



1926 - DA Kempley, middle, and the Assistant DA, left, faced bribery charges for withholding evidence in the murder trial of a Chicago mobster.

THE District Attorney's Office: A Brief History

"History is the story of the great men who have worked here." — Thomas Carlyle

By Gayle Falkenthal



The San Diego County District Attorney's office is rich with the stories of the people who turned the frontier's rough justice into law and order. As we mark the 150th anniversary of the organization, it's only natural to look back in amazement, amusement, and admiration. Since World War II, only three men have served as District Attorney — two of them for more than two decades each. But in the county's first 20 years, 23 men held the office.

The honor of serving as the first District Attorney of the California's fell to William C. Ferrell. At the time, there were only five men with legal training in San Diego County.

Ferrell's salary as D.A. was \$2,000, plus 10 percent of civil awards collected, along with fees paid by the county treasury allowed by the court in every successful criminal prosecution. If you were convicted of robbery, the D.A.'s take of the \$50 fine was \$41. Ferrell lived well on this generous income until May 1851, when the state legislature caught on and cut the salary down to \$500 plus the criminal fees. Ferrell was so outraged that he quit on the spot.

The same legislature decided to combine the jobs of D.A. and "County Attorney," known today as County Counsel. The outgoing County Attorney, Thomas W. Sutherland, was happy to become D.A. He wasn't so happy a year later in 1852 when the County of San Diego

went bankrupt and stopped paying him. He then moved to San Francisco.

This left the last of the lawyers to take up the reins as D.A. of these, James W. Robinson took a leading part in public affairs in San Diego from the start. A former Governor of Texas under the Mexican Republic in 1835. He was a founder of the San Diego and Gila Railroad, and he bought and developed large amounts of property in Point Loma. He was, by all accounts, a fine legal mind and was independently wealthy enough to hold the job of District Attorney from 1852-1856. He was defeated for reelection in 1856 by Joseph R. Gitchell.

Gitchell was an aggressive prosecutor frequently in the headlines. He succeeded in raising the D.A.'s salary back to \$500, payable in advance. Gitchell resigned two years into his term to become U.S. Attorney in Los Angeles. James Nichols, a local justice of the peace who had been a minister, was appointed. But the office didn't suit him, and he resigned in just seven months.

Meanwhile, William Ferrell was busy at work on his resumé. He became the chief of customs, chairman of the first Board of Supervisors in 1853, county assessor in 1854 and 1858 and was elected to the state assembly in 1855. He was persuaded to become District Attorney for the second time in 1859.

Ferrell had a longstanding reputation as an eccentric,

but there wasn't much choice as there were few lawyers available for the job. He lived up to his billing. A few months into the job, District Judge Benjamin Hayes decided a long-forgotten case against Ferrell. Ferrell became so enraged, he banged his law books on the table, stomped out of court and never again returned to San Diego.

The best medicine for the ailing state of the office turned out to be a physician. Dr. David B. Hoffman was appointed physician to the County in 1853. This also made him chief medical official of the jails, and the county coroner.

Dr. Hoffman enjoyed being District Attorney and brought some sorely needed stability to the office for the next three years. Hoffman left for Sacramento and a new position in the State Assembly in 1861. During the rest of the 1860s, seven different men served as D.A.

In 1870, the new D.A. William T. McNealy, was one of the most highly regarded attorneys of his day. He was the youngest District Attorney ever elected at age 21. He was quickly nominated for District Judge in 1873 after an exceptional three years as D.A., handling civil cases for the county and representing the railroad company in legal matters.

A dozen men served as District Attorney following the well-regarded McNealy before the turn of the century. One of them, James Copeland, nearly made legal history when he appointed Mrs. Clara Foltz, California's first woman lawyer, as his Assistant District Attorney in 1887. But it was discovered at her swearing-in that women were only eligible to hold the positions of School Trustee or Superintendent of Schools, and Mrs. Foltz' appointment was denied. She eventually was appointed California's first female deputy D.A. in Los Angeles County in 1910 at the age of 61.

William M. Darby won a heated election campaign in the fall of 1894 to succeed Martin L. Ward. But six weeks after his election, Darby committed suicide by hanging himself from his bedpost at his Old Town home.

The lame-duck Board of Supervisors appointed incumbent Ward to the "vacancy." But the Board membership shifted in the new term to a Democratic majority, and it appointed Adelbert H. Sweet to the Darby vacancy. Sweet wrote to D.A. Ward, politely insisting he step aside. This set up a five-month legal battle that eventually made its way to the California Supreme Court. The Court upheld the claim of Sweet.

Ward and Sweet continued to tangle for years.

Eventually, despite their duels in court, Ward came to respect Sweet deeply, and eulogized him at his funeral in 1924. Sweet's private firm, Sweet, Stearns, and Forward, became the backbone of the well-known San Diego law firm of Luce, Forward, Hamilton, & Scripps.

The name on the door of the D.A.'s office in 1902 is a name still familiar to local playgoers. Cassius Carter served three years as district attorney. He was also a recognized Shakespearean scholar. The acclaimed Old Globe Theatre's small theatre in the round was named after Carter when it opened for the second California Exposition in 1935.

After Lewis Kirby served in 1907-08, the modern era of longer tenures in office began. Harry S. Utley, a naturalized British citizen, served until 1922 with the World War I years excluded (four local lawyers each served for 12 months as "caretakers" of the office). Chester Kempley and Stephen Connell each served a full four-year term, followed by Thomas A. Whelan.

Whelan was elected D.A. at the age of 28 with the largest majority of anyone ever elected to the office. Whelan was a vigorous crusader against all forms of vice: alcohol, drugs, prostitution, and gambling. In 1934, Whelan went to battle with the members of a proposed nudist colony, "Campo Nudisto," in Jamul. He was very concerned about the effect on public morality. But after three D.A. investigators paid a visit to the remote spot (and took photos of the residents playing volleyball in the nude), Whelan was satisfied that it was a small group well out of view, and decided to leave them alone.

No mercy however was shown to the operators of 23 down-town hotels and rooming houses when Whelan filed abatement actions against them in December 1935. He pledged to dismiss the civil suits if the property owners could satisfy him and the courts they were no longer housing "dissolute" women.

In 1937, the Board of Supervisors asked Whelan to draft an ordinance licensing gambling devices in the county. Whelan, a staunch opponent of gambling, refused and said any such ordinance would be illegal. The board members assailed Whelan in the press. Whelan responded by threatening to arrest any supervisor who voted in favor of such an ordinance.

With Whelan so stubborn, the Board simply hired a private attorney to draft the ordinance. A few weeks later, Whelan conducted a raid on the first slot machine operations in town. This began months of battling over

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Photos
courtesy
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the fate of gambling in San Diego County. By March 1938, Whelan was completely fed up and resigned in protest to return to private practice. The Board of Supervisors appointed Deputy District Attorney James Abbey as Whelan's successor. He ran for a full term eight months later and won handily.

But just halfway through the term, the Board of Supervisors announced Abbey's resignation to go into private practice. While this news was sinking in, the real surprise was unveiled: Thomas Whelan was the unanimous choice to replace Abbey. Abbey agreed to swap jobs and take over Whelan's booming practice at his private firm. Whelan said some of the "happiest years of my life were spent as district attorney... it is with extreme pleasure that I return..." Whelan was also assured by the Supervisors that there would be a substantial pay raise for the succeeding term. Whelan's relationship with the Supervisors was repaired, and he served throughout the booming World War II years. He decided not to run in 1946.

Thanks in large part to the increasing military presence, San Diego was growing. Times were looking good and people wanted to have fun. Sometimes, too much fun. James Don Keller was elected on a "reform" ticket. Keller was known as a very modest, straight-arrow personality not given to any frivolous moments. This meant no more drinking during the day by D.A. staff. Knocking back a martini (or three) during the lunch hour was perfectly routine behavior. Keller would have none of this, which was considered terribly strict.

Keller and his senior staff were responsible for the modern structure of the D.A.'s office. Retired Deputy District Attorney John Hewicker, Jr. was among 28 prosecutors on the staff in the mid-1960s. Hewicker recalls that each prosecutor handled the whole gamut of criminal cases, and the growing workload threatened to overwhelm the group.

One Saturday morning, senior deputies gathered at Keller's house in La Jolla. Out of that meeting, Appellate, Special Operations, Municipal and Superior Court Divisions were created.

When Keller retired after a distinguished 24-year



1937 - DA Whelan (far right) in court.

career, respected former United States Attorney Ed Miller defeated Assistant District Attorney Bob Thomas and took office in 1971.

It's hard to believe that just 30 years ago, the office was so small that all the attorneys could meet once a week in the grand jury chambers, where the assistant D.A. would pass out the cases for the coming week.

From his first weeks in office, Miller initiated a series of innovative contributions. He created the Family Protection Division, Victim/Witness Assistance Program, the state's leading Insurance Fraud Division, Bad Check Restitution Program, Lifer Hearing Unit, and the first Hate Crimes prosecution unit. (Dare we say that one of the highlights of his tenure was creation of the award-winning *Law Enforcement Quarterly* magazine?)

Today, 285 prosecutors, 140 sworn investigators and hundreds of skilled legal support staff work in the D.A.'s office of the fourth largest county in the United States.

As we begin a new century of service, with challenges and crimes that we can't even begin to predict, some things will stay the same, as they have for the past 100 years. Crimes will still be committed, victims will suffer, and dedicated men and women in the District Attorney's office will do their best to bring every case to a just conclusion.

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