pendleton as an administrative clerk.¹⁰

The summer before LaFleur's senior year, Connie Humphreys paid for LaFleur to travel to Long Beach, California, to see his father, and she accompanied him.¹¹ While he was there, he met his future wife, Cheryl Browsers, at a Baptist church.¹² He proposed two weeks into their relationship, and they were married on January 17, 1987. It was a short-lived marriage due to her "wild" spending habits.¹³ LaFleur testified he even began selling drugs to get his wife more spending money.¹⁴ Browsers moved out in November of the same year.¹⁵ In an attempt at reconciliation, LaFleur rented an apartment for her in December so she

⁶A certified copy of Craig LaFleur's conviction was entered into evidence. *LaFleur*, Trial Transcript, 466, 483, 1135, 1145, 1782; *LaFleur*, Ex Parte Application for Subpoena, June 22, 1989.

⁷*LaFleur*, Trial Transcript, 483, 1359.

⁸The Humphreys had six other foster children in their home at the time. See, generally, *ibid.*, 484, 1133, 1137, 1144-49, 1208.

⁹*Ibid.*, 1136, 1147.

¹⁰*Ibid.*, 485, 490, 1152.

¹¹LaFleur's father even attended his high school graduation. *Ibid.*, 1150, 1371, 1150.

¹²See, generally, *ibid.*, 484, 1150, 1155, 1383.

¹³Her mother testified she would spend money "wildly" on telephone calls and clothes, and even wrote bad checks. *Ibid.*, 1156.

¹⁴*Ibid.*, 1386.

¹⁵*Ibid.*, 490, 1155.

could live closer to her parents. Soon after, he was reassigned to Twenty-Nine Palms and was gone for three months. He came home to visit Browers when he was able, and on one visit in January 1988 he found several men in the apartment with her, including one man she identified as her boyfriend.¹⁶

After that encounter, LaFleur began a downward spiral. He tested positive for marijuana and was discharged from the Marine Corps. The marines offered him drug counseling and rehabilitation, but LaFleur chose to be discharged instead.¹⁷ After being discharged, he lived on the streets and tried to stay with friends. That's where he met his girlfriend, nineteen-year-old Wendy Favors, who was also going through a divorce at the time.¹⁸ LaFleur testified that during this time, he sold drugs and his body to make money.¹⁹

Nick Holm

During opening statements, one of LaFleur's attorneys called Holm a "drug user . . . a violent person, a threatening person, a menacing person, a destructive person, that stole money, jewelry, guns."²⁰ Holm's parents called him a "devil worshiper," a "con man with no conscience," and "callous, indifferent, and capable of killing another."²¹

During Holm's psychological evaluation, he told the doctor that he could not spell, still used his fingers to do math, and had sucked his thumb his entire life.²² He was always interested in guns and had always carried one on him from when he was young until he was arrested.²³ One of his neighbors in San Diego County told FBI agents that Holm once asked her if she had heard gunfire, and when she replied that she had not heard anything, he got excited because he had wrapped a towel

¹⁶*Ibid.*, 491, 1158–59, 1213. After finding Browers in the apartment with her boyfriend, LaFleur went to talk to his mother-in-law. He was crying and very upset, because he wanted the marriage to last. *Ibid.*, 1161–62.

¹⁷*Ibid.*, 492, 1215, 1503; Pauline Repard, "Transient, Ex-Marine Held in Man's Death," *San Diego Union-Tribune*, Jan. 21, 1989.

¹⁸*LaFleur*, Trial Transcript, 492–93, 836. LaFleur still considered Favors his girlfriend when he was arrested. *LaFleur*, Acknowledgment of Inmate Form.

¹⁹*LaFleur*, Trial Transcript, 1503.

²⁰*Ibid.*, 481.

²¹*Ibid.*, 482, 1319; Richard Core, "LaFleur Tragic Figure, Lawyer Claims," *San Diego Union-Tribune*, June 22, 1989.

²²Valerie Alvord, "Admitted Killers Delusions and Death Wish Told," *San Diego Union-Tribune*, Aug. 16, 1989; *LaFleur*, Holm Psychological Evaluation, 2.

²³*LaFleur*, Holm Psychological Evaluation, 3.

around the handgun to muffle the sound.²⁴ While Holm was growing up in Oregon, he and his father would shoot birds, squirrels, rabbits, and bats for target practice. Holm admitted he had been in a cult, where they would mutilate, eat, and drink the blood of animals. Until he was arrested, Holm said his longest period of sobriety since he was fourteen was "about three days" because he "liked to stay high."²⁵

THE DAYS LEADING UP TO THE MURDER

LaFleur and Holm met at a New Year's Eve party and were inseparable for the next ten days, until they split up in Oregon after the murder.²⁶ Both men had been staying at various friends' houses over the last few months so they would not have to sleep on the street. LaFleur had a part-time job working at a hamburger restaurant in Oceanside, but Holm had been unemployed for the last several years.²⁷ They often talked about starting over in Oregon because they were tired of having little to no money and moving between couches. Holm said they could live in his parents' trailer and work to earn enough money for a place of their own.²⁸

On January 9, while at the Carlsbad mall with Favors and friend Kelly Cole, whom they were staying with, LaFleur and Holm were again complaining about having no money when they saw an elderly couple walking. Holm said they should "beat them up and take their money."²⁹ They talked about how they could "steal a car. We can steal some money; and, if necessary, kill someone," and how easy that would be.³⁰ Holm told LaFleur that he had robbed an elderly person before and had killed a man in self-defense (although Holm later admitted this was a lie).³¹ He said they should target an elderly person because he would be an easy target, and then just leave him in a canyon somewhere so the men could not be identified.³² Both Cole and

²⁴*LaFleur*, FBI Special Agent Mowrey Affidavit.

²⁵*LaFleur*, Holm Psychological Evaluation, 3–5.

²⁶*LaFleur*, Trial Transcript, 480, 494.

²⁷*LaFleur*, Detention Hearing Transcript, 9, January 24, 1989.

²⁸*LaFleur*, Trial Transcript, 873.

²⁹*Ibid.*, 766.

³⁰*Ibid.*, 873.

³¹*LaFleur*, Mowrey Affidavit, 4; *LaFleur*, FBI Interview of Nick Holm, January 20, 1989.

³²*LaFleur*, Trial Transcript, 878, 880, 881.

Favors told the two men to stop talking about it. Favors was angry with LaFleur for talking about this, and she stayed at her ex-husband's house that night. LaFleur paid their friend Sam Clark twenty dollars to stay with Favors and watch her.³³

THE KIDNAPPING, ROBBERY, AND MURDER OF BLOOMQUIST

The morning of January 10, Bloomquist and his wife had planned on running errands and then having a lunch date together. They got to the Plaza Camino Real shopping center in Carlsbad about 10:30 a.m. Because it was too early to eat lunch, they decided that Nora Bloomquist would go shopping for about an hour while he waited in the car.³⁴ They drove to the back of the shopping center and parked near the Broadway department store. Bloomquist told her, "I will be right here," and waved at his wife as she walked into the department store. This was the last time that Nora Bloomquist saw her husband alive.

When she came back outside at 11:30 a.m., her husband and the car were gone.³⁵ She felt sick to her stomach because she "knew he would never willingly leave [her]." Thinking he had to run another errand or she was mistaken about where the car was, she went back into the mall to have a milkshake. She ran into a friend who asked her if she had lost her car. Nora Bloomquist replied, "not only my car, but my husband." They called security and looked around the parking lot, but could not find Bloomquist. Her friend drove her home and helped her call the police and her son to report that her husband was missing.³⁶

LaFleur and Holm had hitchhiked to the Plaza Camino Real shopping center to steal a car and money from an elderly person.³⁷ They had arrived about 11 a.m. and saw Bloomquist sitting in his brown, 1988 Oldsmobile Cutlass counting the \$300 he had just withdrawn from the bank. According to the two men, they watched Bloomquist for about an hour before they approached the car, Holm from the passenger's side while LaFleur walked up to the driver's side.³⁸ LaFleur showed

³³LaFleur, government's Trial Memorandum, 6-7, June 19, 1989.

³⁴LaFleur, Trial Memorandum; Trial Transcript, 498, 500, 503-504, 507.

³⁵LaFleur, Mowrey Affidavit, 2.

³⁶LaFleur, Trial Transcript, 509; Valerie Alvord, "Killers Did Not Dim Widow's Memories."

³⁷LaFleur, Mowrey Affidavit, 3.

³⁸LaFleur, Trial Transcript, 1045.

Bloomquist the .22 caliber handgun in his waistband and told him to open the door and slide over to the passenger's seat.³⁹ LaFleur got behind the steering wheel and Holm got in the back seat behind Bloomquist. According to LaFleur, Holm told him to drive to De Luz Canyon and into the ravine while he held a gun on Bloomquist.⁴⁰ During the forty-five-minute drive, Bloomquist repeatedly offered to give Holm and LaFleur all of his money and the car if they did not harm him.⁴¹ He expressed great concern for his wife who was left alone, and begged for his life. He also held his heart and complained of chest pain.⁴²

De Luz Canyon is an area on the U.S. Marine Corps base, Camp Pendleton. At the time, there were several gaps in the perimeter, including at De Luz Canyon.⁴³ It is a very desolate, relatively untraveled area with a lot of rocks, trees, and bushes.⁴⁴ Once at the ravine, LaFleur and Holm took Bloomquist out of the car and walked him about 150 yards further down the dirt track into the ravine at gunpoint, with LaFleur leading the way.⁴⁵ What exactly happened once the three men got to the bottom of the ravine is disputed between LaFleur and Holm. What is known, however, is that LaFleur wrapped Bloomquist's sweater around the barrel of the .22 caliber handgun in his right hand.⁴⁶ Seeing this, Bloomquist clutched at LaFleur's arm, leaving a noticeable scratch. LaFleur fired two shots into Bloomquist's chest, one of which hit the victim's wrist. He fell to his knees and Holm pushed him over with his foot. Holm then placed the sweater on Bloomquist's back and shot him twice with his .25 caliber handgun. Holm then moved the sweater to cover Bloomquist's head and fired one last shot. The men then "saw blood com[ing] from his nose and mouth." According to LaFleur, Holm said, "[N]ow he is dead."⁴⁷

The men took Bloomquist's wallet and watch before leaving his body and getting back into the car. The watch was broken

³⁹*LaFleur*, Mowrey Affidavit, 3; *LaFleur*, FBI interview of Larry LaFleur, January 24, 1989; Trial Transcript, 1045.

⁴⁰*LaFleur*, Trial Transcript, 1046.

⁴¹*Ibid.*, 1046, 1528, 1602.

⁴²*Ibid.*, 469, 1046, 1048, 1763.

⁴³There were several "no trespassing" signs posted around the area warning people it was government property. *LaFleur*, Trial Transcript, 470, 524, 534–35; Robert Dietrich, "Camp Pendleton to Tighten Access in Wake of Slaying," *San Diego Union-Tribune*, Jan. 25, 1989.

⁴⁴*LaFleur*, Trial Transcript, 514.

⁴⁵*Ibid.*, 1048, 1762.

⁴⁶*Ibid.*, 22–25, 471–72, 1046–47, 1617; Holm Interview.

⁴⁷*LaFleur*, LaFleur Interview.

and bloody, so LaFleur threw it out the window of the car.⁴⁸ The men drove three miles to a dumpster behind the Alpha Beta supermarket in the Fallbrook Town Center and threw out most of Bloomquist's items, including bank documents, car documents, a steering wheel lock, and some of Bloomquist's clothing.⁴⁹ In the newly washed Oldsmobile, they picked up Favors and Clark from Favors' ex-husband's house around noon.⁵⁰ The two men told Favors that one of Holm's friends had given them money and the car for cleaning his garage.⁵¹ LaFleur told Clark that Holm had sold his guns to his brother and bought the car from him as well.⁵² Favors, LaFleur, and Holm packed their personal items into the car, and the four of them drove to Oceanside to drop Clark off.⁵³ They told Clark they were going to Oregon to get Favors away from all of the problems in Oceanside.⁵⁴

They then drove straight through for twenty-one hours to Roseburg, Oregon.⁵⁵ Once in Oregon, they realized that Holm's parents did not have a trailer there. The three then went to see LaFleur's grandparents and then his brother, but no one could help them.⁵⁶ They rented a room at the Casablanca Motel in Roseburg on January 12.⁵⁷ The two men sold Holm's AK-47 for more money.⁵⁸

Holm stated that he overheard LaFleur and Favors talking about killing him in his sleep, so he left under the pretense of getting ice cream and a newspaper.⁵⁹ He drove Bloomquist's car, containing everyone's belongings, back to California.⁶⁰ Holm dropped the guns off at his cousin's house, then left the car at the Oceanside Transit Center and took the bus to the home of his girlfriend, Deanna Reeves. The next day, Holm and Reeves

⁴⁸*LaFleur*, Trial Transcript, 1048.

⁴⁹*LaFleur*, Trial Transcript, 473; Holm Interview. The clothing discarded included Bloomquist's bullet-riddled sweater, and his gloves and hat. *LaFleur* Interview.

⁵⁰*LaFleur*, Trial Transcript, 805, 905, 907, 1541.

⁵¹*LaFleur*, Trial Memorandum, 6. Clark described it as a "wad" of money. Trial Transcript, 802.

⁵²*LaFleur*, Trial Transcript, 803, 1304.

⁵³*Ibid.*, 802, 911.

⁵⁴*Ibid.*, 802, 806.

⁵⁵*LaFleur*, Detention Transcript, 61; *LaFleur*, Trial Transcript, 960, 1542, 1545.

⁵⁶*LaFleur*, Trial Transcript, 925, 927, 1060.

⁵⁷*LaFleur*, Holm Interview; Trial Transcript, 928.

⁵⁸*LaFleur*, Trial Transcript, 936.

⁵⁹*LaFleur*, Holm Psychological Evaluation, 7; Trial Transcript, 929.

⁶⁰*LaFleur*, Mowrey Affidavit, 4; Trial Memorandum, 7; Holm Interview; Holm Psychological Evaluation, 7; Trial Transcript, 925.

went back to the transit center to retrieve Holm's clothing and music tapes from the car.⁶¹

LaFleur wanted to stay in Oregon, but Favors wanted to return to California, so they headed back after two more nights in Oregon.⁶² Once back in San Diego, LaFleur admitted to Clark that he and Holm had killed an elderly man to get his car and money.⁶³

Five days later, on January 15, Bloomquist's body was found in a ravine.⁶⁴ Two non-military men were in De Luz Canyon for target practice when their dog started barking incessantly.⁶⁵ At 1:30 a.m. the morning of January 16, Nora Bloomquist's doorbell rang. She opened the door to a woman from the coroner's office and an FBI agent asking her to identify Bloomquist's pocket knife.⁶⁶

An autopsy performed on January 16 showed that Bloomquist had died as a result of several small caliber bullets fired into his chest, head, and back. He had a total of five bullet wounds from a .25 caliber and a .22 caliber handgun. They were all close contact wounds.⁶⁷

The next day, Bloomquist's car was found abandoned at the Oceanside Transit Center around 11:00 p.m., with one stolen license plate.⁶⁸ Inside the car, agents found personal items belonging to LaFleur, Holm, and Favors.⁶⁹ Bloomquist's wallet with his credit cards and several .22 caliber rounds were found in the trunk.⁷⁰ Additionally, both LaFleur's and Holm's fingerprints were found in the car.⁷¹ On January 18, a transient found Bloomquist's personal effects in the trash dumpster where LaFleur and Holm had thrown them eight days before.⁷²

Because the murder occurred on a U.S. military base, multiple branches of law enforcement were involved. Through the coopera-

⁶¹ *LaFleur*, Holm Interview.

⁶² *LaFleur*, Trial Transcript, 933, 1040.

⁶³ *Ibid.*, 808.

⁶⁴ *Ibid.*, 472.

⁶⁵ *Ibid.*, 514–15, 522.

⁶⁶ *Ibid.*, 510; Valerie Alvord, "Killers Did Not Dim Widow's Memories."

⁶⁷ *LaFleur*, Detention Transcript, 3; Trial Memorandum, 8.

⁶⁸ *LaFleur*, Detention Transcript, 28; Trial Transcript, 550–51. The registered owner of the stolen license plate told agents it had been stolen sometime between January 13 and 15 from the Plaza Camino Real shopping center. Mowrey Affidavit, 2.

⁶⁹ LaFleur's clothing, tapes, and athletic awards were found inside the car. *LaFleur*, Detention Transcript, 27–28.

⁷⁰ *LaFleur*, Mowrey Affidavit, 2.

⁷¹ *LaFleur*, Trial Memorandum, 7.

⁷² *LaFleur*, Mowrey Affidavit, 3.

tion of the FBI, Naval Investigative Services, San Diego County Sheriff's Department, and local police departments, LaFleur and Holm were arrested without resistance shortly after returning to San Diego.⁷³ Both men would spend the rest of their lives in custody.

LaFleur was arrested January 19 in Oceanside.⁷⁴ He was "very composed subsequent to being arrested," but became very upset after confessing to murdering Bloomquist.⁷⁵ LaFleur told agents "the paper has it right" and cried profusely when giving details of what occurred.⁷⁶ When Special Agent Swartzelder asked LaFleur why he had done it, he hung his head and replied, "[I]t wasn't worth it."⁷⁷

Holm's girlfriend cooperated with law enforcement, and he was arrested on January 20 at her house at Camp Pendleton.⁷⁸ Reeves told Holm she had gone grocery shopping on her lunch break and needed help bringing in the groceries from her truck.⁷⁹ Once Holm left the house, approximately ten law enforcement agents circled Reeves' truck with their weapons trained on him.⁸⁰ He had the .25 caliber handgun used to kill Bloomquist in his back pocket, several stolen guns in a briefcase, and Bloomquist's diamond ring and car keys in Reeves' house.⁸¹ Holm did not understand what it meant to "waive his rights," so special agents John Swartzelder and Chase Foster attempted to explain it to him.⁸² Holm implicated LaFleur when Swartzelder told him one arrest had been made.⁸³ In their interviews with the FBI, both men admitted to shooting Bloomquist.⁸⁴

⁷³*LaFleur*, Detention Transcript, 13, 23–24, 30; Trial Memorandum, 3.

⁷⁴*LaFleur*, Detention Transcript, 6, 26, 30; Trial Transcript, 75.

⁷⁵*LaFleur*, Trial Transcript, 80.

⁷⁶*LaFleur*, LaFleur Interview; Detention Transcript, 42. The special agent testified that "[h]is eyes got red. . . . [H]e got tears in his eyes." Trial Transcript, 81.

⁷⁷*LaFleur*, Trial Transcript, 73.

⁷⁸*LaFleur*, Detention Transcript, 6, 11, 13. Reeves was a corporal in the marine corps. Detention Transcript, 45.

⁷⁹*Ibid.*, 11, 46.

⁸⁰Special agents Swartzelder, Foster, and Edward Jansen, other FBI agents, several Immigration and Naturalization Service agents, Naval Investigative Services and their officers, and at least three military officers in civilian clothes were all involved. *Ibid.*, 44, 47.

⁸¹*Ibid.*, 2, 49; *LaFleur*, Holm Interview; Trial Transcript, 480. The weapons inside Holm's briefcase included a stolen .22 caliber semi-automatic pistol, a stolen MAC-10, a 9mm pistol, three throwing stars, a knife, and ammunition. Detention Transcript, 20; Trial Transcript, 480.

⁸²*LaFleur*, Holm Interview; Trial Transcript, 93–98.

⁸³*LaFleur*, Detention Transcript, 20, 22; Trial Transcript, 100.

⁸⁴*LaFleur*, Detention Transcript, 3.

THE MONTHS LEADING UP TO THE TRIAL

Federal charges were filed in the Southern District of California. The district is unique in many respects, specifically for the large number of separate jurisdictions in a relatively small area, including military, Native American, federal, and state jurisdictions, all in extremely close proximity to Mexico. In this case, the state government had jurisdiction because the initial kidnapping occurred at the Carlsbad mall. The federal government had jurisdiction because the murder of Bloomquist occurred at Camp Pendleton, giving the Southern District Court of California special maritime jurisdiction under *Special Maritime and Territorial Jurisdiction*, 18 USC §7. The United States attorney at the time, William Braniff, met several times with San Diego County's then-district attorney Ed Miller to discuss the proper venue for the case. At the time, the federal government had banned the use of the death penalty. State court allowed the death penalty in special circumstances, including murder during a kidnapping and robbery or for financial gain, both of which would have applied in this case.⁸⁵ In a press conference, then-assistant United States attorney (AUSA) Larry Burns stated that the case would be turned over to state court only if the death penalty was appropriate.⁸⁶ Ultimately, the case remained in federal court, where the maximum penalty for the two men was life without parole. This reduced the media's access to the trial. In state court, a judge may allow cameras inside the courtroom, and interviews can be conducted in specified areas of the courthouse. However, federal law prohibits cameras inside federal courthouses.⁸⁷ Several journalists were present in the courtroom to take notes about the proceedings.

Both men received court-appointed attorneys. Holm's attorney, Richard Boesen, told Holm not to talk to anyone about the

⁸⁵District Judge Larry Burns, interview by Crystal Vasalech, February 3, 2016. Valerie Alvord, "Death Penalty Possible If Murder Trial of Two Is Shifted to State Court," *San Diego Union-Tribune*, Feb. 1, 1989. Boesen noted that federal cases are generally thoroughly investigated and well issued. He also noted that when a federal murder case goes to trial, "the proverbial gates open up and the FBI agents swarm over the city to find witnesses." Richard Boesen, interview by Crystal Vasalech, February 8, 2016.

⁸⁶Valerie Alvord, "Death Penalty Possible." Larry Burns is now a district judge for the Southern District of California. However, for ease and clarity, he will be referred to as "AUSA Burns" for the events that occurred in 1989.

⁸⁷Magistrate Judge David Bartick, interview by Crystal Vasalech, February 2, 2016; *Federal Rules of Criminal Procedure*, "Title IX: General Provisions: Rule 53: Courtroom Photographing and Broadcasting Prohibited," https://www.law.cornell.edu/rules/frcrmp/rule_53.

case, and his investigator told Holm's family that he could not talk about the case.⁸⁸ Later that same day, however, when Holm spoke to his sister on the phone, she said she needed to know if he had robbed the elderly man. Holm replied, "[Y]es, but I can't talk about it on the phone because they are probably taping."⁸⁹

On the way to the courthouse for his first appearance, Holm told the U.S. marshal that if he and LaFleur "were in the same room, I would kill him."⁹⁰ At their detention hearing, LaFleur had no one in the audience, while Holm's sister, her fiancé, his maternal aunt, and his maternal grandmother were there to support him.⁹¹ Emotions ran high between the two men during the hearing, with Holm often glaring at LaFleur.⁹² The court ordered that the men be kept on separate floors in the detention facility and that they be brought to court separately.⁹³

Because there were two defendants, AUSA Burns proposed a bifurcated trial, which had only been used a few times before in other jurisdictions. This meant that both men would face trial at the same time in the same courtroom, but with separate

⁸⁸Boesen's investigator at the time was Mike Neuman. Boesen Interview.

⁸⁹*LaFleur*, Trial Transcript, 42. The hearings were held on April 17, 1989.

⁹⁰LaFleur and Holm were both denied bail at their first appearance on January 20, 1989.

⁹¹The detention hearing was held on January 24, 1989. Holm also had an active arrest warrant from two years earlier for possession of a loaded firearm in his vehicle. Holm's parents were not willing to take him in, but Holm's sister Tamberline and her fiancé at the time, Joseph Salas, were willing to let him live with them and her two children. *LaFleur*, Detention Transcript, 4, 10, 11.

⁹²*Ibid.*, 69–70. Two separate grand juries were held in this case. Grand juries are closed proceedings with only the prosecutor, the grand jury, and the witnesses present. They are used much more often by federal prosecutors than state prosecutors. When a grand jury is used, neither side has any idea what the other side's strategy is until pre-trial motions begin. This also applies to the media, which often get information regarding the case only from press conferences and interviews with the attorneys. Judge Bartick Interview.

The first grand jury indicted on ten counts. One charged aiding and abetting in violation of 18 USC §2; Count Two was felony murder in violation of 18 USC §1111; Counts Three, Six, and Nine were against Holm for using a firearm to commit the crimes in violation of 18 USC §924(c)(1); Counts Four, Seven, and Ten were against LaFleur for using a firearm to commit the crimes in violation of 18 USC §924(c)(1); Count Five was conspiracy to kidnap in violation of 18 USC §1201(a)(2) and (c); and Count Eight charged robbery in violation of 18 USC §2111. The men were arraigned on the indictment on February 3, 1989. Detention Transcript, 71. *United States v. LaFleur*, Indictment (January 26, 1989).

A subsequent grand jury returned a superseding indictment on eleven counts on June 14. Three counts were against Holm alone for the use of a firearm during the three separate crimes (robbery, kidnapping, murder); three counts were against LaFleur alone for the use of a firearm during those same three crimes; and five were against both Holm and LaFleur.

⁹³The men were also denied bail. *LaFleur*, Detention Transcript, 68, 70.

juries because each claimed that the other man had forced him to shoot Bloomquist.⁹⁴ This drew a lot of media attention to the case.⁹⁵ The process would be complicated, but Burns argued that it would be the most efficient use of time, and "if anyone could handle the bifurcated trial, it was Judge Enright."⁹⁶ LaFleur's attorney was against the idea.⁹⁷ It was not until a week before the trial that Judge Enright made the final decision to conduct two separate trials.⁹⁸ Holm would go first on the original start date, and LaFleur's trial would be held once Holm's trial was complete.⁹⁹

Because of the large amount of publicity in the case, one of LaFleur's attorneys, John Lanahan, filed a motion for change of venue to the Central District of California, which was denied.¹⁰⁰ The media play a large role in criminal cases and have an impact on the case itself, although they do not—and should not—influence the case. Litigators are aware of media coverage and how it can impact potential jurors. Change of venue motions are very common in high-profile cases, but they are rarely granted, because it is difficult to persuade a judge that the entire jury pool has been prejudiced by the media in a county as large as San Diego.¹⁰¹

HOLM'S GUILTY PLEA AND MENTAL COMPETENCY HEARING

At the beginning of June, Boesen requested a mental competency hearing for Holm, because he believed Holm was unable

⁹⁴*LaFleur*, Trial Memorandum, 3; Trial Transcript, 122.

⁹⁵See, e.g., Bill Ott, "Duress Defense Rejected in Slaying," *San Diego Union-Tribune*, May 9, 1989.

⁹⁶A temporary jury box was going to be built to accommodate the extra jury, and jury members would wear separate colored nametags to tell which defendant's jury they were on. Burns Interview.

⁹⁷Lanahan filed a motion to sever the trials because of the accusatory statements each man made against the other. *LaFleur*, Trial Transcript, 18.

⁹⁸Lanahan's motion to sever was heard and denied on April 17, 1989. The chambers conference in which Judge Enright made his final decision was held June 15, 1989. *LaFleur*, Trial Transcript, 32–33, 128.

⁹⁹*Ibid.*, 144. Boesen relayed in a recent interview that during this conference, Judge Enright pointed right at him and said, "Nick Holm goes first serie autem." Not understanding this Latin phrase, Boesen immediately looked it up when he got back to his office and realized it meant essentially "in order." Boesen Interview.

¹⁰⁰*LaFleur*, Trial Transcript, 20, 33.

¹⁰¹Bartick Interview.

to assist with his own defense properly.¹⁰² Boesen contended that Holm suffered from a mental disorder and, for two weeks, was acting out, was "out of control," and had refused to cooperate with the staff at the Metropolitan Correctional Center.¹⁰³ He also refused to cooperate or communicate with Boesen for the trial preparations.¹⁰⁴

Holm pleaded guilty to aiding and abetting murder in perpetuating the crimes of kidnapping and robbery on June 20.¹⁰⁵ When asked why he pleaded guilty, Holm stated it was "because I am guilty. Whatever I get is fair. If I had been in state [court], I'd been gassed by now anyway. I'd rather go to the gas chamber than spend life in prison, but that's not going to happen."¹⁰⁶ Before the court would accept Holm's plea, Judge Enright ordered Holm to complete a mental competency exam.

Dr. Friedman, the psychologist, described Holm as detached, never smiling or making eye contact, and speaking in a monotone voice.¹⁰⁷ Holm began hearing voices and seeing visions, similar to an acid trip, in December 1988.¹⁰⁸ He believed he was "sometimes" possessed by the devil, which made him want to hurt people and put him "in the mood to kill." He admitted to a history of "frequent and intense temper tantrums with little provocation." Friedman stated that Holm had a significant emotional disturbance and had no ability to empathize.

Holm's diagnoses were organic hallucinosis and severe borderline personality disorder. The organic hallucinosis was the result of long-term drug use and caused the auditory and visual hallucinations and poor control over his emotions and behavior. The borderline personality disorder was attributed to his chaotic childhood, during which he failed to "develop a positive sense of identity, belonging, or purpose." His obsession with returning to Oregon was because that was the only place he associated "with the only relatively happy period in his entire life."

¹⁰²*LaFleur*, Request for Mental Competency Hearing, June 19, 1989.

¹⁰³*Ibid.*; Holm Evaluation, 7.

¹⁰⁴*LaFleur*, Request for Mental Competency Hearing.

¹⁰⁵*LaFleur*, Superseding Indictment, Count Three, June 14, 1989. The remaining counts were dismissed in light of the plea.

¹⁰⁶*LaFleur*, Holm Evaluation, 7.

¹⁰⁷*Ibid.*, 8.

¹⁰⁸Holm described his visions as "shapes, colors, walls breathing, [and] smoke on the ceiling." He stated that the voice was always the same, but was not sure if it was a male or female voice. *Ibid.*, 4-5. He was prescribed medication to decrease these symptoms once at the Metropolitan Correctional Center. See, generally, *ibid.*, 4-9.

Nonetheless, Friedman testified that Holm "was able to make a reasonable determination" to plead guilty.¹⁰⁹ After questioning Holm, the court found him competent to stand trial and thus competent to plead guilty.¹¹⁰ Holm admitted to kidnapping, robbing, and shooting Bloomquist in the back and the head.¹¹¹

In a recent interview, Holm's attorney recalled that it was a very "tough case," and Holm would not have been very good on the witness stand.¹¹² Boesen described him as having a "very flat affect." He also was a difficult client, because he was "non-responsive, generally non-communicative, had anger issues, and was not at all willing to open up."¹¹³

LaFleur's Trial

Twelve jurors and five alternate jurors were impaneled after being screened for several potential issues, including their views on psychiatry and criminal punishment.¹¹⁴ Throughout the trial, the courtroom was filled to capacity. Some people were members of the victim's family, but many spectators attended to watch the bespectacled twenty-two-year-old LaFleur, who was accused of murdering a complete stranger.¹¹⁵ The United States was represented by AUSAs Larry Burns and Nancy Worthington. LaFleur was represented by federal defender Mario Conte, in addition to John Lanahan.

Opening statements began on June 21, 1989. During the government's opening statement, Burns stressed the fantasy of starting over in Oregon and how it came crashing down when there was no trailer waiting for them.¹¹⁶ Conte began his opening statement for LaFleur by saying, "There is one thing that we're going to agree with the government on in this case; and that's what happened to Mr. Bloomquist was indeed tragic. What we're going to show you, by the evidence, is another

¹⁰⁹*LaFleur*, Trial Transcript, 411. The mental competency hearing was held on June 21, 1989.

¹¹⁰*Ibid.*, 411, 416.

¹¹¹*Ibid.*, 423–24.

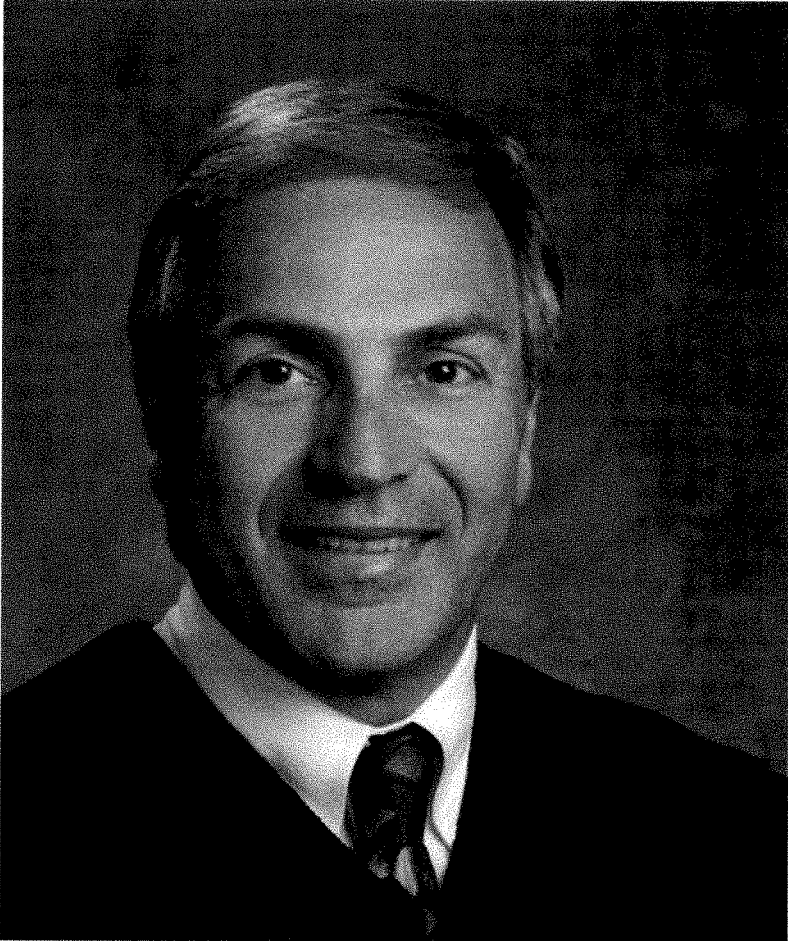
¹¹²Boesen Interview.

¹¹³*Ibid.*

¹¹⁴*LaFleur*, Trial Transcript, 161, 170, 1101.

¹¹⁵Valerie Alvord, "LaFleur Insists Killing of Elderly Robbery Victim Was Unplanned," *San Diego Union-Tribune*, July 1, 1989.

¹¹⁶*LaFleur*, Trial Transcript, 474–75.



In 1989, Larry Alan Burns was a federal prosecutor, representing the United States in the *LaFleur* trial. In 2003, he became a district judge. (Courtesy of Southern District of California)

tragedy. The tragedy is Larry LaFleur." The defense case would focus on LaFleur's childhood: his abandonment by his parents, the sexual abuse by his stepfather, and his placement in several foster homes.¹¹⁷ Conte's opening statement also highlighted the devastation that his divorce and the loss of his military career had on LaFleur.

¹¹⁷Ibid., 479.

The first witness was Nora Bloomquist. When Burns showed her a picture of the Bloomquists' car to identify, she said yes, "it's our car except for the dirt. We never had a dirty car."¹¹⁸ She remained composed on the stand through all of this, until she was handed her husband's wallet and she began to cry.¹¹⁹

The next witness was Frederick Schattschneider, who, along with his brother Hugo, found Bloomquist's body. He described how desolate the canyon area is where Bloomquist was found.¹²⁰ The medical examiner testified using a mannequin to show the five gunshot wounds and explained that the head wound or any of the back wounds were potentially fatal and the cause of Bloomquist's death.¹²¹ On the second day, the ballistics and firearms expert testified that Bloomquist was shot in the chest first, and that the gun had been held within 1.5 inches of his back.¹²² The transient man who found Bloomquist's belongings in the dumpster testified to finding the radio headset, steering wheel lock, notebooks, bank books, senior saver card, and a garage door opener.¹²³ On the third day of trial, Favors testified extensively about her relationship with LaFleur. She noted that LaFleur seemed very happy on the way up to Oregon and that they planned to start over and settle down there.¹²⁴ She was adamant that neither Holm nor LaFleur told her about Bloomquist.¹²⁵

In a recent interview, Burns stated he knew at the time that it was imperative for the jury to view the scene where Bloomquist was killed. To access the canyon from De Luz Road, there is a very narrow dirt path that descends about 1.2 miles into the valley.¹²⁶ There are ruts in the road, so the bottom of the canyon can only be accessed on foot by a dirt path that Burns called the "pathway to death."¹²⁷ When Burns visited the scene before the trial, a pool of Bloomquist's blood was still there. He stated, "[W]hat a place of solitude to die, to have

¹¹⁸*Ibid.*, 499.

¹¹⁹Core, "LaFleur Tragic Figure."

¹²⁰*LaFleur*, Trial Transcript, 514.

¹²¹Dr. Super, the medical examiner, was from the San Diego Coroner's Office. *Ibid.*, 580, 631–32.

¹²²The ballistics expert was Lance Martini. *Ibid.*, 698, 696, 704–706.

¹²³*Ibid.*, 737–41.

¹²⁴*Ibid.*, 925–69.

¹²⁵*Ibid.*, 944.

¹²⁶*Ibid.*, 517; Burns Interview; Dietrich, "Camp Pendleton to Tighten Access."

¹²⁷*LaFleur*, Trial Transcript, 542; Burns Interview.

your last breath, away from everyone and everything."¹²⁸ He also said, "[W]hatever their intentions were up to that point, it was clear to me that they were marching him down there to kill him."¹²⁹

Burns was certain that the request to take the jury to the site would be denied because of the logistical issues, but Judge Enright agreed that the jury should visit the scene.¹³⁰ On the morning of June 28, the courtroom staff, attorneys, and jurors drove caravan-style, with Burns leading the way to the site. LaFleur did not attend.¹³¹

They drove as far down into the ravine as they could, but rocks had been placed across the road by Immigration Services. The group walked the rest of the way (about one-half mile) to where Bloomquist's body had been found. At the end of the dirt path, Bloomquist's blood was still there. The jury was very emotional at the scene, a few jurors got choked up, and Burns remembers seeing one of the jurors being comforted on the walk back up the path.¹³²

That afternoon, the defense began its case. Robert Conte (no relation to the attorney on the case), a friend of the Humphreys, testified that he believed LaFleur was very needy, eager to please, and nervous. He also stated that LaFleur was labeled the "darling of the community" when he was living with the Humphreys.¹³³ The next two witnesses were very close with LaFleur: Connie Humphreys and Beverly Browsers, his ex-mother-in-law. Humphreys testified to LaFleur's difficult childhood and the positive changes in him when he came to live with them. His ex-mother-in-law testified that LaFleur was unable to cope after his marriage crumbled: "he didn't care what happened to him. He was very depressed, down in the dumps."¹³⁴ She talked about losing her own son and LaFleur being there to help her bury him, and how they had thought of him as their own son and wanted to help him. Throughout the majority of

¹²⁸Burns Interview.

¹²⁹*Ibid.*

¹³⁰To allow the jury to view the scene, Burns asked the FBI to create an exact topographical model before trial began, but because the jury viewed the actual scene, he referred to the model only a few times during his closing argument. *Ibid.*

¹³¹A United States marshal drove in each of the two vehicles carrying the jurors. Judge Enright, a deputy, and a court reporter traveled in a separate vehicle. Each attorney drove his own vehicle. *LaFleur*, Trial Transcript, 1088, 1097-99.

¹³²Burns Interview.

¹³³*LaFleur*, Trial Transcript, 1131, 1133.

¹³⁴*Ibid.*, 1163.



On June 28, 1989, Judge William Enright (center, in white hat) escorted the jury to view the scene of the crime in De Luz Canyon at Camp Pendleton. (Courtesy of Judge Larry Alan Burns)

the trial, LaFleur remained composed. However, he cried during both women's testimonies.¹³⁵

Dr. Richard Rappaport, LaFleur's psychiatrist, testified, even though he was not board certified in either psychiatry or forensic psychiatry.¹³⁶ Rappaport met with LaFleur on two separate occasions, for about five hours total.¹³⁷ He did not interview anyone close to LaFleur because he "didn't feel it was essential, but it would have been helpful."¹³⁸ He also did not ask LaFleur about any of the many inconsistencies in his statements.¹³⁹

After reviewing LaFleur's diary from 1988, which LaFleur had named "Fred," Rappaport testified that there was an "immaturity [in] his need for associating with women in particular." LaFleur "becomes very enthusiastic, extremely involved and needy, over-idealizing them, wanting to have a relationship and maintain a closeness over and above any kind of sexuality. . . .

¹³⁵Valerie Alvord, "Two Tell Troubled Past of Murder Suspect; Say He's Like a Son," *San Diego Union-Tribune*, June 29, 1989.

¹³⁶The government filed a motion to exclude Rappaport's testimony, but it was denied. *LaFleur*, Trial Transcript, 1108, 1123, 1166, 1229.

¹³⁷Rappaport met with LaFleur on June 1 and June 24, 1989. *Ibid.*, 1179–80.

¹³⁸*Ibid.*, 1252. Rappaport did speak with the Humphreys for about twenty-five minutes total. *Ibid.*, 1266–67. He spoke with Mrs. Browers for about twenty minutes and Conte, the witness, for about fifteen minutes. *Ibid.*, 1267–68.

¹³⁹*Ibid.*, 1273.

It's as if his existence is dependent upon those relationships, and he goes from one to the other almost with an even flow."¹⁴⁰

Rappaport made generalizations about LaFleur's mental condition, diagnosing him with depression and a mixed personality disorder, with features of dependency and antisocial personality.¹⁴¹ Regarding LaFleur's dependency, Rappaport testified that "he has a need to rely on other people to . . . get his feelings about himself, to get his sense of worth. . . . There is no existence of LaFleur outside of how he relates to other people."¹⁴² He testified that LaFleur's use of drugs and alcohol was a result of his depression. LaFleur's illegal activities, including his "shoplifting and other minor kinds of delinquencies that kids grow up with" were due to his "impulsiveness and his amenab[ility] to doing almost any kind of act in order to maintain . . . the dependency on other people."¹⁴³ In his report, Rappaport said that "LaFleur states that he was willing to go to jail for stealing or robbery, but really didn't expect to get caught."¹⁴⁴

Rappaport also testified that Holm could control LaFleur. "He was lost . . . without someone to oversee him. . . . Holm showed an interest in him. . . . [A]nybody [who] seemingly care[d] was enough to get him to do whatever that individual wanted him to do. . . . [H]e would do, at that time, whatever was required to maintain those relationships."¹⁴⁵ However, Rappaport also testified on cross-examination that one of the features of antisocial personality disorder is that the person has no regard for the truth, and repeatedly lies and cons others. He also agreed that everyone has certain traits of personality disorders.¹⁴⁶

Several people who knew Holm then testified in LaFleur's defense. Holm's father testified that Holm knew their trailer in Oregon had been repossessed in 1979 or 1980. Holm was asked to leave his parents' house in December 1988 because he was constantly arguing with his parents. He also testified that he would take Holm out to De Luz Canyon about two or three times a week for target practice. He also believed his son was "irrational, sometimes a Jekyll and Hyde syndrome."¹⁴⁷ Holm's

¹⁴⁰*Ibid.*, 1174–78.

¹⁴¹*Ibid.*, 1186–91.

¹⁴²*Ibid.*, 1192.

¹⁴³*Ibid.*, 1192–93.

¹⁴⁴*Ibid.*, 1283.

¹⁴⁵*Ibid.*, 1217, 1220, 1223.

¹⁴⁶*Ibid.*, 1279–80.

¹⁴⁷*Ibid.*, 1315–19.

neighbors testified that two guns had been stolen, and that Holm shot a gun out of his front door.¹⁴⁸

LaFleur then took the stand to testify in his own defense. He talked about his childhood and his stepfather's abuse. He also gave his version of the crime. He said he shot Bloomquist in the chest from about eight feet away.¹⁴⁹ On cross-examination, when asked why he never told anyone about what happened before he got arrested, he explained that "he didn't want to get [Holm] into any trouble."¹⁵⁰ Burns asked LaFleur about his military training in both hand-to-hand combat and firearms.¹⁵¹ LaFleur also testified on cross-examination that he was clean at the time, and drugs had nothing to do with what happened.¹⁵² When questioned, he estimated that if they had just dropped Bloomquist off, it would have taken him about two hours to walk to the nearest house.¹⁵³ However, he later testified that the closest house to where they killed Bloomquist was only about half a mile away.¹⁵⁴ LaFleur broke down in tears while he was testifying, but Burns was quick to ask whether LaFleur shed any tears when Bloomquist was begging for his life. "No, sir, I didn't."¹⁵⁵ Burns recalled later that it was evident to him that LaFleur and Holm had agreed to blame each other. He also called LaFleur's testimony about his childhood a "sympathy ploy."¹⁵⁶

The two parties gave their closing arguments on the eighth day of trial. There had been more than twenty-two witnesses and fifty-five exhibits entered into evidence.¹⁵⁷ Burns stressed the tragedy of the case and referred to the "hopes and dreams of a couple that met more than 60 years ago . . . [who had] nothing more complicated than a luncheon date together on a Tuesday morning in January. . . . That's what this case is about. It is not about the shattering of Larry LaFleur's hopes and dreams, his fantasy of going to Oregon. This case is about the cold-blooded killing of Swan Bloomquist, what that meant to his family, and

¹⁴⁸*Ibid.*, 1324, 1328, 1345.

¹⁴⁹*Ibid.*, 1536.

¹⁵⁰*Ibid.*, 1550.

¹⁵¹*Ibid.*, 1561–62.

¹⁵²*Ibid.*, 1536.

¹⁵³*Ibid.*, 1605.

¹⁵⁴*Ibid.*, 1614.

¹⁵⁵Valerie Alvord, "LaFleur Convicted Himself of Killing, Jurors Say," *San Diego Union-Tribune*, July 8, 1989; *LaFleur*, Trial Transcript, 1602.

¹⁵⁶Burns Interview.

¹⁵⁷*LaFleur*, Trial Transcript, 1738.

what that meant to us as a community."¹⁵⁸ He emphasized that LaFleur testified, "while answering his own lawyer's questions, that he had planned a robbery, that he had contemplated a kidnapping" and admitted on cross-examination "that nothing forced him to do anything."¹⁵⁹ Holm was not free from Burns' impassioned closing argument; Burns stated, "Mr. Holm is an awful human being. Anyone who would do what he did to Swan Bloomquist is despicable."¹⁶⁰

The defense's theme throughout the trial had been that Holm controlled LaFleur and forced him to commit the crimes. The theme carried through Lanahan's closing, as he began with, "I agree, Nick Holm was a despicable human being."¹⁶¹ Lanahan tried to explain why LaFleur never told anyone about what had happened by saying, "[Y]ou are forcing someone to keep a horrible secret, because, if you explain it, it makes no sense. But that's because it came from Nick Holm, and Nick Holm makes no sense."¹⁶²

Burns' rebuttal pointed out that LaFleur himself testified that he was not coerced or forced to participate in the kidnapping or robbery.¹⁶³ He argued that "LaFleur is not a modern-day *Oliver Twist*, and Nick Holm is not the Artful Dodger who manipulated him into the commission of a very serious crime."¹⁶⁴ He ended on a very poignant note: "Mr. LaFleur sits before you today. In. Life. Swan Otto Bloomquist is dead, ladies and gentlemen. May he rest in peace."¹⁶⁵

The jurors received their instructions and began to deliberate at 10:25 a.m. on July 6.¹⁶⁶ During the deliberations, the jury requested to look at "Fred," the diary mentioned by Rappaport.¹⁶⁷ Although it had not been entered into evidence, the attorneys permitted the jury to view it. The jury deliberated for a total of only five hours before returning a guilty verdict on all counts

¹⁵⁸*Ibid.*, 1746.

¹⁵⁹*Ibid.*, 1748–49.

¹⁶⁰*Ibid.*, 1759.

¹⁶¹*Ibid.*, 1776.

¹⁶²*Ibid.*, 1805.

¹⁶³*Ibid.*, 1830.

¹⁶⁴*Ibid.*, 1824.

¹⁶⁵*Ibid.*, 1833.

¹⁶⁶*Ibid.*, 1902.

¹⁶⁷*Ibid.*, 1918.

at 10:50 a.m. the next morning.¹⁶⁸ At the defense's request, the jury was polled for their votes. One juror cried when giving her vote, and another juror appeared near tears.¹⁶⁹

Some jurors admitted they felt sympathy for LaFleur, and early on two jurors were swayed by that sympathy. But all twelve jurors conceded that the evidence was too overwhelming to not convict. One juror stated, "[T]he defendant himself admitted to the facts. So as far as I'm concerned, it was very clear. It's tough because he's a young man, but he made the decision to shoot." They told the media they found "Fred" more disturbing than some of the testimony that was given.¹⁷⁰

JUROR MISCONDUCT HEARING

After the trial, juror Kimberly Tucker called Judge Enright and told him of a conversation she had with another juror where she learned Holm had pleaded guilty.¹⁷¹ One of the jurors, Gary Cazares, overheard his coworkers talking about Holm's guilty plea and told Tucker about it during a court recess before they began to deliberate.¹⁷² As a result, Judge Enright held a hearing to determine whether a new trial was warranted.

Although both jurors submitted affidavits swearing that Holm's guilty plea was not discussed during jury deliberations, they were called to testify.¹⁷³ During the hearing, Lanahan conceded that the defense's case was "yes he did it, why he did it was: he was being controlled by a codefendant."¹⁷⁴ Judge Enright ruled that Holm's "guilty plea is completely, utterly consistent

¹⁶⁸Ibid., 1920–21. The verdict form listed guilty for each of the eight counts: Count One was conspiracy to kidnap, Count Two was first degree murder, Count Three was first degree murder (under the conspiratorial liability), Count Five was using a firearm to commit the murder, Count Six was kidnapping, Count Eight was the use of a gun during the kidnapping, Count Nine was robbery, and Count Eleven was for using a firearm during the robbery. Counts Four, Seven, and Ten were not at issue in the trial because they only were against Holm. *LaFleur*, verdict form, July 7, 1989.

¹⁶⁹Alvord, "LaFleur Convicted Himself."

¹⁷⁰Ibid.

¹⁷¹Judge Enright notified both attorneys of the phone conversation in a letter dated July 14, 1989. *LaFleur*, Motion for New Trial; Sentencing Transcript, 30, September 21, 1989.

¹⁷²Ibid., 3, 16–19.

¹⁷³Ibid., 16, 22.

¹⁷⁴Ibid., 8.

with the entire defense presented by this defendant."¹⁷⁵ A new trial was not granted, because "the information known only to two jurors had no effect whatsoever on the verdict."¹⁷⁶

SENTENCING OF LAFLEUR AND HOLM

Both men were sentenced by Judge Enright in September 1989. The mandatory sentence for felony murder is life without parole.¹⁷⁷ Because of the other charges, LaFleur faced several additional life imprisonment terms plus an extra 30 years.¹⁷⁸

LaFleur

At a sentencing hearing, LaFleur's attorney unsuccessfully argued that the mandatory sentence of life without parole was unconstitutional.¹⁷⁹ Dr. Friedman, the psychologist who performed the competency evaluation for Holm, evaluated LaFleur over several weeks before sentencing and concluded that LaFleur was bright and did not have any sociopathic behaviors, but that he was impulsive and so did not think things through. She noted that he was on antidepressant medication because he was depressed about the conduct that led to this case and his bleak outlook on the future. She found that, after reviewing "Fred," Dr. Rappaport's report, and various writings from LaFleur while he was at the Metropolitan Correctional Center, she believed that LaFleur wanted to redeem himself.¹⁸⁰ The media noted that LaFleur

¹⁷⁵*Ibid.*, 40.

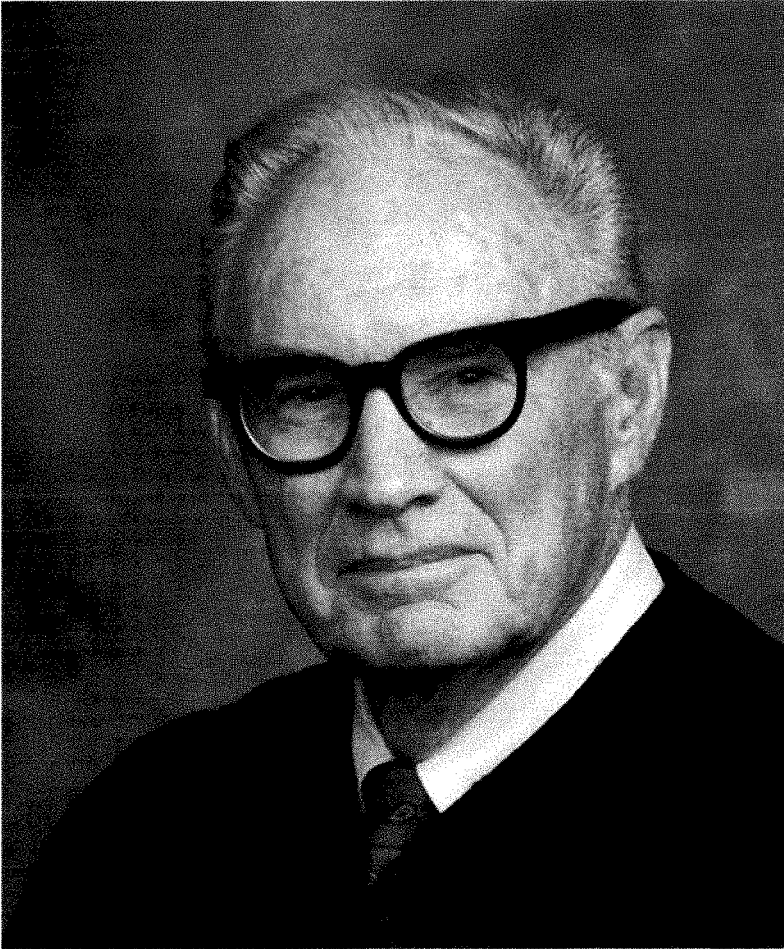
¹⁷⁶*Ibid.*, 42.

¹⁷⁷Count Three. *LaFleur*, Trial Transcript, 417.

¹⁷⁸The maximum penalty for intent to kill murder, kidnapping, and conspiracy to commit a kidnapping and robbery (Counts One, Two, and Six) is life in prison for each. Robbery (Count Nine) carries a maximum penalty of fifteen years. The use of a gun during the commission of those felonies is an additional five years for each (Counts Five, Eight, and Eleven). *LaFleur*, Government Sentencing Memorandum.

¹⁷⁹Conte argued that the sentence was unconstitutional because judges could not take any mitigating evidence into account. He also argued that because LaFleur was only twenty-three, it was cruel and unusual punishment. He argued that because the sentence for capital murder is twenty years to life, it violated the Fourteenth Amendment's Equal Protection Clause. Last, Conte argued that the statute violated LaFleur's Fifth Amendment due process rights. *LaFleur*, Sentencing Hearing Transcript, 45-53, September 21, 1989.

¹⁸⁰*Ibid.*, 56-57.



Judge William B. Enright presided over LaFleur's jury trial and Holm's guilty plea. (Courtesy of Southern District of California)

rubbed tears from underneath his thick, dark-rimmed glasses throughout the hearing.¹⁸¹

Based on LaFleur's history of sexual and physical abuse, Friedman stated, "He is extremely vulnerable. He has a lack of identity. He has poor problem solving skills. . . ." ¹⁸² "[B]ecause

¹⁸¹Valerie Alvord, "Killer of North County Man Gets Life Term," *San Diego Union-Tribune*, Sept. 22, 1989.

¹⁸²*LaFleur*, Sentencing Transcript, 57–58.

of his background, because of the lack of structure in his life, because of his insatiable request for love and acceptance, and because of his inability to adequately solve problems and deal with problems, . . . he really didn't think of the finality of the death until after it occurred."¹⁸³ Holm was strong, someone whom LaFleur would follow.¹⁸⁴ Holm "was violent, demanding, outspoken. . . . [T]hey had to medicate him. . . . [H]e made demands of them. . . . [H]e has been a complete and stark contrast to the behavior and personality that Larry LaFleur presented."¹⁸⁵ Friedman believed that LaFleur was "not the instigator in this case."¹⁸⁶ LaFleur "can be rehabilitated. He's motivated. He's sensitive, and he's bright. Since he's been at the [Metropolitan Correctional Center] for eight months, he has been solid, no aggression."¹⁸⁷

LaFleur's sentencing hearing was harsh and emotional. His attorney continued to argue that LaFleur would never have committed these acts "except for the coming together with Nick Holm. . . . Holm brought the guns into his life; and within ten days, this crime occurred."¹⁸⁸ LaFleur then spoke on his own behalf:

I owe both the Bloomquist family and society a debt I can never repay. I know that the awful crimes that I was involved in were wrong. I know, by my own stupidity, I have caused the Bloomquist family great pain. How I wish I could take that pain away. I know I will never be able to do that. I know, your Honor, that I deserve to spend a lifetime in prison. I am in no way trying to say I don't; but what I would like to say is: I hope I will someday have a second chance. I know I made a great mistake by taking another man's life. I am not trying to make that look unimportant. I do feel that, if I was ever to be given a second chance, I could be a good citizen again.¹⁸⁹

¹⁸³Ibid., 59.

¹⁸⁴Ibid.

¹⁸⁵Ibid., 60.

¹⁸⁶Ibid., 59.

¹⁸⁷Ibid., 60.

¹⁸⁸Ibid., 65.

¹⁸⁹Ibid., 68.

Burns requested a life sentence plus fifteen years.¹⁹⁰ He argued that LaFleur should not get "anything less than life without parole. That is the sentence he deserves for a vicious and callous crime . . . a helpless old man praying to his god and begging for his life, and the response that it got from this defendant."¹⁹¹ He further insisted that "as prosecutors and as police and defense counsel, of course, we see a sordid—a sordid side of human nature on a daily basis. Even accepting that, it's hard to fathom the degree of callousness of the defendants in this case to do what they did."¹⁹²

Bloomquist's son Ronald also addressed the court:

This isn't easy for me. My dad was a man who I loved and respected all my life. He was the proudest man I ever knew, and, when I grew up, he never laid a hand on me. He held our family together when my wife was killed last summer as a result of a criminally negligent person striking our motor home, letting her get burned. . . . I think that the only solace I can get is that he sacrificed his life so that these two people wouldn't go on and kill others; and I thank god for that.¹⁹³

Judge Enright then poignantly pronounced his sentence. He called Rappaport's testimony "an abomination. . . . [H]is testimony, in my humble judgment, lacked any credence whatsoever." Enright then turned his attention to LaFleur, telling the defendant that he saw him cry during the trial and the sentencing, but pointed out that he was "not seeing the same LaFleur that the victim saw in that clearing." Further, Enright stated, when "you didn't want the old man to have a heart attack and to get his sweater because he's cold, you had no intention of that old man ever leaving that clearing. You had no intention that he would leave that place alive; and that sweater was obtained for one purpose, one purpose only, the purpose for which you had practiced, you and your companion, to muffle the sound of gunshot."¹⁹⁴

Before announcing the sentence, Judge Enright said that, although he had been a prosecutor, a defender, and a judge in murder cases, "I don't know of any more cold-blooded killing,

¹⁹⁰*Ibid.*, 71. Burns earlier had told the media he wished he could have requested the death penalty. Alvord, "Killer of North County Man Gets Life Term."

¹⁹¹*LaFleur*, Sentencing Transcript, 69.

¹⁹²*Ibid.*

¹⁹³*Ibid.*, 71–72.

¹⁹⁴*Ibid.*, 74.

without pity, than this. Mr. Bloomquist had every right to live. He prayed for his life. He pleaded for his life. *No tears then.*"¹⁹⁵ LaFleur received the maximum penalty on all eight counts.¹⁹⁶

Holm

The Probation Department recommended life imprisonment for Holm.¹⁹⁷ Boesen told the court that Holm pleaded guilty to avoid any more pain and suffering to Bloomquist's family and that Holm accepted responsibility for his actions.¹⁹⁸ When Boesen asked Holm how he felt about what he did, Holm replied, "How do you think I feel? I took another man's life. . . . [E]very single night before I close my eyes, . . . I look and all I see are the eyes of Mr. Bloomquist looking at me."¹⁹⁹ He argued, however, that "by [Holm's] silence, he has been characterized somewhat unfairly and certainly inaccurately as a leader, promulgator, enforcer, and predator."²⁰⁰ Boesen also emphasized Holm's bad childhood and dysfunctional life and existence, stating that Holm "led a tragic life. He has no positive home life; as a result, very little love, very little understanding and was subject to psychological abuse."²⁰¹

Holm appeared remorseful when he addressed the court:

[M]e and Mr. LaFleur did intend to rob Mr. Bloomquist. In fact, we intended to steal his car, but we didn't intend to murder him. I don't believe me or Mr. LaFleur really wanted to commit a murder, but unfortunately we did. I feel very disgusted with myself. . . . I realize I took a part of Mrs. Bloomquist's and Mr. Bloomquist's life, which I had no right of taking. . . . There is nothing I can say or do except to say that I'm sorry. . . . [T]here is no substantial sentence you can give to me for the crime that I committed. I wish I could be put to death instead of living in prison for the rest of my life knowing I took another man's life.²⁰²

¹⁹⁵*Ibid.*, 75. Emphasis added.

¹⁹⁶*Ibid.*, 77.

¹⁹⁷*Ibid.*, 83.

¹⁹⁸*Ibid.*, 86.

¹⁹⁹*Ibid.*, 87.

²⁰⁰*Ibid.*, 86.

²⁰¹*Ibid.*, 88.

²⁰²*Ibid.*, 89; Boesen Interview.

Judge Enright then addressed the courtroom and Holm, saying,

[T]he offense was planned and premeditated. He and the co-defendant planned to abduct and rob another person and murder him. Holm even practiced the technique of muzzling the sound of a gunshot. His actions were callous and cold-blooded. There is no other appropriate sentence. . . . A deliberate and cold-blooded, premeditated murder of one of our fellow human beings. And it was a man, I believe from the evidence, who had contributed mightily in his life to other people, and had impacted their lives substantially. That is all gone now."²⁰³

Holm also was sentenced to life in prison.²⁰⁴

After the sentencing, Burns told the media that he agreed with Judge Enright's remarks about Rappaport's testimony and that, "as far as I'm concerned, they already got a break when the state elected not to proceed against them on a capital case."²⁰⁵ He later stated that the doctor "was way out on a limb and [Judge] Enright's characterization of it as an abomination was accurate."²⁰⁶

LaFleur appealed his conviction, and Burns argued the case in front of the Ninth Circuit Court of Appeals, which affirmed LaFleur's and Holm's convictions.²⁰⁷ This case is now the precedential case for life without parole within the Ninth Circuit.²⁰⁸

CONCLUSION

This case is memorable for many reasons. Not only did it involve the callous, cold-blooded, premeditated murder of another human being, but the victim was an eighty-two-year old man who had done nothing wrong other than being in the wrong place at the wrong time. It was a media spectacle, requiring the defense attorneys to request a change of venue and allowing two jurors to have extrinsic knowledge of Holm's guilty plea during the trial. The fact that the defendants drove

²⁰³LaFleur, Sentencing Transcript, 94–95.

²⁰⁴Ibid.

²⁰⁵Valerie Alvord, "Bloomquist's Remorseful Killer Sentenced to Life Without Parole," *San Diego Union-Tribune*, Sept. 26, 1989.

²⁰⁶Burns Interview.

²⁰⁷LaFleur, 971 F.2d 200 (9th Circ. 1992).

²⁰⁸Burns Interview.

Bloomquist to Camp Pendleton, a military base subject to federal jurisdiction, had a tremendous impact on the defendants' potential sentences.

In a recent interview, Burns said the verdict was proportionate and just, and he still "has no compunction about LaFleur and Nick Holm spending the rest of their life in prison. That's where they belong. . . . Once was enough. They forfeited their right to be among us."²⁰⁹ Burns also described Conte as a good lawyer, who gave LaFleur a good defense and that it was a "hard fought trial."²¹⁰

Even twenty-five years later, both Burns and Boesen vividly remember not only the factual details of the case, but the emotional toll the murder of a "defenseless, elderly man that could have easily been overpowered" took on everyone, including the widowed Nora Bloomquist.²¹¹ Mrs. Bloomquist lamented, "We had everything to live for, but now I'm all alone. I'll probably be joining him soon."²¹²

²⁰⁹Ibid.

²¹⁰Ibid.

²¹¹Ibid.; Boesen Interview. Boesen spoke of his long relationship with Judge Burns, calling him "a great guy, and so smart."

²¹²Alvord, "LaFleur Convicted Himself."

"STRIPPERGATE": POLITICAL CORRUPTION IN AMERICA'S FINEST CITY

KATHERINE BROWN

On May 14, 2003, FBI agents and San Diego police detectives raided City Hall and searched the offices of city councilmen Ralph Inzunza and Michael Zucchet.¹ When the FBI agents arrived at City Hall, many city employees were confused by the agents' presence. As Toni Atkins, a city councilwoman at the time stated, "People are pretty freaked out. No one knows what's going on. It's not every day we have the FBI on our floor."² The law enforcement officials stated that "the search was based on conversations intercepted through surveillance, wiretaps and listening devices" in the offices of Inzunza and Zucchet. While the FBI agents were searching City Hall, other agents were searching the Cheetahs strip club in Kearny Mesa (a community in eastern San Diego), and two strip clubs in Las Vegas, all owned by Michael Galardi.³ Federal prosecutors soon charged Inzunza and Zucchet with illegally taking campaign contributions from Galardi and Lance Malone, Galardi's lobbyist, in exchange for repealing a "no touch" ordinance that prohibited patrons and

¹*United States v. Inzunza*, 638 F.3d 1011 (9th Cir. 2011); Kelly Thornton and Caitlin Rother, "FBI Raids City Hall," *San Diego Union-Tribune*, May 15, 2003, http://legacy.sandiegouniontribune.com/news/metro/probe/20030515-9999_1n15search.html.

²*Ibid.*

³Thornton and Rother, "Councilmen Inzunza, Lewis and Zucchet Targeted," *San Diego Union-Tribune*, May 14, 2003, <http://legacy.sandiegouniontribune.com/news/metro/20030514-2354-search.html>.

Katherine Brown earned her juris doctorate from the University of San Diego School of Law. Her area of interest is civil litigation.

strippers from touching each other in strip clubs.⁴ Dubbed "Strippergate" by the local media, this incident was the latest in a series of scandals involving civic leaders in the community the San Diego Chamber of Commerce proudly proclaimed "America's Finest City."

A DISTURBING PATTERN

One of the earlier and perhaps more well-known corruption scandals involves San Diego businessman C. Arnholt Smith, whose business empire in San Diego included grocery stores, taxicab companies, an airline, a bus line, and real estate holdings.⁵ Smith was also the first owner of the San Diego Padres baseball team and brought the team into the National League in 1969 as an expansion team.⁶ Despite the fact that Smith established one of San Diego's most beloved sports teams and held a reputation as a San Diego "rainmaker," his legacy may be overshadowed by the scandal that followed his success.⁷ In the early 1970s, government investigators discovered that Smith's bank, the U.S. National Bank, made unsecured loans to some of Smith's other businesses and ultimately declared the bank insolvent.⁸ The U.S. National Bank had an outstanding debt of \$400 million, making it the biggest bank failure in

⁴Charles Lewis, another San Diego city councilman at the time, was also charged for these crimes but died before the trial. Discussion of Lewis' role in Strippergate is omitted from this article for purposes of clarity. "'Strippergate Scandal' Stirs up City Hall," *ABC 10 News*, Feb. 11, 2005, <http://www.10news.com/news/-strippergate-scandal-stirs-up-city-hall>; Tony Perry, "Trial Begins for Officials in San Diego," *Los Angeles Times*, May 4, 2005, <http://articles.latimes.com/2005/may/04/local/me-strip4>.

⁵John Quirt, *Deil Gustafson's Biggest Salvage Job: The Minneapolis Wheeler-Dealer Who Collects Banks and Run-Down Real Estate Is Trying to Take Over the Battered Properties Once Controlled by C. Arnholt Smith, His Ambitious Plans Face Some Formidable Obstacles* (Chicago, 1978); "San Diego Tycoon C. Arnholt Smith Dies," *Los Angeles Times*, June 10, 1996, http://articles.latimes.com/1996-06-10/news/mn-13551_1_san-diego.

⁶Holcomb B. Noble, "C. Arnholt Smith, 97, Banker and Padres Chief Before a Fall," *New York Times*, June 11, 1996, <http://www.nytimes.com/1996/06/11/us/c-arnholt-smith-97-banker-and-padres-chief-before-a-fall.html>.

⁷Steve Erie, an associate professor of political science at University of California, San Diego, stated that Smith "was the rainmaker in San Diego in the 1950s and 1960s." Professor Erie explained, "Anything that happened in this town required his approval and blessing. A small group of six or seven men ran San Diego but he was at the top." "San Diego Tycoon C. Arnholt Smith Dies."

⁸Quirt, "Deil Gustafson's Biggest Salvage Job"; Noble, "C. Arnholt Smith, 97."



In May 2003, FBI agents and San Diego police searched the City Hall offices of councilman Ralph Inzunza (shown above) and Michael Zucchet. (Courtesy of United States Attorney's Office, Southern District of California)

the nation at the time.⁹ Smith was later indicted on charges of bank fraud, income tax evasion, and illegal campaign contributions, and was ultimately convicted in the U.S. District Court for the Southern District of California for embezzling \$8.9 million from his businesses in 1979.¹⁰

A more recent scandal involved the corruption of San Diego city officials regarding the public pension fund. In 2003, city officials admitted that the city had misstated its financial condition for the previous several years, after Diann Shipione, a pension board trustee, blew the whistle on the city's financial corruption.¹¹ While on the city's pension board, Shipione learned "that the city had for years been shortchanging its public pension fund, leading to an unfunded liability of more than \$1.15 billion" and "that the city owed nearly \$1 billion more in health care benefits to retirees and did not have the money."¹² After this revelation, both the manager and the auditor of the city's pension board resigned.

Two retired city employees, concerned that they would not get their benefits because of the city's mismanagement of the pension fund, filed a class-action lawsuit against San Diego on behalf of more than 5,000 employees.¹³ The two retirees, Jim Gleason and Dave Wood, sought "payment of money to the San Diego City Employees Retirement System" and the "removal from office of a majority of the system's board of trustees."¹⁴ Then, in 2004, the Securities and Exchange Commission, the FBI, and the U.S. Attorney's Office in San Diego started investigations into the city's financial statements and possible political corruption.¹⁵ The failure to manage the pension fund adequately has had a lasting impact on the city's pension

⁹Ibid.

¹⁰See *Harmsen v. Smith*, 693 F.2d 932 (9th Cir. 1982); "San Diego Tycoon C. Arnholt Smith Dies."

¹¹John Ritter, "San Diego Now 'Enron by the Sea,'" *USA Today*, Oct. 24, 2004, http://usatoday30.usatoday.com/news/nation/2004-10-24-sandiego-_x.htm; John M. Broder, "Sunny San Diego Finds Itself Being Viewed as a Kind of Enron-by-the-Sea," *New York Times*, Sept. 7, 2004, <http://www.nytimes.com/2004/09/07/us/sunny-san-diego-finds-itself-being-viewed-as-a-kind-of-enronbythesea.html>.

¹²Ibid.

¹³Ritter, "San Diego Now 'Enron by the Sea,'" ; Broder, "Sunny San Diego"; "Retirees Sue City Hall Over Pension Fund," *San Diego Union-Tribune*, Jan. 18, 2003, <http://legacy.sandiegouniontribune.com/news/metro/pension/20030118-87-retirees.html>.

¹⁴Ibid.

¹⁵Ritter, "San Diego Now 'Enron by the Sea,'" ; Broder, "Sunny San Diego."

system.¹⁶ In the midst of this scandal, Mike Aguirre, a securities lawyer and former financial fraud investigator who was running for San Diego city attorney at the time, stated, "The basic story is that San Diego has become a thoroughly corrupt community in which the power players cut the deals, you don't ask any questions, and everybody gets what they want."¹⁷

In the midst of San Diego's pension scandal, the Strippergate scandal broke. In addition to the charges of bribery and the involvement of nude dancers, Strippergate is perhaps more provocative than both the Smith and pension scandals because controversy still lingers regarding the actual guilt of two of the alleged offenders, Inzunza and Zucchet. Some still question whether these two councilmen were guilty of the charged crimes and whether the public backlash they faced, which arguably led to the demise of any future political career they may have had, was warranted.¹⁸

The crimes involved in the Strippergate case, particularly honest services fraud, are complex and can be difficult to understand.¹⁹ Their complexity did not make the case amenable to receiving the large amount of public attention that it received. This scandal left a lasting legacy because of three primary factors: first, it involved strippers and bribes, topics that catch the public's attention; second, it likely ended the potentially long and successful careers of two young, up-and-coming politicians; third, it received a great deal of media focus and attention from the public because the San Diego city government was already in the spotlight with the pension mismanagement scandal. These factors make the case interesting to examine and point to the importance of Strippergate in the history of corruption cases in the Southern District. Although the Strip-

¹⁶See Greg Moran, "Pension Problems Not Going Away Soon," *San Diego Union-Tribune*, Nov. 17, 2008, <http://legacy.sandiegouniontribune.com/news/metro/pension/20081117-9999-1m17pension.html>.

¹⁷Broder, "Sunny San Diego."

¹⁸See Daniel Coffey, "Justice Undone: Michael Zucchet and Ralph Inzunza," *San Diego Source*, Oct. 14, 2010, http://www.sddt.com/Commentary/article.cfm?Commentary_ID=176&SourceCode=20101014tza#.VsAcl5MrJsO; Dan Lawton, "'Strippergate': A Decade-long Mockery of Justice," *San Diego Source*, Nov. 5, 2012, http://www.sddt.com/Commentary/article.cfm?Commentary_ID=194&SourceCode=20121105tza&_t=Strippergate+a+decadelong+mockery+of+justice#.VtNjVpMrKYW.

¹⁹See Glen Austin Sprovier, "The Prosecutor's Pistol: The Genesis and State of Honest-Services Fraud," *Criminal Law Reporter* 89 (2011): 1, <http://www.coleshotz.com/2B7963/assets/files/News/366.pdf> ("The labyrinth of doctrine surrounding the federal honest-services fraud statute, 18 U.S.C. §1346, is a constant source of confusion to both white collar criminal practitioners and corporate regulators").

pergate scandal added to the history of corruption in the city and potentially ruined the political careers of two young city councilmen, there is hope that this scandal brought something positive to San Diego. With the huge amount of media attention, San Diego residents were reminded of the important role that city government plays in their lives. Because of Strippergate and the pension scandal, public scrutiny over the city government increased, and the public learned that the local government's decisions and actions can and do impact their daily lives. The scandal also served to remind the members of the city government that the public is watching over them and that government officials will be held accountable for questionable or unlawful conduct. This dual reminder can benefit San Diego in the long run, as it can lead to a more efficient and accountable city government.

INFLUENCING CITY GOVERNMENT

In 2000, the San Diego City Council enacted a "no touch" ordinance that banned touching between strippers and patrons of strip clubs. The previous law regarding touching only prohibited "lewd and lascivious" conduct.²⁰ This law was difficult for police officers to enforce because "nobody could come up with exactly what was lewd and lascivious." Thus, the no touch ordinance was designed to make it easier to enforce the law by providing a clearer definition of what was allowed in strip clubs. The ordinance also included provisions that prohibited touching between dancers and patrons during a performance; prohibited touching on certain parts of the dancer's body; and banned nude dance clubs from operating at certain hours.²¹

Although the no touch ordinance benefitted law enforcement, strip club owners were not pleased with its enactment. Some strip club owners and dancers were concerned that it would lead to a loss of profits and tips.²² In response to this ordinance, and the potential loss of profits, Michael Galardi sought to get it repealed.²³ In addition to Cheetahs Totally Nude Club in San Diego, Galardi owned a number of strip

²⁰*Inzunza*, 638 F.3d at 1006, 1010.

²¹Ray Huard, "Law Gives Police, Strip Clubs Definite Guidelines," *San Diego Union-Tribune*, May 16, 2003, http://legacy.sandiegouniontribune.com/news/metro/20030516-9999_1n16adult.html.

²²The issue of a decrease in tipping was a major concern for the dancers in the clubs, especially for those dancers whose only income was from tips. *Ibid*.

²³*Inzunza*, 638 F.3d at 1010.

clubs in Las Vegas.²⁴ To help get the no touch ordinance repealed, Galardi enlisted Lance Malone, who was a former Las Vegas county commissioner.²⁵

To repeal the ordinance, Galardi and Malone sought the help of San Diego City Council members. The conversations between Malone and Ralph Inzunza, the city councilman who represented District 8 at the time, began in May 2001, when Malone and John D'Intino, one of Galardi's employees, attended a fundraising event for Inzunza.²⁶ At this event, Malone gave Inzunza campaign contribution checks that totaled \$1,750 from associates of the Cheetahs strip clubs. Inzunza listened to Malone and D'Intino, and stated that the best way to get the ordinance repealed would be to get a police officer to come to a city council meeting and explain that the ordinance was not working. Inzunza explained that having an officer express concerns would enable him to bring the issue before the Public Safety and Neighborhood Services Committee, which oversaw the adult entertainment industry in San Diego.²⁷

In June 2001, Malone and Inzunza met for lunch, and Malone gave Inzunza \$8,650 in checks, which were traceable to Galardi. Inzunza told Malone that he would get the no touch ordinance on the city council's docket, and that they would need Zucchet's help to get the ordinance repealed. Zucchet was running for a seat on the city council at the time, and, according to Malone, Inzunza told him, "We get him in, you support him, we'll get it off."²⁸ Then, in July 2001, Inzunza spoke to Malone and told him that they would meet with Zucchet at an upcoming fundraiser. Malone met privately with Zucchet at the fundraiser and gave him \$6,750 in checks.²⁹ However, when Zucchet learned that the money was traceable to Galardi and the Cheetahs clubs, he decided to return the checks out of concern that accepting the money would be a political liability. Although Zucchet did not accept the \$6,750, he left open the possibility of accepting contributions from Malone in the future.³⁰

In early 2002, movement toward repealing the no touch ordinance progressed further when Inzunza asked Malone to come to

²⁴*Ibid.*; Perry, "Trial Begins for Officials in San Diego."

²⁵*Inzunza*, 638 F.3d at 1010.

²⁶*Ibid.*

²⁷*Ibid.*

²⁸*Ibid.*

²⁹This \$6,750 was "more than half of the total raised for Zucchet at the fundraiser." *Ibid.*

³⁰*Ibid.*

an upcoming luncheon for Zucchet and to bring "a few thousand dollars" in checks that were not traceable to the adult entertainment industry to give to Zucchet.³¹ To get help in obtaining this money, Malone contacted Tony Montagna, one of Galardi's employees who ran a gym in San Diego.³² Montagna, who was an FBI informant at the time, got his clients to write \$2,000 in checks. D'Intino then delivered the checks from Montagna to Zucchet at a fundraiser in February 2002.³³ That year, there was a runoff election between Zucchet and Kevin Faulconer for the District 2 city council seat.³⁴ During the runoff election, Malone delivered an additional \$3,000 in checks to Zucchet.³⁵ Zucchet won the November 2002 runoff election.³⁶

While Zucchet was working on his runoff campaign, Inzunza and Malone continued to work together. In March 2002, Inzunza told Malone that he would start to put together a legislative proposal that would repeal the no touch ordinance. They determined that to repeal the no touch ordinance, they needed support from law enforcement, and they agreed that their best strategy for repealing the ordinance would be to get "a cop to provide cover for the plan, so that it appeared that the police were behind the legislative push."³⁷ Malone then contacted Detective Russ Bristol, who was a San Diego police officer and an FBI informant at the time.³⁸ Inzunza wanted to keep the plan to repeal the ordinance a secret, stating, "[I]f this gets out to the media, I'm gonna tell 'em I wanted to make the ordinance tougher." Also, per Inzunza's request, Malone had emails sent to the city council from two fictitious citizens regarding the no touch ordinance so that Inzunza could have "a pretext for his interest in the no touch ordinance."³⁹

³¹Ibid. at 1010–11.

³²Ibid.

³³Ibid. at 1011.

³⁴Ralph Inzunza was reelected to his city council seat in District 8 in this same election. Ray Huard and Caitlin Rother, "Frye, Inzunza Re-elected; Runoff to Decide Two S.D. Council Seats," *San Diego Union-Tribune*, March 7, 2002, http://legacy.sandiegouniontribune.com/news/politics/cities/20020307-9999_1m7sdelect.html.

³⁵*Inzunza*, 638 F.3d at 1011. Kevin Faulconer now serves as the mayor of San Diego.

³⁶Ibid.; "Election History—Council District 2, City of San Diego," *City of San Diego—Office of the City Clerk*, <http://www.sandiego.gov/city-clerk/pdf/cd2results.pdf>.

³⁷*Inzunza*, 638 F.3d at 1011.

³⁸The Ninth Circuit Court of Appeals noted that Malone "already had an ostensibly corrupt relationship" with Detective Bristol. Ibid.

³⁹Ibid.



An FBI agent took this photo of (left to right) Lance Malone, Ralph Inzunza, Michael Zucchet, and Tony Montagna as they left the Grant Grill together. (Courtesy of United States Attorney's Office, Southern District of California)

After Zucchet's victory in the November 2002 runoff election, he was assigned to the Public Safety and Neighborhood Services Committee. In February 2003, Zucchet, Inzunza, and Malone met for lunch to discuss the ordinance. At this meeting, the three men clarified their objectives and discussed various methods to succeed in repealing the ordinance. Zucchet expressed doubt about the likelihood of getting support from law enforcement as well as their overall chances of repealing the ordinance. Despite Zucchet's reservations, after the lunch Malone told Galardi that both councilmen were on board.⁴⁰

With Zucchet's skepticism throughout the discussions with Inzunza and Malone, and his concerns regarding their ability to obtain support from law enforcement, Malone and Galardi were concerned that he was not committed to repealing the ordinance. In February 2003, "Malone told Galardi that he would follow up with Inzunza to ensure that Zucchet would 'come through' for them." When Malone tried to get Zucchet and Detective Bristol to meet, Zucchet refused and instead set up a meeting with Lieutenant Kanaski, the head of the vice unit.

⁴⁰Ibid.

Malone asked Inzunza to follow up with Zucchet after he met with Kanaski and told Inzunza, "I'm there for you anything you ever need . . . I mean there's never a question."⁴¹

When Zucchet met with Lieutenant Kanaski, they discussed the no touch ordinance and Kanaski made it clear that law enforcement did not oppose the ordinance.⁴² Malone found out about this conversation and became concerned about the status of his relationship with Inzunza and Zucchet.⁴³ However, members of Inzunza's staff assured Malone that both councilmen would still work on repealing the ordinance. Galardi testified that in March 2003, he gave Malone \$6,000 in cash to distribute between Inzunza and Zucchet.⁴⁴

Malone then developed a new plan where a "concerned citizen" would appear before the Public Safety and Neighborhood Services Committee and request that some of the provisions in the no touch ordinance be tightened. This would provide an opportunity for Detective Bristol to testify and to criticize the ordinance at a committee meeting, which would then enable Inzunza to repeal it. On April 16, 2003, Malone and Zucchet had breakfast, and Zucchet told Malone "that he 'would do the lifting at the committee level.'" Galardi testified that before the breakfast, he gave Malone \$10,000 to give Inzunza and Zucchet.⁴⁵

On April 30, 2003, Malone's "concerned citizen" plan was executed. After the "concerned citizen" appeared before the Public Safety and Neighborhood Services Committee, "Zucchet referred the matter for a report by the city attorney, which amounted to a referral to the committee."⁴⁶ Inzunza then put the no touch ordinance before the committee, and his staff worked on a memo with Malone to submit to its members.⁴⁷

Plans to repeal the no touch ordinance abruptly ended on May 14, 2003, when FBI agents and San Diego police detectives raided City Hall and searched the offices of Inzunza and Zucchet.⁴⁸ The day after the search, Zucchet answered questions from

⁴¹Ibid.

⁴²Ibid. at 1011-12.

⁴³Ibid. at 1012.

⁴⁴Ibid.

⁴⁵Ibid.

⁴⁶Ibid.

⁴⁷Ibid.

⁴⁸Ibid.; Thornton and Rother, "FBI Raids City Hall."

FBI agents for three-and-a-half hours.⁴⁹ Zucchet did not ask to have an attorney present because he believed he did "absolutely nothing wrong."⁵⁰ When asked if he had any idea why the FBI had searched his office, Zucchet acknowledged that it likely had something to do with Lance Malone and stated, "I'm not completely befuddled because . . . I have had contact with Lance Malone before." Zucchet further stated, "I haven't promised anything and . . . haven't taken any votes. I haven't done anything."⁵¹

On May 16, 2003, federal prosecutors began presenting their case to a grand jury, which would have to decide whether to indict Inzunza and Zucchet on fraud, bribery, extortion, and conspiracy charges.⁵² After the FBI raid, authorities revealed that federal agents had been conducting a secret two-year corruption probe that involved wiretaps, surveillance, and listening devices that had been placed in Galardi's strip clubs and in the offices of city council members.⁵³ On August 28, 2003, the grand jury indicted Inzunza and Zucchet on numerous counts of honest services wire fraud in violation of 18 United States Code sections 1343 and 1346, one count of conspiracy to commit honest services wire fraud in violation of 18 United States Code section 371, and three counts of extortion in violation of the Hobbs Act, 18 United States Code sections 1951 through 1952.⁵⁴ The grand jury also indicted Galardi and Malone on counts of honest services wire fraud, conspiracy to commit honest services wire fraud, extortion, and interstate travel in aid of racketeering.⁵⁵

⁴⁹Caitlin Rother, "Zucchet Denies Wrongdoing," *San Diego Union-Tribune*, May 15, 2003, http://legacy.sandiegouniontribune.com/news/metro/probe/20030515-9999_1n15zucc1.html.

⁵⁰*Ibid.*

⁵¹*Ibid.*

⁵²Kelly Thornton, "Grand Jury to Hear Case Today," *San Diego Union-Tribune*, May 16, 2015, http://legacy.sandiegouniontribune.com/news/metro/probe/20030516-9999_1n16fbi.html. Kelly Thornton and Marisa Taylor, "Federal Grand Jury Starts Work in Council Corruption Inquiry," *San Diego Union-Tribune*, May 17, 2003, http://legacy.sandiegouniontribune.com/news/metro/probe/20030517-9999_1n17grand.html.

⁵³Thornton, "Grand Jury to Hear Case Today."

⁵⁴*Inzunza*, 638 F.3d at 1012; Kelly Thornton, Caitlin Rother, and Ray Huard, "Inzunza, Lewis, Zucchet Allegedly Accepted Money from Strip-Club Owner and His Staff in Exchange for Favors," *San Diego Union-Tribune*, Aug. 28, 2003, <http://legacy.sandiegouniontribune.com/news/metro/probe/20030828-2331-indict.html>.

⁵⁵*Ibid.*

UNITED STATES V. INZUNZA

Ralph Inzunza and Michael Zucchet both pleaded not guilty to all charges on August 30, 2003.⁵⁶ To enter the courtroom to make their plea, the city councilmen had to pass "through a crush of supporters who gave them movie-star treatment."⁵⁷ One *San Diego Union-Tribune* reporter noted, "On their way in and out of the building, Ralph Inzunza . . . and Michael Zucchet were immediately surrounded by a crowd that cheered, waved campaign placards and chanted 'Fight! Fight! Fight!' in a scene that turned into a passionate political rally." Some supporters reportedly "grumbled to reporters, calling the case weak."⁵⁸

A little more than one week later, on September 8, 2003, Galardi pled guilty to a single count of wire fraud in a deal with the U.S. Attorney's Office. The deal required that Galardi testify against Inzunza and Zucchet. The plea agreement stated that Galardi had already provided some helpful information to the government and that if Galardi's cooperation were "substantial," the prosecutors would ask for a lighter sentence. In response to this plea deal, the attorney for Inzunza stated that any truthful testimony from Galardi could not hurt his client. At the hearing before U.S. district judge Jeffrey T. Miller, "Galardi admitted that he, D'Intino and Malone paid Inzunza . . . and Zucchet to 'corruptly influence them' to pursue repealing a 'no touch' rule at strip clubs." Before the indictment, D'Intino also reached a plea deal with the prosecution.⁵⁹

On November 3, Judge Miller designated the case as "complex," which resulted in a delay of the trial so that defense attorneys would have more time to prepare.⁶⁰ Judge Miller's ruling exempted the case from falling under the Speedy Trial Act, which requires that a defendant's trial begin within seventy days of the indictment.⁶¹ This act allows a judge to issue a con-

⁵⁶According to a *San Diego Union-Tribune* reporter, there appeared to be about two hundred people outside of the courthouse who greeted the councilmen. Kelly Thornton, "Councilmen Plead Not Guilty as Cheering Supporters Rally," *San Diego Union-Tribune*, Aug. 30, 2003, http://legacy.sandiegouniontribune.com/news/metro/probe/20030830-9999_1n30arraign.html.

⁵⁷*Ibid.*

⁵⁸*Ibid.*

⁵⁹*Ibid.*

⁶⁰Kelly Thornton, "Corruption Case Complexity Delays Start Date for Trial," *San Diego Union-Tribune*, Nov. 4, 2003, http://legacy.sandiegouniontribune.com/news/metro/probe/20031104-9999_1m4cityhall.html.

⁶¹18 U.S.C. §3161(c)(1) (2015); Thornton, "Corruption Case Complexity Delays Start."

tinuance of a trial when a "case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself."⁶² This decision came as no surprise, considering that there were about 2,000 pages of documents and 3,000 hours of recorded conversation. Both the prosecution and the defense accepted Judge Miller's decision.⁶³

On May 3, 2004, the attorneys commenced jury selection. As noted above, the investigation and trial in this case occurred during the time investigations were taking place into the mismanagement of San Diego's pension fund. Therefore, Judge Miller's admonition to the jury went beyond routine in an attempt to ensure that any of the jurors' feelings about the city's mismanagement of the pension fund did not impact their decisions in this case.⁶⁴ Specifically, Judge Miller told the jurors,

The overall financial status of the city is a source of public concern. There are questions concerning the city employees' pension fund, the resignation of the mayor and who will lead the city from this point forward. Each of us must openly acknowledge that these issues and challenges exist. At the same time, however, in the pursuit of our constitutional commitment to ensure a fair trial for every party in this case, we must set aside and not be influenced by the problems confronting the city.⁶⁵

On May 10, the trial officially began with opening statements from the prosecution and from the defense counsel for Inzunza and Zucchet.⁶⁶ Paul Cook, representing the United States, framed the case as one "about the corruption of the political process through bribery, undue influence, and deceit."⁶⁷ He told the jury that the prosecution would prove "that the purpose and intent of this scheme was to get the city councilmen to corruptly change an ordinance . . . that regulated the adult entertainment businesses here in San Diego . . . solely for

⁶²18 U.S.C. §3161(h)(7)(B) (2015).

⁶³Thornton, "Corruption Case Complexity Delays Start."

⁶⁴Kelly Thornton, "Judge Tries to Shield Trial from City Turmoil," *San Diego Union-Tribune*, May 4, 2005, http://www.sandiegouniontribune.com/uniontrib/20050504/news_1n4cityhall.html.

⁶⁵*Ibid.*

⁶⁶Perry, "Trial Begins for Officials in San Diego."

⁶⁷Opening Statement of Paul Cook, *United States v. Inzunza*, Transcript of Record at 16, May 10, 2005 (on file at U.S. Courts Library, San Diego).

the financial benefit of . . . Lance Malone, John D'Intino, and Michael Galardi."⁶⁸ Cook went on to state that the jury would hear much evidence through recorded conversation, and explained how the prosecution had obtained those recorded conversations.⁶⁹ He framed the facts to make the dealings between Inzunza, Zucchet, Malone, and Galardi more than just "politics as usual."⁷⁰ Cook mentioned the private meetings in the back rooms of Cheetahs, stressed the large financial stake that Galardi had in the repeal of the no touch ordinance, referred to the strategy to repeal the ordinance as a "hidden plan," and said the councilmen "orchestrated" this plan "to conceal their corrupt purpose" and to "cheat the people of this city of the honest services of their elected officials."⁷¹

Not surprisingly, Michael Pancer, Inzunza's defense attorney, took the opposite approach and argued that Inzunza was only doing his job when he discussed repealing the no touch ordinance with Malone. Specifically, Pancer stated, "the conversations that Ralph Inzunza had with Lance Malone are typical of the conversations that politicians have with voters and with lobbyists and with campaign contributors every day in this country."⁷² Pancer explained that it was not extortion when Inzunza requested that Malone get money for Zucchet by saying it was "a standard fundraising campaign contributor's call to try to raise money."⁷³ One of Pancer's last points in his opening statement minimized the role that Inzunza's actions to repeal the no touch ordinance had in Inzunza's life and emphasized the other standard tasks that a city councilperson must do, such as giving speeches, preparing for items on the council agenda, and attending council sessions. Pancer explained that meeting with lobbyists is part of a city councilperson's job, and that Inzunza was focusing on "doing what he thinks is best and preparing to do that which is best for the City of San Diego."⁷⁴

Raymond "Jerry" Coughlan, Zucchet's defense attorney, took a similar approach, emphasizing that Zucchet merely believed that he was doing his job as a councilman by discussing potential changes to the law with a lobbyist. Coughlan also stressed the lack of evidence that the prosecution had against

⁶⁸Ibid.

⁶⁹Ibid. at 18.

⁷⁰Ibid. at 70.

⁷¹Ibid. at 18, 25–26, 27, 70–71.

⁷²Ibid. at 91.

⁷³Ibid. at 111.

⁷⁴Ibid. at 119.

Zucchet.⁷⁵ He explained that a councilperson is a legislator, and a "legislator gathers information, strategizes, discusses possible law changes."⁷⁶ Coughlan further explained that Zucchet was never a part of a conspiracy but, instead, just "thought he was participating in discussions about possibly changing a variety of laws, including no touch."⁷⁷ Additionally, Coughlan cited Zucchet's lack of commitment to the plan and apprehension as evidence that the councilman was never a part of any conspiracy or plan to take money in exchange for repealing the ordinance.⁷⁸ Coughlan emphasized that in the audio recordings, Zucchet never made a promise in exchange for money.⁷⁹

In July 2005, after more than two months, almost forty witnesses, and countless hours of recorded conversations, the closing arguments began.⁸⁰ John Rice, an assistant U.S. attorney arguing for the prosecution, tried to explain the lack of an explicit agreement between the councilmen and Malone. Rice stated that money had been exchanged for repealing the no touch ordinance and emphasized that people engaged in a bribe will not expressly say that this is a bribe.⁸¹ Specifically, Rice stated, "When you agree to do anything illegal, you don't write it down or spell out the terms. But you make it clear over time and by what you do."⁸² Rice argued that the only reason Inzunza and Zucchet had worked to repeal the ordinance was to get money from Malone and Galardi, and that the councilmen sought to accomplish their goal by using deception and hiding their plan through "disguised money, bogus e-mails, sham issues and counterfeit citizens."⁸³

In the defense's closing arguments, Pancer argued that it was wrong for the prosecution to depict Inzunza as greedy and

⁷⁵Ibid. at 128–29.

⁷⁶Ibid. at 129.

⁷⁷Ibid. at 129.

⁷⁸See *ibid.* at 134.

⁷⁹Ibid. at 165.

⁸⁰Kelly Thornton, "Latter Phase Could Produce 'Fireworks,'" *San Diego Union-Tribune*, July 3, 2005, <http://legacy.sandiegouniontribune.com/news/metro/probe/20050703-9999-1m3cityhall.html>.

⁸¹Thornton, "Prosecution Tells Jurors It Was Bribery," *San Diego Union-Tribune*, July 7, 2005, <http://legacy.sandiegouniontribune.com/news/metro/probe/20050707-9999-7m7cityhall.html>.

⁸²Ibid.

⁸³Ibid.

willing to take bribes just to get money from Galardi.⁸⁴ Pancer argued that Inzunza's primary motive was serving the public, stating, "He is not driven by a desire for campaign contributions, there is just no doubt that what he is driven by is serving his constituents."⁸⁵ Pancer also noted that Inzunza had a surplus of campaign money after he ran for office, so he would have no reason to accept a bribe from Malone.⁸⁶

In Coughlan's closing argument, he emphasized that, after speaking with Malone and Inzunza about repealing the ordinance, Zucchet tried to learn about the issue on his own by speaking to Lieutenant Kanaski. Coughlan noted that although Zucchet may have expressed interest in repealing the no touch ordinance, he was skeptical of Malone, and his real goal was to get rid of two strip clubs in his district, Les Girls and the Body Shop, because he thought they were eyesores. Again, Coughlan emphasized Zucchet's actions and statements that demonstrated his lack of commitment to the alleged plan and were inconsistent with someone who had agreed to take a bribe.⁸⁷

On July 18, 2005, the jury returned guilty verdicts for Inzunza and Zucchet.⁸⁸ The jury found Inzunza guilty on one count of conspiracy, nine counts of honest services fraud, and three counts of extortion.⁸⁹ They found Zucchet guilty of one count of conspiracy, five counts of honest services fraud, and three counts of extortion.⁹⁰ Following these verdicts, both defendants moved for judgments of acquittal and, alternatively, new trials.⁹¹

Judge Miller denied Inzunza's motion and sentenced him to twenty-one months in prison.⁹² However, in a surprising and rare move, Judge Miller granted Zucchet's motion for a judgment of acquittal on the extortion charge and on four of the

⁸⁴Thornton, "Lawyer Insists Client Inzunza Is Not Greedy," *San Diego Union-Tribune*, July 8, 2005, <http://legacy.sandiegouniontribune.com/news/metro/probe/20050708-9999-7m8cityhall.html>.

⁸⁵Ibid.

⁸⁶Ibid.

⁸⁷Ibid.

⁸⁸Karen Kucher, "Two San Diego Councilmen Convicted on Corruption Charges," *San Diego Union-Tribune*, July 18, 2005, <http://legacy.sandiegouniontribune.com/news/metro/probe/20050718-1234-bn18trial2.html>.

⁸⁹*Inzunza*, 638 F.3d at 1012; Kucher, "Two San Diego Councilmen Convicted."

⁹⁰Ibid.

⁹¹*Inzunza*, 638 F.3d at 1012.

⁹²Ibid.

honest services counts.⁹³ On the remaining honest services count and conspiracy count, Judge Miller denied the motion for acquittal but granted a new trial.⁹⁴ Following the jury's verdict and Judge Miller's decision, Inzunza appealed his convictions. The government appealed the district court's ruling to grant Zucchet's motion for acquittal on several counts and his motion for a new trial on the remaining counts.⁹⁵

THE COURT OF APPEALS DECISION

On September 1, 2009, a three-judge panel of the United States Court of Appeals for the Ninth Circuit ruled on the appeals from the district court decision.⁹⁶ On Inzunza's appeal, the Ninth Circuit found that there was "sufficient evidence from which a rational jury could find that Inzunza conspired to commit honest services fraud." Therefore, the Ninth Circuit held that the district court properly denied Inzunza's motion for a judgment of acquittal and a motion for a new trial.⁹⁷

The Ninth Circuit also upheld the district court's decision to grant Zucchet's motion of acquittal for the Hobbs Act violation and four honest services counts, and the motion for a new trial on the remaining counts.⁹⁸ In upholding the district court's decision regarding Zucchet, the Ninth Circuit emphasized the lack of an explicit promise.⁹⁹ Although the Ninth Circuit acknowledged that Zucchet had attended the strategy session with Malone, and that Zucchet had agreed to refer the no touch ordinance issue to the Public Safety and Neighborhood Services Committee, the court found that there "was neither an explicit promise nor a connection of such a promise to a contribution."¹⁰⁰ Furthermore, the court noted that the government's case against Zucchet contained "large gaps" and that the government relied

⁹³Ibid.; Thornton, "Split Decision," *San Diego Union-Tribune*, Nov. 11, 2005, http://www.sandiegouniontribune.com/uniontrib/20051111/news_7n11cityhall.html.

⁹⁴*Inzunza*, 638 F.3d at 1012.

⁹⁵See *Inzunza*, 638 F.3d 1006.

⁹⁶Ibid.; Thornton, "A Simple Note Signals a Judge's Validation," *Voice of San Diego*, Sept. 2, 2009, <http://www.voiceofsandiego.org/topics/government/a-simple-note-signals-a-judges-validation/>.

⁹⁷*Inzunza*, 638 F.3d at 1016.

⁹⁸Ibid. at 1025–26.

⁹⁹Ibid. at 1025.

¹⁰⁰Ibid.

heavily on "Inzunza's dealings with Malone as circumstantial evidence of Zucchet's guilt," but that there was "simply nothing in the record to confirm Zucchet's participation in their bargain."¹⁰¹ Therefore, the Ninth Circuit agreed "with the district court that no reasonable juror could have found that Zucchet aided or abetted any agreement with unambiguous *quid pro quo* . . . or agreed to a *quid pro quo* himself prior to that date."¹⁰² The Ninth Circuit used a similar rationale in its decision to uphold the district court's grant of Zucchet's motion for a new trial on one honest services count and the conspiracy count.¹⁰³ Again, the Ninth Circuit noted that the evidence failed to show that there was an explicit *quid pro quo* between Zucchet and Malone to repeal the no touch ordinance.¹⁰⁴

The importance of the Ninth Circuit's ruling to uphold Judge Miller's decision was recognized throughout the legal community in the Southern District. Judge Miller's decision surprised many and was highly criticized, especially by jurors in the case. In an email responding to Judge Miller's decision regarding Zucchet, one juror wrote, "What a bunch of bull!"¹⁰⁵ Another juror, standing by the jury's decision to convict Zucchet, explained that he was "really flummoxed by the judge's decision."¹⁰⁶

The jury foreman, Kenny Hill, was perhaps the most shocked and offended by Judge Miller's decision to overturn their verdicts for Zucchet. Following Judge Miller's decision, Hill stated that he did not understand what the jurors did wrong, because they followed Judge Miller's instructions, and he asked, "How did we misinterpret those instructions?"¹⁰⁷ In expressing his frustration with the decision, Hill further stated, "It's like we were allowed to play judge as long as we make a decision the judge agrees with. What's the point then? I don't want to play-act the role. He's supposed to be judged by a jury of his peers."¹⁰⁸ Hill continued to stand by the jury's verdict after the Ninth Circuit's decision. Hill disagreed with the Ninth Circuit's ruling because "[Zucchet] may not have had as much

¹⁰¹Ibid.

¹⁰²Ibid. at 1026.

¹⁰³See *ibid.*

¹⁰⁴Ibid.

¹⁰⁵Alex Roth and Steve Schmidt, "After Acquittals, Some Wonder if Time Wasted," *San Diego Union-Tribune*, Nov. 12, 2005, <http://legacy.sandiegouniontribune.com/news/metro/probe/20051112-9999-1n12jury.html>.

¹⁰⁶Ibid.

¹⁰⁷Thornton, "Split Decision."

¹⁰⁸Ibid.

communication with Malone early on, but he knew there was some type of plan and agreed to participate almost from the beginning. He wasn't always as enthusiastic about it but when the time came to perform, he was there."¹⁰⁹

Although some disagreed with Judge Miller's controversial decision, Miller was supported by his colleagues. Judge Thomas Whelan, recognizing that it is often unpopular for judges to set aside a jury's verdict, stated, "I'm sure he agonized over this and thought he was right, and he was. I'm sure he feels vindicated and justified in what he did. An impartial group of judges looked at it and agreed with him."¹¹⁰ After the Ninth Circuit's ruling, Judge Whelan stated, "I think [Judge Miller] made the bench and judges look good. I'm proud to be his colleague."¹¹¹

THE ROLE OF *UNITED STATES V. INZUNZA* AS A HEADLINE TRIAL

To understand the importance of the *United States v. Inzunza* case, and its full impact on the Southern District, it is necessary first to examine the factors that caused this case to become such a major event in San Diego. The amount of publicity this case received is crucial to its impact on the San Diego community.

In his book *The Big Trial*, Lawrence Friedman examines some of the nation's most high-profile trials and discusses what factors can lead to a trial becoming big news.¹¹² Friedman defines the term *headline trial* as a trial that makes the headlines and often the front page of the newspaper, is a part of the evening news, and evokes intense public interest. Friedman uses the O.J. Simpson trial as a clear example of a headline trial.¹¹³ He explains that although there are various types of headline trials, they all have one thing in common: they occur in the public spotlight.¹¹⁴ Most trials occur without any public spectacle, but headline trials catch the public eye. Reporters and members of the public fill the courtrooms to view these trials, making them very visible to the public.

¹⁰⁹Thornton, "A Simple Note."

¹¹⁰*Ibid.*

¹¹¹*Ibid.*

¹¹²Lawrence M. Friedman, *The Big Trial: Law as Public Spectacle* (Lawrence, KS, 2015).

¹¹³*Ibid.*

¹¹⁴*Ibid.*, 2–3.

It is clear that the *United States v. Inzunza* trial fits Friedman's definition of a headline trial. The trial garnered high public attention and was the topic of countless news stories. Public interest started in the early stages of the trial. One *San Diego Union-Tribune* article noted that, after grand jury proceedings, there was a "crowd of media staking out" the building.¹¹⁵ Michael Wheat, an assistant U.S. attorney who represented the United States in the trial, recalled that the courtroom was packed throughout the trial, and the media were there every day.¹¹⁶ The courtroom was also packed when the jury foreman read the verdict.¹¹⁷

Friedman posits that headline trials have "two distinct social tasks."¹¹⁸ The first "is to instruct, to teach, to send a message"; the second task "is to entertain."¹¹⁹ Both tasks are present in the *Inzunza* trial. Perhaps most obviously, the trial satisfied the second task, entertaining the people in San Diego and even people throughout the nation because of the media coverage. In Friedman's classification of headline trials, *United States v. Inzunza* falls within the "corruption and fraud" category.¹²⁰ He writes that trials in the corruption and fraud category include "impeachment trials, trials of government officials accused of taking bribes, and other trials that grow out of corruption in high places."¹²¹

Friedman notes that the trials in the corruption and fraud category usually do not attract as much attention as trials for violent crimes, especially when the trials involve more technical and complex laws.¹²² He also states that "in general, corruption trials, though they may be socially of the highest importance, are not likely to provide good theater."¹²³ This is likely the case because "local politicians are low on the food chain,

¹¹⁵Thornton and Taylor, "Federal Grand Jury Starts Work."

¹¹⁶Michael Wheat (assistant U.S. attorney, Department of Justice), in discussion with the author, Feb. 16, 2016, San Diego, CA.

¹¹⁷Greg Moran and Kelly Thornton, "Councilmen Guilty," *San Diego Union-Tribune*, July 19, 2005, <http://legacy.sandiegouniontribune.com/news/metro/probe/20050719-9999-1n19cityhall.html>.

¹¹⁸Friedman, *The Big Trial*, 6.

¹¹⁹*Ibid.*

¹²⁰*Ibid.*, 52–53.

¹²¹*Ibid.*, 53.

¹²²*Ibid.*, 57, 60.

¹²³*Ibid.*, 60.

and political corruption is hardly a rarity."¹²⁴ The *Inzunza* trial is one of the notable exceptions to Friedman's general rule.

Several factors likely played a role in drawing public attention to this trial. First, the scandal arose from efforts designed to repeal a law that governed strip clubs. Although the government declared in its opening statement that the case "is not a morality play about the propriety of nude dancing or the regulation of nude dancing" and the fact that this case deals with strip clubs and dancers "only serves as the backdrop for the corruption," it is difficult to imagine a more scandalous setting for the case.¹²⁵ The large impact this backdrop had on the case is evidenced by the nickname it acquired in San Diego: "Strippergate." Although the dancers and the strip clubs may not have been the focus of the crimes themselves, it was clearly the association of elected officials with the strip clubs that elicited media attention and public scrutiny. As one reporter noted, "[I]t's hard to top a scandal involving elected officials, strip clubs and Las Vegas influence peddlers."¹²⁶

The second factor that added to the drama of the trial and increased the attention this case received was the status of Inzunza and Zucchet in San Diego. According to Michael Wheat, Zucchet and Inzunza were viewed throughout San Diego as young, up-and-coming politicians, viewed by many as the best and the brightest, comprising the future of politics in San Diego.¹²⁷ At the time of the trial, Inzunza had represented District 8 for a little over four years.¹²⁸ Zucchet had represented District 2 for about two-and-a-half years and, despite the trial, had just been named acting mayor.¹²⁹ In fact, Zucchet held the job as mayor for less than sixty hours before the jury

¹²⁴Philip J. LaVelle, "Blemishes Keep City in National Spotlight," *San Diego Union-Tribune*, July 19, 2005, <http://legacy.sandiegouniontribune.com/news/metro/probe/20050719-9999-1n19council.html>.

¹²⁵Opening Statement of Paul Cook, *United States v. Inzunza*, Transcript of Record at 71, May 10, 2005 (on file at U.S. Courts Library, San Diego).

¹²⁶LaVelle, "Blemishes Keep City in National Spotlight."

¹²⁷Michael Wheat (assistant U.S. attorney, Department of Justice), in discussion with the author, Feb. 16, 2016, San Diego, CA.

¹²⁸Ronald W. Powell, Jennifer Vigil, and Matthew T. Hall, "Councilmen Will Step Down," *San Diego Union-Tribune*, July 20, 2005, http://www.sandiegouniontribune.com/uniontrib/20050720/news_1n20council.html; Susan Murphy, "Former San Diego Councilman Ralph Inzunza to Be Released from Prison," *KPBS*, Aug. 7, 2013, <http://www.kpbs.org/news/2013/aug/07/former-san-diego-councilman-ralph-inzunza-schedule/>.

¹²⁹Ron Donoho, "Guilty by Association," *San Diego Magazine*, Oct. 30, 2006, <http://www.sandiegomagazine.com/San-Diego-Magazine/April-2006/Guilty-by-Association/>.

announced its verdict.¹³⁰ Wheat recalled that Inzunza and Zucchet had talked about becoming senators one day.¹³¹ The fact that these two young men's political careers could end so abruptly added to the drama of the trial, and thus attracted more attention from the media and residents of San Diego.¹³²

The third factor was the case coinciding with the pension scandal. Because of this, the public's eye was already drawn to corruption in San Diego's city government. The pension scandal received national recognition and led to the mocking reference to San Diego as "Enron-by-the-Sea."¹³³ According to one local reporter, the Strippergate scandal "stunned veteran political observers and added to the feel of a rudderless city government." Larry Sabato, a University of Virginia political scientist, stated at the time, "Maybe it's just coincidence, but quite a number of unfortunate events have settled on San Diego almost simultaneously."¹³⁴

With San Diego already in the national spotlight for the pension scandal, the Strippergate scandal received more attention than it might have otherwise. People were already concerned about the city government's ability to manage its finances, and Strippergate added to these concerns. It left some concerned about "a lack of leadership and focus on finding a long-term solution to the financial strain caused by the pensions system."¹³⁵ Thus, because San Diego was already in the spotlight for its failures in handling the city's pension fund, more eyes were on the Strippergate scandal, and more people questioned whether San Diego could properly deal with the corruption that it faced.

In addition to meeting Friedman's second social task of entertainment, the *United States v. Inzunza* trial also met his first social task of teaching or sending a message.¹³⁶ With the public interest in the *United States v. Inzunza* trial and

¹³⁰Greg Moran and Kelly Thornton, "Inzunza, Zucchet Could Face Three to Four Years in Prison, Legal Experts Say; Now Reduced to Six Members, Council Will Need Five Votes to Pass Measures," *San Diego Union-Tribune*, July 19, 2005, <http://legacy.sandiegouniontribune.com/news/metro/probe/20050719-9999-1n19cityhall.html>.

¹³¹Michael Wheat in discussion with the author, Feb. 16, 2016, San Diego, CA.

¹³²Dan Lawton, "'Strippergate': A Decade-long Mockery of Justice," *San Diego Source*, Nov. 5, 2012, http://www.sddt.com/Commentary/article.cfm?Commentary_ID=194&SourceCode=20121105tza&_t=Strippergate+a+decalong+mockery+of+justice#.VtNjVpMrKYW.

¹³³Broder, "Sunny San Diego."

¹³⁴LaVelle, "Blemishes Keep City in National Spotlight."

¹³⁵*Ibid.*

¹³⁶Friedman, *The Big Trial*, 6.

the media attention the trial received, San Diego residents paid more attention to the city council than they had before. Because of the concerns over whether the city council could adequately address the scandals that it faced, the public's eye was on the city government. Although this increased focus on city government came from mismanagement of city funds and a corruption scandal involving strip clubs, it led to a positive result, in that it helped San Diego citizens realize the importance of the local government.

Local governments often play a much larger and more direct role in our daily lives than the federal government does. Despite that fact, many people pay closer attention to national politics than local politics.¹³⁷ Data from one study found that in 304 elections occurring in 144 cities from 1996 to 2011, the average voter turnout in mayoral elections was 25.8 percent.¹³⁸ In comparison, the voter turnout in the 2012 national election was 58.2 percent.¹³⁹

According to Michael Wheat, after the Strippergate scandal people started looking at the San Diego city council more closely. Throughout the scandal and the trial, many reports and articles in the local media focused on the corruption in the city government. One article in the *San Diego Union-Tribune* actually focused on how the corruption in the city government led to an increased concern over leadership in the San Diego government. The article discussed a countywide survey conducted in May 2005 by True Research Inc. of Encinitas.¹⁴⁰ Carried out in the midst of the *United States v. Inzunza* trial and the city's pension debacle, the survey showed that "[a] surge in concern about governmental leadership was the biggest change during the past three years in how San Diego County residents judge the problems in the region." In the survey, 13 percent of San Diego residents "identified some aspect of government or

¹³⁷See Emily Badger, "Why Is Voter Turnout for Mayoral Elections Always So Abysmally Low?" *City Lab*, Sept. 10, 2013, <http://www.citylab.com/politics/2013/09/why-voter-turnout-mayoral-elections-always-so-abysmally-low/6845/>.

¹³⁸Thomas M. Holbrook and Aaron C. Weinschenk, "Campaigns, Mobilization, and Turnout in Mayoral Elections," *Political Research Quarterly* (2013): 46, <http://prq.sagepub.com/content/67/1/42.full.pdf+html>.

¹³⁹Michael P. McDonald, "Turnout in the 2012 Presidential Election," *The Huffington Post*, Sept. 13, 2013, http://www.huffingtonpost.com/michael-p-mcdonald/turnout-in-the-2012-presi_b_2663122.html.

¹⁴⁰Jeff Ristine and Hala Aryan, "13 Percent Surveyed Say It's a Top Problem," *San Diego Union-Tribune*, July 25, 2005, <http://legacy.sandiegouniontribune.com/news/metro/probe/20050725-9999-1m25leaders.html>.

leadership as the No. 1 problem." In 2002, only 3 percent of the respondents said the government was their top concern.¹⁴¹

Norma Damasheck, vice president for public policy of the League of Women Voters of San Diego stated at the time, "It seems to take this kind of disaster to wake people up that there is a government out there and that good and bad things are getting done. They're being hit over the head with the events of the day."¹⁴² This wakeup call for the residents of San Diego taught them the importance of paying attention to the city government and the necessary role they play in making sure it runs efficiently.

The trial also sent a message to members of the city government that they would be held accountable for their unlawful actions. Because of their involvement with Galardi and Malone, Inzunza and Zucchet were monitored for years.¹⁴³ Unbeknownst to the two councilmen, the FBI employed informants and set up wiretaps and listening devices in Galardi's strip clubs and in City Hall.¹⁴⁴ These investigatory tools and the useful information they provided for the trial sent a message to the members of the local government to act lawfully and responsibly, because even if the citizens do not seem to be paying close attention now, any unlawful or scandalous behavior will come to light at some point.

CONCLUSION

Following the *United States v. Inzunza* trial, both Zucchet and Inzunza resigned from the city council. Judge Miller sentenced Inzunza to twenty-one months in prison.¹⁴⁵ In January 2012, Inzunza finally began serving his sentence, and he was released on August 7, 2013.¹⁴⁶ The government decided not to pursue further action against Zucchet on the remaining charg-

¹⁴¹Ibid.

¹⁴²Ibid.

¹⁴³Michael Wheat (assistant U.S. attorney, Department of Justice), in discussion with the author, Feb. 16, 2016, San Diego, CA.

¹⁴⁴Thornton and Rother, "FBI Raids City Hall"; *Inzunza*, 638 F.3d at 1012.

¹⁴⁵*Inzunza*, 638 F.3d at 1012.

¹⁴⁶"Former Councilman in 'Stripper-Gate' Headed to Prison," *ABC 10 News*, Jan. 10, 2012, <http://www.10news.com/news/former-councilman-in-stripper-gate-headed-to-prison>; Murphy, "Former San Diego Councilman Ralph Inzunza."

es, so the charges against him were dropped.¹⁴⁷ He now serves as the general manager of the San Diego Municipal Employees Association, a union for San Diego city employees.¹⁴⁸

After Judge Miller set Inzunza's prison sentence, Inzunza stated, "What is so hard for me is that I will live with this scarlet letter for the rest of my life, and that it's so painful and so hard. When the raid of my office took place and the indictments and the conviction, I feel as if part of me had died, and I know that part of my obituary has already been written."¹⁴⁹ Zucchet expressed a similar sentiment in an interview, stating, "The thing I took hardest of all of this—threatening my freedom, ruining me financially, going after my family, you name it—the thing that was hardest for me to take is that I feel like that career was stolen from me."¹⁵⁰ These statements serve as a good reminder of the severe impact the Strippergate scandal had on the two men at the center of it. Although the scandal may have eliminated any possibility of successful political careers for Zucchet and Inzunza, one can hope that it will have a long-term positive impact on San Diego.

Despite the lessons learned from previous scandals—C. Arnholt Smith, the pension mismanagement debacle, and Strippergate—San Diego experienced yet another scandal in its city government in 2013, when former mayor Bob Filner was sentenced for sexual harassment.¹⁵¹ In October 2013, Filner pleaded guilty to one felony false imprisonment charge and two misdemeanor battery charges for forcibly kissing or grabbing three women. Filner was sentenced in California state court to ninety days of home confinement, three years' probation, and fines totaling about \$1,500.¹⁵²

Although the Filner scandal did not involve the Southern District, it shows that corruption and scandal still exist in the city government. All of these scandals indicate that there may be a cycle of corruption in San Diego. The intense media

¹⁴⁷Murphy, "Former San Diego Councilman Ralph Inzunza."

¹⁴⁸"Mike Zucchet—General Manager," *San Diego Municipal Employees Association*, <https://www.sdmea.org/union/staff/MikeZucchet.aspx>; "Mission Statement," *San Diego Municipal Employees Association*, <https://www.sdmea.org/about/MissionStatement.aspx>.

¹⁴⁹Thornton, "Split Decision."

¹⁵⁰David Rolland, "Injustice Served," *San Diego City Beat*, Mar. 16, 2011, <http://sdcitybeat.com/article-8847-how-one-strip-joint-and-the-federal-government-destroyed-mike-zucchet's-political-career.html>.

¹⁵¹Josh Levs and David Simpson, "Ex-San Diego Mayor Sentenced to Home Confinement for Assaulting Women," *CNN*, Dec. 9, 2013, <http://www.cnn.com/2013/12/09/justice/ex-san-diego-mayor-bob-filner-sentencing/>.

¹⁵²*Ibid.*

coverage and public scrutiny the San Diego city government faced because of Strippergate brought local government to the forefront of public discussion. The recurrence of scandal and corruption indicates that the lessons learned from these scandals were quickly forgotten. Reflecting upon the Filner scandal and remembering the other scandals from San Diego's past should serve as another reminder of the importance of holding local government officials accountable. Remembering this will encourage government officials to act with the public interest as their top priority, and will make the government more efficient in the long run.

BOOK REVIEWS

A War Like No Other: The Constitution in a Time of Terror, by Owen Fiss. New York, NY: The New Press, 2015. 352 pp.; notes, index; \$27.95 cloth.

This collection of ten essays by Owen Fiss chronicles the emergence of the detention facility in Guantanamo Bay, military commissions, torture, extraordinary rendition, warrantless surveillance, and targeted killings of terrorist suspects, through the use of drones or otherwise, justified in the name of a "War on Terror." He acknowledges the unique threats that a stateless terrorist organization like Al-Qaida poses, yet he makes a compelling case as to how these aforementioned policies have undermined constitutional protections, such as the writ of habeas corpus. Fiss documents how the judiciary has failed to hold the administrative and legislative branches of government accountable, and how court rulings have empowered violations of freedoms of speech, privacy, and due process, in the name of public safety in an era of globalized terrorism.

The advantage of this book is that each of Fiss' chapters can be read on its own, since they were originally speeches or articles written on distinct subjects such as drones or warrantless wiretapping, with a succinct summary provided beforehand by Trevor Sutter. At the same time, if one reads the volume in its entirety, certain passages become repetitive.

Although such a volume appears designed for students and academics in legal professionals, as a historian who works on U.S. national security issues I found that this work makes a valuable contribution to other historical sub-fields. First, it provides a non-polemical historical perspective of the rationale behind establishing the Guantanamo detention facility. In terms of the evolution of American domestic security, it provides a continuity of the history of policies implemented under President George W. Bush that have been perpetuated by President Barack Obama. In terms of international history, Fiss provides an analysis of the interplay between U.S. national security, perceived in domestic terms, and how this perception interacts and conflicts with international laws of war, such as the Third Geneva Convention of 1949.

In the field of security studies, Fiss' work is situated in the literature on counter-terrorism, which primarily focuses on the strategies and tactics for defeating such groups. While most of the literature assesses the successes and failures of the covert or overt military methods used to combat terrorist groups like

Al-Qaida, Fiss raises the ethical dilemmas posed by the legal legacy that evolved in conjunction with "The War on Terror." Relating Fiss' work within the aforementioned fields, his legal analysis provides nuance that is lacking in works solely examining the covert or military security aspects of this war. Fiss raises the issue that the "War on Terror" is essentially a rhetorical device designed by the executive to describe an amorphous war with an amorphous enemy. He situates the labeling of this conflict with previous administrations' declarations of a "War on Poverty," "War on Drugs," and "War on Cancer." However, in this case the terminology is both ambiguous and an oxymoron. As of 2001, war had been declared on a tactic of war, terrorism. Nonetheless, an entire foreign policy under the Bush administration was developed based on this rhetorical device, with the resulting practices that have undermined constitutional protections. Even though Obama abandoned the nomenclature inherited from the Bush administration, the legal dilemmas undermining the Constitution remain and could remain for the foreseeable future in the face of international and domestic threats posed by the Islamic State of Iraq and Syria (ISIS).

In reading Fiss' work as an outsider to legal history, I found that his ten essays essentially deal with the legal frameworks that emerged due to the ambiguities of defining space and time during a war against an unconventional belligerent. U.S. laws of engagement and international codes of war were designed to deal with standing armies or uniformed militias, which usually comprise enemy citizens. However, Al-Qaida is a decentralized, non-state-centric, transnational network, with loyal satellite groups, sometimes described as "franchises," in countries such as Yemen, and includes both foreign nationals and U.S. citizens.

To combat Al-Qaida operatives in Afghanistan and Pakistan, or Al-Qaida in the Arabian Peninsula, based in Yemen, the Obama administration adopted the strategy of targeted assassinations through the use of drones. Opposed to meeting a standing army in a battle or a state-sponsored militia in jungles, an American military response emerged due to geographic contingencies. Al-Qaida survives as atomized cells commingling among non-combatants in small villages, essentially urban terrain, nestled in the mountains of Afghanistan and Pakistan or the deserts of Yemen. This geography, and the political sensitivities in both Pakistan and Yemen, precluded large deployments of U.S. ground forces, resulting in the use of drones. This new geo-spatial strategy for a new battlefield redefined not only the notions of an active zone of combat, but also how two states conceptualize notions of citizenship. The assassination of an American citizen, Anwar al-Awlaki, leader

of Al-Qaida of the Arabian Peninsula, has two ramifications in this regard. Not only did the U.S. target an American citizen and later his son, but the government of Yemen allowed the U.S. essentially to violate its sovereignty, and forfeit protections of its own civilians, knowing ahead of time that American drone attacks could kill Yemeni non-combatants in the vicinity of a drone strike.

Fiss also demonstrates the dilemmas of the indefinite period of time that results from declaring a "War on Terror." Unlike a war with Japan or Germany, where a nation can formally surrender, Bush's "War on Terror," or Obama's war on Al-Qaida or ISIS, does not have a definitive point of termination of hostilities. There is no capital that represents a sovereign state to invade, or a formal government of Al-Qaida to surrender. Hence, without a defining moment of surrender, the practices initiated by the Bush administration can remain in place perpetually, thus making Fiss' assessment of the last fifteen years since 2001 a cautionary work, where the constitutional protections designed to protect the individual from the state have been and can continue to be undermined in the future.

Ibrahim Al-Marashi

History Department, California State University, San Marcos

Subverting Exclusion: Transpacific Encounters with Race, Caste, and Borders, 1885–1928, by Andrea Geiger. New Haven: Yale University Press, 2011. 304 pp.; notes, index; \$45.00 cloth.

In *Subverting Exclusion*, Andrea Geiger offers an innovative, well-crafted study of Japanese immigration to the North American West during the late nineteenth and early twentieth centuries. All immigrants, Geiger notes, "perceived and responded to the new environments they encountered in North America in terms of the social and cultural understanding they brought with them from their countries of origin" (p. 1). For those who departed Meiji Japan, such understandings included *mibun*—status and caste distinctions that were legally prescribed during the Tokugawa period (1600–1867). Japanese leaders abolished the status system at the beginning of the Meiji era (1868–1912). Yet attitudes associated with *mibun* endured, Geiger argues, influencing the way Japanese immigrants interpreted, negotiated, and resisted racism throughout the North American West.

One of the major contributions of this book is the attention given to *buraku jūmin*, persons who belonged to or were descended from outcaste groups. Historically, these groups existed outside the four official status categories (warrior,

farmer, artisan, merchant) and occupied the lowest levels of Japanese society. By including former outcastes in her narrative, Geiger challenges the long-held view that Japanese who settled in North America came almost exclusively from the higher classes. The book also breaks new interpretive terrain in showing how ideas about status, despite the formal eradication of *mibun*, shaped the experiences of Japanese immigrants across social backgrounds.

Geiger begins by framing, in chapters 1 and 2, the context of *mibun* and Meiji emigration policy. Under the Tokugawa system, outcaste groups were not only consigned to "polluting" occupations (such work varied, ranging from slaughtering animals to digging coal), but were also subject to laws that circumscribed their places of residence, spatial movement, and social relations. These and other status regulations were eliminated by the Meiji government, which deemed the older social structure incompatible with a modernizing Japan. As part of its reform, the government also removed restrictions on emigration, opening the way for large-scale travel abroad. Precisely how many buraku jūmin participated in the ensuing emigration to North America is unclear; as Geiger acknowledges, concrete figures are difficult to establish. While much of the available evidence is indirect, however, she makes a persuasive case that at least some of the migrants to the North American West were former outcastes.

Chapters 3 and 4 develop a key theme of the book: the intersection of status- and caste-based meanings with white racism in North America. Focusing on the western regions of Canada and the United States, Geiger looks at how Japanese immigrants understood and confronted racial prejudice through the lens of *mibun*. The persistence of status concerns could be seen, for instance, in immigrant approaches to work. In places like British Columbia, where Japanese "found themselves relegated to the bottom of race-based labor hierarchies" (p. 65), some immigrants attempted to avoid occupations that in Japan had been linked to outcastes. Notions regarding *mibun*, moreover, influenced the responses of Japanese authorities. Instead of addressing racism directly, Meiji officials at times blamed white animosity on the behavior of Japanese immigrants from lower status groups—a rhetorical strategy, Geiger contends, that only reinforced racist claims.

The latter half of the book presents some of Geiger's most interesting insights. Her discussion of border crossings between the United States, Canada, and Mexico reveals how Japanese immigrants invoked international treaty rights—in particular, the transit privilege—to evade exclusionary measures. By the early twentieth century, Japanese immigrants faced a complex

set of barriers that restricted not only their entry, but also access to full political membership. Through a comparison of the familiar *Homma* (1902) and *Ozawa* (1922) decisions, Geiger casts fresh light on contestations over citizenship in North America and, more broadly, on Canadian and U.S. efforts to turn the "territories defined by their borders" into "racialized spaces that excluded Japanese and other Asians" (p. 138). The book's final sections continue to explore the interactions between race and *mibun* within Japanese immigrant communities, specifically in regard to marriage and the discourse of homogeneity. Here and throughout the study, Geiger demonstrates that understandings rooted in race and status differences were not static but rather were appropriated, reworked, and employed in multiple ways by those who participated in the emerging trans-Pacific dialogue.

In methodology, *Subverting Exclusion* serves as a fine example of transnational history. Geiger has skillfully traced the movement of Japanese migrants and their perceptions across national boundaries while illuminating the significance of borders and nation-states. Organized in clear, thematic chapters and based on a wealth of sources, this book adds compelling new perspectives to the literature on Japanese immigration to North America. It should appeal as well to readers interested in trans-Pacific diplomacy, Asian American history, and comparative immigration law.

Andrea Kwon
Berkeley, California

A Legal History of the Civil War and Reconstruction: A Nation of Rights, by Laura F. Edwards. New York: Cambridge University Press, 2015. 212 pp.; acknowledgments; bibliographic essay; index; \$29.99 paper.

During the Civil War and Reconstruction era, did the federal government strike the right balance between equality under codified law and equality in practice? Laura Edwards weighs the government's response to the challenges of the time and finds it wanting. Expansive new rights were demanded and promised, but delivering them proved difficult.

Judging by the title alone, a reader might assume this book is a scholarly history of the law during the Civil War and Reconstruction. It does analyze the challenges of expanding wartime powers, both in the North and in the Confederacy; constitutional amendments and their application; and the

role and limits of the courts and government generally. But its coverage of the period is not comprehensive or fact intensive, and there is little sense of particular events contributing to the law's development over time.

The book is not valuable as a reference, and a reader who wants to learn what happened, how it happened, and how it shaped the law's development should look elsewhere. Instead, *A Legal History of the Civil War and Reconstruction* critically synthesizes the outlooks and interests of people and groups of the era, as well as later scholarship and political analysis. In other words, it is primarily a book about how to think about legal developments during the Civil War and Reconstruction, rather than a book about the developments themselves.

To help make her points, Edwards cites illustrative anecdotes both to convey a sense of the times and to portray the thought processes of real people. These are invariably vivid, evocative, and interesting. A discussion of the sale of treasury notes, for instance, sounds as if it ought to be fairly dry. But Edwards' narrative conveys a strong sense of both individual and national character, and makes for lively and compelling reading.

Edwards focuses on a few central themes, notably the people as the source of the nation's identity, the role of a federal government as the mediator of rights, and the role of newly recognized rights in the developing legal landscape. The breadth of her assertions sometimes leaves little room for nuance, and the limitations only become clear later. For example, she notes the Republican Party's reverence for property rights and traces its effects on later policies. She suggests that this made redistributing former slaveholders' land to the freedmen who had worked it unthinkable, and says congressional Republicans flatly refused to do it. But as she mentions elsewhere, Republicans were not intractable. They did pass legislation to confiscate property from slaveholders and to redistribute it to tenant farmers and sharecroppers, including freedmen, although these measures were not particularly effective.

Edwards does not take a strictly chronological approach, but freely discusses and compares events from different time periods. Nor does she limit herself to the Civil War and Reconstruction; her analysis also includes earlier and later events. This inevitably means that a number of important laws and legal decisions during the Civil War and Reconstruction—which is, after all, the era the book promises to cover—are mentioned only in passing, and others are omitted.

This is nowhere more apparent than in Edwards' discussion of American Indians and their tribes. She analyzes two long-standing concerns, sovereignty and land confiscation, in

the abstract. Her examination of particular events, however, is spotty. The legal history jumps from the Supreme Court's decision in *Cherokee Nation v. Georgia* (1831), briefly touches on the more important case of *Worcester v. Georgia* (1832), and resumes with *Ex Parte Crow Dog* (1883). Discussion of events after 1832 focuses almost entirely on the far West. Tribes' participation in the Civil War, their stance on slavery, and the war's immediate effect on them are not acknowledged. The gap, however, is partly filled in the end; Edwards includes both a helpful bibliographic essay and a bibliography to aid further exploration of the major strands of Civil War and Reconstruction-era history.

The book ends on a strong point, powerfully summing up in its final pages and the concluding essay. Federal policy of the time held that access to the ballot box and the legal system were enough to address concerns of the nation's citizenry. Edwards persuasively argues that the federal government should have acted—and should now act—more decisively to carry out the nation's ideals.

Mark D. Myers
San Diego, California

Loren Miller: Civil Rights Attorney and Journalist, by Amina Hassan. Norman: University of Oklahoma Press, 2015. 294 pp.; illustrations; notes; bibliography; index; \$26.95 cloth.

In *Loren Miller: Civil Rights Attorney and Journalist*, what begins as a somewhat laborious introduction to the biography of California Superior Court judge Loren Miller, due to the choppiness of fragmented facts stitched together, quickly melts into a fascinating profile of a man whose name and legacy should be more recognizable to the average American. Before any disappointment arises over the problematic start to the book, the reader is transported to small-town Nebraska in 1903 to witness Miller's birth and, without realizing, becomes absorbed in Miller's world. Born into the union of a former slave and a Midwestern white woman, Miller experienced an early life that was both unusual and challenging. His family was enveloped in extreme poverty, and his parents' mixed race marriage was a hindrance to breaking free of financial hardship. One wonders what the residents of Pender, Nebraska would have thought at that time, had they been told about the remarkable life that this young resident would carve out for himself or the impact of his contributions to America.

A ferocious civil rights activist, a devoted husband, an honest confidante, a convicted attorney, and an enthusiastic journalist, Miller is introduced as a man who set aside his deep aspirations of becoming a creative writer and chose instead to practice law for the greater good. Throughout the book, the reader is reminded that, despite Miller's unwavering fight against racial discrimination and, specifically, racially restrictive covenants, he spent much of his adult life struggling with the decision either to pursue his love of writing or to practice law. Hassan skillfully peppers her biography with Miller's own words, in the form of letters to his wife and close friends, newspaper editorials, poems, and his 1966 book, *The Petitioners: The Story of the Supreme Court of the United States and the Negro*, which discusses the role of the U.S. Supreme Court in framing the lives of African Americans in the United States. It is through Miller's own words that the reader experiences, and is almost forced to sympathize with, Miller's internal struggle over his career. As the reader learns more about Miller's acute intellect and conviction, it is all the more surprising that this man who fought so tirelessly for the right of African Americans to live where they wanted had such strong reservations about his chosen career path.

Miller's greatest professional accomplishment was his notable role in the fight to eliminate racially restrictive covenants. Miller and his family lived in Los Angeles at a time when nearly 80 percent of the city was controlled by racially restrictive covenants, confining African American residents to small sections of the city, usually ghettos. Much of Miller's Los Angeles law practice was devoted to litigating the unenforceable and unconstitutional nature of racially restrictive covenants.

Miller's experience and reputation eventually brought him before the U.S. Supreme Court. He was chief counsel in *Shelley v. Kraemer*, 334 U.S. 1, 68 S. Ct. 836, 92 L. Ed. 1161 (1948), a case in which the Supreme Court declared that racial covenants on property could not be enforced by the courts. The reader cannot help but be inspired by Miller, the son of a former slave, who worked alongside Thurgood Marshall to secure a ruling that had such a significant impact on United States citizens of every race.

Without being burdensome, Hassan steadily weaves relevant dates into her biography. It can be quite shocking for the reader to run quick calculations in his head and be instantly reminded that this unbridled segregation was taking place in the United States in very recent history. However, that knowledge reinforces the significance of Miller's life's work. Despite having been born into extreme, almost shocking poverty, Miller, through hard work, dedication, and remarkable intellect, nurtured close friendships and working relationships with Langston Hughes

and Thurgood Marshall. He developed a respectable law practice in Los Angeles and was invited to the White House on more than one occasion to meet with President Kennedy, and to dance with his wife at an inaugural ball.

Hassan's biography leads the reader from Miller's bed on the floor of a rodent-infested shack in Nebraska to his seat on the bench of the Superior Court of California, where he served until his death. The book not only makes the reader yearn to learn more about American history, the role of activists, and the impact of the U.S. Supreme Court on daily life, but it sheds a bright light on an inspirational judge who gave up the selfish urge to follow his own dreams in exchange for fighting selflessly for the American dream.

Megan C. Nesvig
Research Attorney
San Diego, 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.

Bennion, John. "Water Law on the Eve of Statehood: Israel Bennion and a Conflict in Vernon, 1893–1896," *Utah Historical Quarterly* 82 (Fall 2014): 288–305.

Blum, Michael C., and Maggie Hall. "Lands Council, Karuk Tribe, and the Great Environmental Divide in the Ninth Circuit," *Natural Resources Journal* 54 (Spring 2014): 1–40.

Bowman, Timothy. "Negotiating Conquest: Internal Colonialism and Shared Histories in the South Texas Borderlands," *Western Historical Quarterly* 46 (Autumn 2015): 335–53.

Brady, Lisa M., Donald Worster, Libby Robin, and Emily Wakild. "Reflections: The Wilderness Act at Fifty," *Environmental History* 19 (October 2014): 714–34.

Bridges, Jennifer. "Katy's Ladies: Prostitution in Early Denison, Texas, 1872–1880," *East Texas Historical Journal* 53 (Spring 2015): 46–61.

Brister, Daniel. "Border Patrol," *Natural History* 122 (October 2014): 16–21.

Carmack, Noel A. "A Long Course of the Most Inhuman Cruelty: The Abuse and Murder of Isaac Whitehouse," *Utah Historical Quarterly* 82 (Fall 2014): 272–87.

Chase, Robert T. "Cell Taught, Self Taught: The Chicano Movement Behind Bars—Urban Chicanos, Rural Prisons, and the Prisoners' Rights Movement," *Journal of Urban History* 41 (Sept. 2015): 836–61.

Clark, David W. "Carl Albert: Little Giant of Native America," *Chronicles of Oklahoma* 93 (Fall 2015): 290–311.

Clayson, William. "'A Real Man Among Men': How Republicans Helped Democrat Mike O'Callaghan Win the 1970 Nevada Governor's Race," *Nevada Historical Society Review* 57 (Spring/Summer 2014): 83–106.

Coates, Amelia. "Sacred Rain Arrow: Honoring the Native American Heritage of the States While Balancing the Citizens' Constitutional Rights," *American Indian Law Review* 38:2 (2013–2014): 501–32.

Dance, Anne. "Dikes, Ducks, and Dams: Environmental Change and the Politics of Reclamation at Creston Flats, 1882–2014," *BC Studies* 184 (Winter 2014–2015): 11–44.

Deisen, Matthew. "State v. Jim: A New Era in Washington's Treatment of the Tribes?" *American Indian Law Review* 38:1 (2013–14): 101–55.

Dillon, Brian Dervin, Richard H. Dillon, and John Dervin Yi An Dillon. "Gum Shan vs. Tan Heung Shan: 19th Century Chinese in California and Hawaii, Part 2," *California Territorial Quarterly* 101 (Spring 2015): 6–30.

Ennis, Samuel E., and Caroline P. Mayhew. "Federal Indian Law and Tribal Criminal Justice in the Self-Determination Era," *American Indian Law Review* 38:2 (2013–2014): 421–76.

Ezzo, Joseph. "The Leonard Peltier Case: An Argument in Support of Executive Clemency Based on Norms of International Human Rights," *American Indian Law Review* 38:1 (2013–14): 35–99.

Fontane, Walter M. "I'll Do My Own Damn Killing Revisited: Benny Binion and the End of Organized Crime in East Texas," *East Texas Historical Journal* 53 (Spring 2015): 62–78.

Gifford, Laura Jane. "Planning for a Productive Paradise: Tom McCall and the Conservationist Tale of Oregon Land-Use Policy," *Oregon Historical Quarterly* 115 (Winter 2014): 470–501.

Gray, Susan E. "Indigenous Space and the Landscape of Settlement: A Historian as Expert Witness," *Public Historian* 37 (February 2015): 54–67.

Greenwald, Emily, and Ian Smith. "Bury My Documents in Lenexa, Kansas: Expert Witness Work and the American Indian Records Repository," *Public Historian* 37 (February 2015): 39–45.

Hardin, Randi Dawn Gardner. "Knight v. Thompson: The Eleventh Circuit's Perpetuation of Historical Practices of Colonization," *American Indian Law Review* 38:2 (2013–2014): 579–98.

Helquist, Michael. "'Criminal Operations': The First Fifty Years of Abortion Trials in Portland, Oregon," *Oregon Historical Quarterly* 116 (Spring 2015): 6–39.

Hernández, Kelly Lytle. "Hobos in Heaven: Race, Incarceration, and the Rise of Los Angeles, 1880–1910," *Pacific Historical Review* 83 (August 2014): 410–47.

Irwin, Robert. "Canada, Aboriginal Sealing, and the North Pacific Fur Seal Convention," *Environmental History* 20 (January 2015): 57–82.

Kennington, Kelly Marie. "Law, Geography, and Mobility: Suing for Freedom in Antebellum St. Louis," *Journal of Southern History* 80 (August 2014): 575–604.

Kopelson, Gene. "The 1968 Nebraska Republican Primary," *Nebraska History* 95 (Fall 2014): 162–72.

Korasick, John. "The Concept of Liberty in Territorial Missouri, 1819," *Missouri Historical Review* 109 (April 2015): 179–97.

Lain, Katy. "'Transaction Null and Void': The Peculiar Citizenship Fight of Emma Wong Sing," *Southern California Quarterly* 96 (Winter 2014): 405–32.

Lumsden, Stephanie. "Settler Law: Criminalizing California Indian Traditions," *News from Native California* 27 (Summer 2014): 25–29.

Milford, Jana B. "Out in Front? State and Federal Regulation of Air Pollution Emissions from Oil and Gas Production Activities in the Western United States," *Natural Resources Journal* 55:1 (2014): 1–46.

Miller, Char. "Streetscape Environmentalism: Floods, Social Justice, and Political Power in San Antonio, 1921–1974," *Southwestern Historical Quarterly* 118 (October 2014): 158–77.

Osborne, Thomas J. "Saving the Golden Shore: Peter Douglas and the California Coastal Commission, 1972–2011," *Southern California Quarterly* 96 (Winter 2014): 433–64.

Pembleton, Matthew R. "The Voice of the Bureau: How Frederic Sondern and the Bureau of Narcotics Crafted a Drug War and Shaped Popular Understandings of Drugs, Addiction, and Organized Crime in the 1950s," *Journal of American Culture* 38 (June 2015): 113–29.

Pfeifer, Michael J. "At the Hands of Parties Unknown? The State of the Field of Lynching Scholarship," *Journal of American History* 101 (December 2014): 832–60.

Revels, Asa, and Janet Cummings. "The Impact of Drug Trafficking on American Indian Reservations with International Boundaries," *American Indian Quarterly* 38 (Summer 2014): 287–318.

Sheehan, Charles. "Solicitor General Charles Fahy and Honorable Defense of the Japanese-American Exclusion Cases," *American Journal of Legal History* 54 (October 2014): 469–520.

Villeneuve, Matthew. "'The Job Was Big and the Man Doing It Was Still Bigger': The Forgotten Role of Thomas B. Watters in Klamath Termination, 1953–1958," *Oregon Historical Quarterly* 116 (Spring 2015): 40–67.

Vollan, Chuck. "'Bone Dry': South Dakota's Flawed Adoption of Alcohol Prohibition," *South Dakota History* 45 (Fall 2015): 189–227.

White, Wayne A. "'This Faithfulness Destroyed Them': The Failure of Grant's Peace Policy among the Kiowas and Comanches," *Chronicles of Oklahoma* 93 (Summer 2015): 182–97.

Williams, Ronald, Jr. "Race, Power, and the Dilemma of Democracy: Hawai'i's First Territorial Legislature, 1901," *Hawaiian Journal of History* 49 (2015): 1–45.

Zieger, Hans. "Scoop and Slade: Partners in the Senate," *Columbia: The Magazine of Northwest History* 29 (Spring 2015): 5–9.

MEMBERSHIPS, CONTRIBUTIONS, AND GRANTS

AS OF JUNE 30, 2015

FOUNDER

\$3000 or more

J. Bruce Alverson, Esq., Las Vegas
Gareth T. Evans, Esq., Los Angeles
Farella, Braun & Martel LLP, San Francisco
Frederick Furth, Esq., Healdsburg
Morrison & Foerster Foundation, San Francisco
Sidley Austin LLP, Los Angeles
Susman Godfrey LLP, Los Angeles
Dean Ziehl, Esq., Los Angeles

PATRON

\$1000-\$2999

Akin, Gump, Strauss, Hauer & Feld, Los Angeles
Bingham McCutchen, Santa Monica
Theodore J. Boutrous, Jr., Esq., Los Angeles
Jerome I. Braun, Esq., San Francisco
Browne George Ross LLP, Los Angeles
Elizabeth J. Cabraser, Esq., San Francisco
Davis Wright Tremaine LLP, Anchorage & Portland
William I. Edlund, Esq., San Francisco
Fairbank & Vincent, Los Angeles
Jeffrey M. Fisher, Esq., San Francisco
Paul T. Friedman, Esq., Oakland
Donald L. Gaffney, Esq., Phoenix
Girardi & Keese, Los Angeles
Gersham Goldstein, Esq., Portland
Leonard L. Gumport & Wendy Munger, South Pasadena
Rita M. Haeusler, Esq., Los Angeles
Hughes, Hubbard & Reed LLP, Los Angeles
Keker & Van Nest LLP, San Francisco
Klee, Tuchin, Bogdanoff & Stern LLP, Los Angeles
Lewis & Roca LLP, Phoenix
Sonia R. Martin, Esq., San Francisco
Munger, Tolles & Olson LLP, Los Angeles
Albert F. Pagni, Esq., Reno
Marc M. Seltzer, Esq., Los Angeles
Gerald K. Smith, Esq., Phoenix
Stoel Rives LLP, Portland
Steven L. Swig, Esq., San Francisco
Douglas R. Young, Esq., San Francisco
Meryl L. Young, Esq., Irvine

STEWARD

\$750-\$999

Hon. Valerie Baker Fairbank, Los Angeles
Hon. Procter Hug, Jr., Reno
Mark A. Kadzielski, Esq., Los Angeles
Marshal A. Oldman, Esq., Encino
Hon. Christina Ann Snyder, Los Angeles

SPONSOR

\$500-\$749

Seth Aronson, Esq., Los Angeles
Ladd A. Baumann, Hagåtña, Guam
Hon. Christine W.S. Byrd, Studio City
John Carson, Esq., Los Angeles
Hon. Richard R. Clifton, Honolulu
Daniel P. Collins, Esq., Los Angeles
Crowley Fleck PLLP, Billings
Dentons US LLP, San Francisco
Thomas Dubbs, Esq., New York
Bertram Fields., Esq.
Gregory S. Fisher, Esq., Anchorage
Patricia Glaser, Esq., Los Angeles
Greines, Martin, Stein & Richland, Los Angeles
Peter F. Habein, Esq., Billings
Horvitz & Levy LLP, Encino
Dean J. Kitchens, Esq., South Pasadena
Kolodny & Anteau, Beverly Hills
Lewis, Brisbois, Bisgaard & Smith LLP, Los Angeles
Ron Maroko, Esq., Los Angeles
Thomas J. McDermott, Jr., Esq., Indian Wells
Terri Nafisi, Los Angeles
Panish, Shea & Boyle LLP, Los Angeles
Julian W. Poon, Esq., Los Angeles
Hon. Paul G. Rosenblatt, Phoenix
Lowell E. Rothschild, Esq., Tucson
Hon. Milan D. Smith, Jr., El Segundo
Sullivan & Cromwell LLP, Los Angeles
Gail M. Title, Esq., Los Angeles
Robert S. Warren, Esq., San Marino
Ziffren, Brittenham, Branca et al, Los Angeles

GRANTOR

\$250-\$499

Manuel Abascal, Esq., Altadena
Mitchell E. Abbott, Esq., Los Angeles
Alston, Hunt, Floyd & Ing, Honolulu
Hon. George T. Anagnost, Peoria
Edward Angel, Esq., Washington
Prof. Gordon Morris Bakken, Santa Ana
Michael Bareket, Esq., Los Angeles
Leroy J. Barker, Esq., Portland
Peter J. Benvenuto, Esq., San Francisco
Charles A. Bird, Esq., San Diego

William Bisset, Esq., Los Angeles
Andrew P. Bridges, Esq., San Francisco
Timothy F. Cahill, Esq., Sacramento
John Francis Carroll, Esq., San Pedro
Hon. David Carter, Santa Ana
Joseph L. Chairez, Esq., Costa Mesa
Christopher Chorba, Esq., Los Angeles
A. Marisa Chun, Esq., Washington
Cynthia M. Cohen, Esq., Los Angeles
Ezekial E. Cortez, Esq., San Diego
Cosgrave Vergeer Kester LLP, Portland
Crowell Moring LLP, Los Angeles
Robert H. Fairbank, Esq., Los Angeles
Hon. Ferdinand F. Fernandez, Pasadena
Ruth E. Fisher, Esq., Los Angeles
Douglas Fuchs, Esq., Los Angeles
Oscar Garza, Esq., Newport Beach
D. Wayne Gittinger, Esq., Seattle
Hon. Alfred T. Goodwin, Pasadena
Hon. Ronald M. Gould, Seattle
Noah Graff, Esq., Santa Monica
Philip L. Gregory, Esq., Burlingame
Hanna, Brophy, Maclean, et al, Oakland
Edwin A. Harnden, Esq., Portland
Robert Henigson, Deer Harbor
Brian J. Hennigan, Esq., Los Angeles
Earl M. Hill, Esq., Reno
John C. Hueston, Esq., Los Angeles
Aurelie Huet, Esq., Los Angeles
Kajan, Mather & Barish, Beverly Hills
Theane Evangelis Kapur, Esq., Los Angeles
Terri D. Keville, Esq., Los Angeles
King & Kelleher LLP, San Francisco
Daniel M. Kolkey, Esq., San Francisco
Peter Langenberg, Esq., South Pasadena
Robert D. Lowry, Esq., Eugene
Gregory P. Lynch, Esq., Bend
Mrs. David McDaniel, San Francisco
John A. McGuinn, Jr., Esq., San Francisco
Hon. M. Margaret McKeown, San Diego
Georgia K. McMillen, Esq., Wailuku
Mitchell, Silberberg & Knupp, Los Angeles
Hon. John F. Moulds, Sacramento
Hon. Geraldine Mund, Woodland Hills
Hon. Mary H. Murguia, Phoenix
Stephen C. Neal, Esq., San Francisco
George W. Nowell, Esq., San Francisco
Michael E. Olsen, Esq., Costa Mesa
Hon. Karen A. Overstreet, Seattle
Charles Pereya-Suarez, Esq., Los Angeles
Hon. John L. Peterson, Butte
Jeffrey Portnoy, Esq., Honolulu
Bruce M. Ramer, Esq., Beverly Hills
Hon. James A. Redden, Beaverton
Gaurav Reddy, Esq., Los Angeles
Jeffrey H. Reeves, Esq., Irvine
Remcho, Johansen & Purcell, San Leandro

Heather L. Richardson, Esq., Los Angeles
Arthur F. Roeca, Esq., Honolulu
Lawrence D. Rohlfing, Esq., Santa Fe Springs
William J. Rush, Esq., Tacoma
Kelli L. Sager, Esq., Los Angeles
Michael Sahouri, Esq., Pasadena
Francis O. Scarpulla, Esq., San Francisco
Segal & Kirby LLP, Sacramento
Mary Jo Shartsis, San Francisco
Hon. Randy Smith, Pocatello
James P. Spellman, Esq., Long Beach
Alex Spjute, Esq., Redondo Beach
John C. Stein, Esq., San Jose
David H. Stern, Esq., Santa Monica
Gregory P. Stone, Esq., Los Angeles
John Sturgeon, Esq., Los Angeles
Sanford Svetcov, Esq., San Francisco
Taylor & Company Law Offices LLP, San Francisco
Hon. James Teilborg, Phoenix
Roderick Thompson, Esq., San Francisco
William E. Thomson, Esq., Altadena
John D. Thorndal, Esq., Las Vegas
Jeffrey I. Tilden, Esq., Seattle
Hon. Robert J. Timlin, Carpinteria
D. Burr Udall, Esq., Tucson
David M. Walsh, Esq., Los Angeles
White & Case LLP, Los Angeles
Michael A. White, Esq., Saipan
Wilke, Fleury, Hoffelt, Gould & Birney, Sacramento
John M. Youngquist, Esq., San Francisco
Kelly A. Zusman, Esq., Portland

SUSTAINING

\$100-\$249

Barry Abrams, Esq., Houston
Alex Aghajanian, Esq., Pasadena
Clayton Anderson, Esq., La Mesa
Mark Asdourian, Esq., Newport Beach
Charles G. Bakaly, Jr., Esq., Pasadena
Hon. Redfield T. Baum, Sr., Phoenix
Hon. Carlos T. Bea, San Francisco
Timothy Berg, Esq., Phoenix
Hon. Marsha Berzon, San Francisco
Terry Bird, Esq., Los Angeles
John Briscoe, Esq., San Francisco
Sherry P. Broder, Esq., Honolulu
Hon. Robert Bryan, Tacoma
Albie Burke, Ph.D., Long Beach
Kathleen Butterfield, Esq., San Francisco
Dominic Campisi, Esq., San Francisco
Hon. William Canby, Phoenix
Hon. Earl H. Carroll, Phoenix
William Cohan, Esq., Rancho Santa Fe
Hon. Avern Cohn, Detroit
Daniel P. Collins, Esq., Phoenix
Hon. Frank Damrell, Sacramento

Richard De Luce, Esq. Palos Verdes
Hon. Thomas B. Donovan, Los Angeles
Roy Dwyer, Esq., Bend
Robert Ebner, Esq., West Covina
James R. Ellis, Esq., Seattle
Hon. Morris England, Jr., Sacramento
Donald Falk, Esq., Palo Alto
Hon. Robert Faris, Honolulu
Hon. Dale S. Fischer, Los Angeles
Dennis Fisher, Esq., Santa Monica
Hon. Raymond Fisher, Sherman Oaks
Hon. Michael W. Fitzgerald, Los Angeles
Hon. William Fletcher, San Francisco
John Fredenburg, Esq., Sacramento
Lawrence Friedman, Stanford
Hon. Dolly M. Gee, Los Angeles
Hon. Gilbert T. Gembacz (ret.), La Cañada
Hon. Lloyd D. George, Las Vegas
Brian H. Getz, Esq., San Francisco
Prof. Dale D. Goble, Moscow
Christopher Goelz, Esq., Mercer Island
Richard B. Goetz, Esq., Los Angeles
Hon. Mitchel Goldberg, Yorba Linda
Martha K. Gooding, Esq. Irvine
Thomas J. Greenan, Esq., Seattle
Hon. Arthur Greenwald, Encino
Eugene C. Gregor, Esq., New York
Paul D. Gutierrez, Esq., San Francisco
Michael Haglund, Esq., Portland
Stephen Halsey, Newport
E. Richard Hart, Winthrop
Arthur Hellman, Pittsburgh
Brian Hennigan, Esq., Los Angeles
Hon. H. Russel Holland, Anchorage
James Homola, Esq., Fresno
Michael Hubbard, Esq., Waitsburg
Hon. Sandra Segal Ikuta, Pasadena
Daniel Jamison, Esq., Fresno
Hon. D. Lowell Jensen, Castro Valley
Bernard Jolles, Esq., Portland
Kathleen E. Jolly, Esq., Monrovia
Hon. Cindy Jorgenson, Tucson
Hon. Meredith Jury, Riverside
Daniel R. Kaleba, Esq., Palo Alto
Hon. Lawrence Karlton, Sacramento
Steven Kazan, Esq., Oakland
Patrick Kelly, Esq., Los Angeles
Hon. Victor Kenton, Los Angeles
Thomas Kidde, Esq., Los Angeles
Randall Kim, Esq., San Francisco
Hon. Andrew Kleinfeld, Fairbanks
Thomas F. Koegel, Esq., San Francisco
Theodore A. Kolb, Esq., San Francisco
Stephen Kolodny, Esq., Beverly Hills
Hon. Robert Kwan, Santa Ana
Theodore Latty, Esq., Los Angeles
Ruth J. Lavine, Esq., Los Angeles

Bartholomew Lee, Esq., San Francisco
Hon. Peggy Leen, Las Vegas
Hon. Ronald S.W. Lew, Los Angeles
Samuel Lionel, Esq., Las Vegas
Hon. James M. Lorenz, San Diego
Hon. Eugene Lynch, Ross
Hon. Jeremiah C. Lynch, Missoula
Thomas C. Mackey, Ph.D., Louisville
Hon. James C. Mahan, Las Vegas
Robert F. Maloney, Esq., Portland
Hon. Bruce Markell, Las Vegas
Hon. Malcolm F. Marsh, Portland
Raymond C. Marshall, Esq., San Francisco
James C. Martin, Esq., Los Angeles
Ray E. McDevitt, Esq., Mill Valley
Hon. Howard McKibben, Verdi
Mary McNamara, Esq., San Francisco
Kurt W. Melchior, Esq., San Francisco
Frederick N. Merkin, Esq., Los Angeles
Grover Merritt, Esq., Alta Loma
Mark Andrew Merva, Esq., Washington
Hon. Jeffrey Miller, San Diego
Alex Mircheff, Esq., Los Angeles
Paula M. Mitchell, Esq., Los Angeles
Hon. Donald W. Molloy, Missoula
Jeffrey Morris, Douglaston
Hon. Kimberly J. Mueller, Sacramento
Smithmoore Myers, Esq., Spokane
Hon. Dorothy W. Nelson, Pasadena
Hon. William Norris, Los Angeles
Hon. Ben O'Brien, Carmichael
Leslie O'Leary, Esq., Portland
David Oppenheimer, Berkeley
Hon. Owen Panner, Medford
Thomas Peterson, Esq., San Francisco
Hon. Mariana R. Pfaelzer, Los Angeles
Hon. Virginia Phillips, Riverside
Hon. Manuel L. Real, Los Angeles
Scott Reed, Esq. Coeur d' Alene
Hon. Stephen Reinhardt, Los Angeles
Hon. Robin L. Riblet, Santa Barbara
James Rigos, Esq., Seattle
Hon. James Robart, Seattle
Cara Robertson, Esq., Santa Monica
Hon. Robert Rose, Carson City
Hon. Herbert A. Ross, Anchorage
Hon. Janis Sammartino, San Diego
Martin A. Schainbaum, Esq., San Francisco
Hon. Mary M. Schroeder, Phoenix
Hon. Richard Seeborg, San Francisco
Hon. James K. Singleton, Anchorage
Elizabeth Smith, Boise
Hon. Fern M. Smith, San Francisco
Libby Smith, Boise
Hon. N. Randy Smith, Pocatello
James Spellman, Esq., Long Beach
Michael J. Steponovich, Esq., Orange

David S. Steurer, Esq., Palo Alto
Hon. Alicemarie H. Stotler, Santa Ana
Hon. Karen Strombom, Tacoma
Lynn C. Stutz, Esq., Campbell
Hon. Lonny R. Suko, Yakima
Hon. A. Wallace Tashima, Pasadena
John D. Taylor, Esq., Pasadena
Hon. Sidney R. Thomas, Billings
Hon. Gordon Thompson, Jr., San Diego
Paul Ulrich, Esq., Phoenix
David M. Walsh, Esq., Los Angeles
Hon. Kim McLane Wardlaw, Pasadena
Hon. John Weinberg, Seattle
Hon. Stephen V. Wilson, Los Angeles
Kimberly S. Winick, Esq., Los Angeles
Joseph Woods, Jr., Esq., Oakland
Edward J. Wynne, Esq., Ross
Rosalyn S. Zakheim, Esq., Culver City
Hon. Frank R. Zapata, Tucson
Hon. Thomas Zilly, Seattle

ADVOCATE

\$50-\$99

Cheryl Alcorn, Temple City
Honey Amado, Esq., Los Angeles
Jean Claude Andre, Esq., Los Angeles
Sarah Andre, Los Angeles
Francisca N. Araiza-Kasama, Esq., San Marino
Gregory Baka, Esq., Dublin
David Bederman, Atlanta
Hon. Marsha S. Berzon, San Francisco
Hon. Robert N. Block, Santa Ana
Stanley A. Boone, Esq., Fresno
Hon. Rudi Brewster, San Diego
Hon. Robert C. Broomfield, Phoenix
Donald Burrill, Esq., South Pasadena
Martha Byrnes, Esq., Los Angeles
Robert R. Calo, Esq., Portland
Hon. Peter H. Carroll, Los Angeles
Matthew Carvalho, Esq., Seattle
Joseph L. Chairez, Esq., Costa Mesa
Hon. Maxine Chesney, San Francisco
Nanci Clarence, Esq., San Francisco
Richard Clements, Esq., Long Beach
Charles Cleveland, Esq., Spokane
Hon. Audrey B. Collins, Los Angeles
John Colwell, Esq., Bonita
Wilson Condon, Esq., Anchorage
Hon. David Cowan, Los Angeles
Ronald Dean, Esq., Pacific Palisades
Richard A. Derevan, Esq., Costa Mesa
Hon. David Duncan, Phoenix
James Ellis, Esq., Seattle
Iris H.W. Engstrand, San Diego
Hon. William B. Enright, San Diego
Bruce Ericson, Esq., San Francisco

John Feeney, Esq., Flagstaff
James Finberg, Esq., San Francisco
Dennis A. Fischer, Esq., Santa Monica
Hon. George Foley, Jr., Las Vegas
Hon. Richard Ford, Nipomo
S. Cary Forrester, Esq., Phoenix
Christian G. Fritz, Ph.D., Albuquerque
Hon. Holly Fujie, Los Angeles
Paul J. Georgeson, Esq., Reno
Barry Goode, Esq., Richmond
John Gordan III, Esq., New York
Jennifer Gordon, Esq., Los Angeles
William R. Gorenfeld, Esq., Novato
Paul Gray, Esq., Claremont
Eugene Gregor, Esq., New York
Michael Griffith, Oakland
Dr. Vanessa Gunther, Fullerton
Ann Haberfelde, Esq., Los Angeles
Hon. Raldolph Haines, Phoenix
Hon. Lynn Hampton, Pendleton
John K. Hanft, Esq., San Francisco
Hon. Terry Hatter, Jr., Los Angeles
John Havelock, Esq., Anchorage
Paul T. Heitter, Gilbert
Andrew Hoag, Esq. Fresno
Ernest Hoidal, Esq., Bosie
Hon. Eileen W. Hollowell, Tucson
Hon. Anthony W. Ishii, Fresno
L.M. Jacobs IV, Esq., Tucson
Hon. Edward Johnson, Stagecoach
Dr. Lisa Johnson, Hayward
Hon. Robert E. Jones, Portland
Garry Kahn, Esq., Portland
Hon. Harold E. Kahn, San Francisco
Jacquelyn Kasper, Tucson
Yasuhide Kawashima, El Paso
B. Ann Keith, Esq., Ipan Talofoto
Patrick M. Kelly, Esq., Los Angeles
Thomas S. Kidde, Esq., Los Angeles
Hon. Garr M. King, Portland
Hon. Christopher M. Klein, Sacramento
Hon. James Kleinberg, San Jose
Daniel A. Laidman, Esq., Los Angeles
Jeffrey A. Lamken, Esq., Washington, D.C.
Louise LaMothe, Santa Barbara
Prof. Ronald B. Lansing, Portland
John Lapinski, Esq., Los Angeles
James Lassart, Esq., San Francisco
Beatrice C. Laws, San Francisco
Hon. Edward Leavy, Portland
Douglas Littlefield, Oakland
Jordan Luttrell, San Francisco
Hon. Eugene Lynch, Ross
Hon. Michael A. MacDonald, Fairbanks
Prof. Michael Magliari, Chico
J. Richard Manning, Esq., Port Angeles
Prof. Robert Markman, Joplin

Jill Martin, Hamden
Hon. Howard A. Matz, Los Angeles
Jerry McNaul, Esq., Seattle
Howard McPherson, Esq., Honolulu
Philip Merkel, Esq., Huntington Beach
Thomas Mitchell, Esq., San Francisco
Prof. R. James Mooney, Eugene
Alexander Moore, Esq., Walnut Creek
Hon. Ann Mooreman, Ukiah
Diane North, Hendersonville
Hon. Fernando Olguin, Los Angeles
John F. O'Reilly, Las Vegas
Chet Orloff, Portland
Hon. Diarmuid O'Scannlain, Portland
Hon. Carolyn Ostby, Billings
John Palache, Jr., Portland
Robert Bruce Parham, Anchorage
Thomas M. Peterson, Esq., San Francisco
Hon. Lawrence Piersol, Sioux Falls
Forrest A. Plant, Sacramento
Hon. Stephen Pogson, Phoenix
Hon. Charles R. Pyle, Tucson
Hon. Justin Quackenbush, Spokane
Hon. Karsten Rasmussen, Eugene
Scott Reed, Coeur d'Alene
Philip J. Roberts, Laramie
Ralston P. Roberts, Hillsborough
Hon. Ernest Robles, Los Angeles
Hon. John Rossmeissl, Yakima
Mary Ann Rousso, Santa Monica
J. David Sackman, Esq., Los Angeles
Stefano Sarincola, Glendale
Edmund S. Schaffer, Esq., Los Angeles
Owen Schmidt, Esq., Portland
Hon. William Schwarzer, San Francisco
Hon. J. Michael Seabright, Honolulu
Hon. Richard Seeborg, San Jose
Hon. James Selna, Santa Ana
Molly Selvin, Ph.D., Los Angeles
Peter Sherwood, San Francisco
Prof. John Cary Sims, Sacramento
J. Walter Sinclair, Boise
Gail R. Smith, Esq., Mt. Vernon
Jessica R. Springer, Esq., Irvine
H. Dean Steward, Esq., San Clemente
Hon. Karen Strombom, Tacoma
Ragesh Tangri, Esq., San Francisco
Thomas H. Tongue, Esq., Portland
Hon. Nandor Vadas, Eureka
Hon. Neil Wake, Phoenix
George R. Walker, Esq., Monterey
Harold J. Weiss, Jr., Leander
Rebecca Weiss, Esq., Seattle
Hon. Thomas Whelan, San Diego
Dennis E. Widdis, Esq., Reno
Timothy L. Williams, Esq., Bend
Hon. Bernard Zimmerman, San Francisco

SUBSCRIBING

\$25-\$49

Alabama Supreme Court, Montgomery
Alaska State Court Law Library, Anchorage
Albany Law School, Albany
American Antiquarian Society, Worcester
American University, Washington
Anchorage Law Library
Edward Andrews, Esq., Santa Monica
Appalachian School of Law, Grundy
Argosy University, Pittsburg
Arizona State Law Library, Phoenix
Arizona State University, Tempe
George J. Ashkar, Esq., Santa Monica
Adam Attwood, Spokane
Ave Maria School of Law, Naples
Brian Alan Baker, Esq., Pasadena
Bancroft Library, Berkeley
Barry University, Orlando
Kai Bartolomeo, Esq., Los Angeles
Beverly E. Bastian, Carmichael
Hon. Stacy F. Beckerman, Portland
David M. Blain, Esq., San Juan Capistrano
Dean Bochner, Esq., Los Angeles
Boston College, Newton Center
Boston University, Boston
Wyman L. Brandon, Esq., Los Angeles
George Brewster, Jr., San Diego
Hon. Charles R. Breyer, San Francisco
Brigham Young University, Provo
Sherry Broder, Esq., Honolulu
Michael S. Brown, Renton
Robert Buckley, Jr., Esq., Beaverton
Patricia D. Cafferata, Esq., Reno
California Judicial Center, San Francisco
California State University, Fullerton
California Western Law School, San Diego
Case Western Reserve University, Cleveland
Robert Castro, Chino Hills
Chapman University, Orange
Chase College of Law Library, Highland Heights
Hon. Edward Chen, San Francisco
Chicago Kent College, Chicago
Steven Chidester, Irvine
College of William and Mary, Williamsburg
Columbia University Law School, New York
Constitutional Rights Foundation, Los Angeles
Cornell University, Ithaca
Creighton University, Omaha
Dale A. Danneman, Esq., Paradise Valley
Lars Danner, Esq., Anchorage
Dorothy DeCoster, Seattle
Dr. Patrick Del Duca, Esq., Los Angeles
DePaul University, Chicago
Dickinson School of Law, Carlisle
Charles Diegel, Nora Springs

Charles Donegan, Esq., Washington
Drake University, Des Moines
Duke University, Durham
Duquesne University, Pittsburgh
Noel John Dyer, Esq., San Francisco
E.P. Ipswich, Ipswich
Elon University School of Law, Greensboro
Carolyn Elsey, Esq., Tacoma
Emory University, Atlanta
W. Manning Evans, Esq., Washington
Thomas C. Fallgatter, Esq., Bakersfield
Federal Judicial Center, Washington
Alfred G. Ferris, Esq., San Diego
Florida Coastal School of Law, Jacksonville
Florida State University, Tallahassee
Fordham University, New York
Hon. Selim Franklin, Costa Mesa
Gale Group, Detroit
Michael J. Garcia, Esq., Downey
Mark A. Garmus, Esq., San Marino
Prof. Andrea Geiger, Burnaby
George Washington University, Washington
Georgetown University Law Center, Washington
Georgia State University, Atlanta
Hon. Helen Gillmor, Honolulu
Charlotte K. Goldberg, Los Angeles
Golden Gate University, San Francisco
Gonzaga University, Spokane
David Gould, Esq., Calabasas
John Griffin, Esq., Los Angeles
Stephen Griffith, Esq., San Diego
Robert Grimes, Esq., San Diego
Stanley J. Grogan, Ed.D., Pinole
Forrest Hainline III, Esq., San Francisco
Mark I. Harrison, Esq., Phoenix
Hastings College of Law, San Francisco
Danielle Hemple, Esq., Los Angeles
Robert Henry, Esq., Seattle
Bruce R. Heurlin, Esq., Tucson
George B. Hillsinger, Esq., Glendale
Andrew J. Hoag, Esq., Fresno
Hofstra University, Hempstead
Sandra E. Holzner, Esq., Yorba Linda
Douglas G. Houser, Esq., Portland
Lembhard G. Howell, Esq., Seattle
Prof. James Huffman, Portland
Shirley M. Hufstедler, Esq., Flintridge
Mark Humphrey, Esq., Los Angeles
Hon. Roger L. Hunt, Las Vegas
Huntington Library & Art Gallery, San Marino
Hon. Cynthia Imbrogno, Spokane
Indiana University School of Law, Bloomington
Indiana University School of Law, Indianapolis
Institute of History & Philology-Fu Ssu-nien Library, Taipei
Kristen Jackson, Esq., Los Angeles
Robert A. James, Esq., San Francisco
Beverly J. Johnson, Esq., Alameda

JRP Historical Consulting Services, Davis
Judiciary History Center, Honolulu
Elissa Kagan, Esq., Laguna Woods
Heidi M.H. Kalscheur, Esq., San Francisco
Dennis Karnopp, Esq., Bend
Paul Kens, Austin
Chris Kitchel, Esq., Portland
Anna M. Klingler, Esq., Beverly Hills
Dr. Louis Knafla, Porthill
Kay A. Kochenderfer, Esq., Los Angeles
Warren P. Kujawa, Henderson
Doug E. Kupel, Esq., Phoenix
David Langum, Birmingham
Danner Lars, Anchorage
Stanley A. Lehman, Bisbee
Peter Levinson, Bethesda
Kenneth Leyton-Brown, Ph.D., Regina
Liberty University, Lynchburg
Long Beach City Attorney's Office, Long Beach
Hon. Robert C. Longstreth, San Diego
H. Clifford Looney, Esq., Vale
Los Angeles County Law Library, Los Angeles
Los Angeles Public Library, Los Angeles
James Loveder, Santa Ana
Hon. Charles C. Lovell, Helena
Loyola Law School, Los Angeles
Loyola University, New Orleans
Jay Luther, Esq., San Anselmo
Brian Malloy, San Francisco
Charles Markley, Esq., Portland
Marquette University, Milwaukee
Louis Maslow II, Esq., Los Angeles
David McCuaig, Esq., San Diego
McGeorge School of Law, Sacramento
Hon. Robert McQuaid, Jr., Reno
Mercer University, Macon
Jonathan A. Michaels, Esq., Newport Beach
Michigan State University College of Law, East Lansing
Mississippi College, Jackson
Jeffrey Morris, Douglaston
Rye P. Murphy, Esq., San Francisco
National Archives-Pacific Region, Perris
Nevada Supreme Court, Carson City
New York Public Library, New York
New York University, New York
Diane North, Brookeville
Northern Illinois University, DeKalb
Northwestern School of Law, Portland
Northwestern University School of Law, Chicago
Peter O'Driscoll, South San Francisco
Ohio Northern University, Ada
Ohio State University, Columbus
Oklahoma City University, Columbus
Orange County Law Library, Santa Ana
Rachel Osborn, Esq., Spokane
Anne Padgett, Esq., Henderson
Pennsylvania State University, Carlisle

Adam W. Pollock, Esq., Westlake Village
Paul Potter, Esq., Sierra Madre
Princeton University, Princeton
Hon. Philip M. Pro, Las Vegas
LeRoy Reaza, San Gabriel
Prof. R.A. Reese, Irvine
Regent University, Virginia Beach
David Reichard, San Francisco
Evelyn Brandt Ricci, Santa Barbara
Riverside County Library, Riverside
Majid Rizvi, Sugarland
Terence W. Roberts, Borrego Springs
S. Roger Rombro, Esq., Manhattan Beach
Jean P. Rosenbluth, Esq., Santa Ana
John Rosholt, Twin Falls
Rutgers Law Library, Newark
Michael Sall, Esq., San Clemente
Samford University, Birmingham
San Diego County Law Library, San Diego
San Francisco Law Library, San Francisco
San Francisco Public Library, San Francisco
Santa Clara University, Santa Clara
Evelyn Schlatter, Salida
David A. Schlesinger, Esq., San Diego
David M. Schoeggl, Esq., Seattle
Quinton Seamons, Esq., Scottsdale
Seattle University, Seattle
Seton Hall University, Newark
Alan Smith, Esq., Seattle
Hon. Paul Snyder, Gig Harbor
South Texas College of Law, Houston
Southern Methodist University, Dallas
Southwestern University, Los Angeles
Russell Speidel, Esq., Wenatchee
Stanford University, Stanford
State Historical Society of Wisconsin, Madison
State University of New York, Buffalo
St. John's University, Jamaica
St. Louis University, St. Louis
St. Mary's University, San Antonio
Hon. Roger G. Strand, Phoenix
Superior Court Law Library, Phoenix
Supreme Court of Alabama, Montgomery
Syracuse University, Syracuse
Nancy Taniguchi, Ph.D., Merced
Randy J. Tanner, Missoula
Temple University, Philadelphia
Texas Tech University, Lubbock
Texas Wesleyan University, Ft. Worth
Hon. Mary Alice Theiler, Seattle
Thomas Jefferson School of Law, San Diego
Thomas M. Cooley Law Library, Lansing
Terry Thurbon, Esq., Juneau
David Tipton, Santa Monica
Susan E. Torkelson, Stayton
Tulane University, New Orleans
Chris Tweeten, Esq., Helena

Prof. Gerald Uelman, Santa Clara
United States Court of Appeals for the Eleventh Circuit, Atlanta
Universidad de Málaga, Málaga
Université Laval, Quebec
University of Alabama, Tuscaloosa
University of Alberta, Edmonton
University of Arizona, Tucson
University of British Columbia, Vancouver
University of California, Berkeley
University of California, Davis
University of California, Los Angeles
University of California, Santa Barbara
University of Chicago, Chicago
University of Colorado, Boulder
University of Connecticut, Hartford
University of Denver, Denver
University of Detroit, Detroit
University of Florida, Gainesville
University of Georgia, Athens
University of Hawaii, Honolulu
University of Hawaii Law School, Honolulu
University of Idaho, Moscow
University of Illinois, Champaign
University of Iowa, Iowa City
University of Las Vegas School of Law, Las Vegas
University of Louisville, Louisville
University of Miami, Coral Gables
University of Michigan, Ann Arbor
University of Minnesota, Minneapolis
University of Mississippi, University
University of Missouri, Columbia
University of Montana, Missoula
University of Nebraska, Kearney
University of Nebraska, Lincoln
University of Nevada, Las Vegas
University of New Mexico, Albuquerque
University of Notre Dame, Notre Dame
University of Oklahoma, Norman
University of Oregon, Eugene
University of Pennsylvania, Philadelphia
University of Pittsburgh, Pittsburgh
University of San Diego, San Diego
University of San Francisco, San Francisco
University of South Carolina, Columbia
University of Southern California, Los Angeles
University of St. Thomas, Minneapolis
University of Texas, Austin
University of Utah, Salt Lake City
University of Utah Law School, Salt Lake City
University of Victoria, Victoria
University of Virginia, Charlottesville
University of Washington, Seattle
University of Wisconsin, Madison
University of Wyoming, Laramie
John J. Valos, Esq., San Francisco
Valparaiso University, Valparaiso
Vanderbilt University, Nashville

Christopher Vigil, Albuquerque
Wake Forest University, Winston-Salem
Hon. Neil Wake, Phoenix
Hon. J. Clifford Wallace, San Diego
Washburn University, Topeka
Washington State Law Library, Olympia
Washington University, St. Louis
Stan Watts, Esq., Phoenix
Roy G. Weatherup, Esq., Los Angeles
Edgar Weber, Esq., Daly City
William C. Weeks, Esq., Oakland
Norman J. Weiner, Esq., Portland
Wells Fargo Historical Services, San Francisco
West Virginia University, Morgantown
Whittier Law School, Costa Mesa
Widener University, Harrisburg
Widener University, Wilmington
Willamette University, Salem
William Mitchell College of Law, St. Paul
Wisconsin Historical Society, Madison
W. Mark Wood, Esq., Los Angeles
Brandon L. Wyman, Esq., Los Angeles
Yale Law Library, New Haven
Yeshiva University, New York
York University Law Library, North York
Laurence S. Zakson, Esq., Los Angeles

GRANTS, HONORARY, AND MEMORIAL CONTRIBUTIONS

10 PERCENT FOR HISTORY CAMPAIGN

U.S. Court of Appeals, Ninth Circuit
U.S. District Court, Central District of California
U.S. District Court, District of Alaska
U.S. District Court, District of Arizona
U.S. District Court, District of Hawaii
U.S. District Court, District of Idaho
U.S. District Court, District of Montana
U.S. District Court, District of Nevada
U.S. District Court, Eastern District of California
U.S. District Court, Northern District of California
U.S. District Court, Southern District of California
U.S. District Court, Western District of Washington

NEVADA LEGAL ORAL HISTORY PROJECT

John Ben Snow Memorial Trust
State Bar of Nevada
U.S. District Court, District of Nevada
Washoe County Courthouse Preservation Society

HONORARY AND MEMORIAL CONTRIBUTIONS

In honor of Judge Paul Bernal
Lynn C. Stutz, Esq.
In honor of Jane and Harry Scheiber
John Briscoe, Esq.

- In memory of Judge Arthur L. Alarcón
Paula Mitchell, Esq.
- In memory of Gordon Bakken
Nancy J. Taniguchi
- In memory of Judge Stanley Barnes
Edmund S. Schaffer, Esq.
- In memory of Judge James Browning
Judge James Kleinberg
- In memory of Judge William L. Dwyer
Judge John L. Weinberg
- In memory of Judge Richard Lavine
Ruth J. Lavine, Esq.
- In memory of Judge William H. Orrick
Brian H. Getz, Esq.