



William E. Davis: An Oral History

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WILLIAM E. DAVIS: AN ORAL HISTORY

William E. "Bill" Davis served as circuit executive for the Ninth Circuit from 1981 to 1986. He brought a wealth of experience to the position, including work as staff attorney for the Administrative Office of the Courts in California, director of the Administrative Office of the Courts for Kentucky, and personnel officer of the Bahai'i World Center in Haifa, Israel. After leaving the Ninth Circuit, Davis served as chief executive officer of the San Francisco law firm of Bronson, Bronson, and McKinnon, and then as director of the Administrative Office of the Courts, and secretary to the Judicial Council and the Commission on Judicial Appointments for the state of California. Davis is a cofounder of DPK Consulting, a firm that specializes in the promotion of the rule of law, dispute resolution, and anticorruption throughout the world; he also conducts projects in the West Bank and Gaza, Pakistan, Kosovo, Argentina, Venezuela, and the Philippines.

This excerpt of his oral history, recorded in 1994 by Terry Nafisi, deputy circuit executive of the Ninth Circuit, sheds light on Davis' experience in judicial administration and gives a glimpse into the management of courts. The transcript has been edited for publication. The original is part of the Ninth Judicial Circuit Historical Society's oral history collection.

INTRODUCTION BY THE HONORABLE JAMES R. BROWNING, FORMER CHIEF JUDGE, NINTH JUDICIAL CIRCUIT

Back in 1981, when the court was searching for a new circuit executive, Judge Dorothy Nelson said she knew just the man for the job—Bill Davis, former administrator of the state courts in Kentucky—and she was right. This reference from Judge Nelson ultimately brought Bill to the Ninth Circuit as our circuit executive. Together, Bill and I embarked on a program to bring organizational and communication changes to a newly formed Judicial Council of the circuit.

Among the key changes was the democratization of the circuit council. District judges were added as voting members in number equal to judges of the court of appeals. The addition of a senior judge, a bankruptcy judge, and a magistrate judge as nonvoting, observer members further enhanced judicial representation and ensured that the council would be kept

informed of problems affecting all aspects of the circuit. To ensure that the Judicial Council had the means to address problems as they arose, a system of advisory committees was established and a professional administrative staff was added to develop solutions and carry out projects and programs.

Thanks to Bill Davis' skills, deep-seated values, and inexhaustible enthusiasm, we were able to make an impact, not just in the Ninth Circuit, but on the judiciary's national policy and administration. Convincing the Judicial Conference of the United States and the Administrative Office of the United States Courts to adopt a financial management policy of budget decentralization was one of our most important contributions.

Bill and I were partners, with different but complementary skills, who shared a commitment to improve the administration of the Ninth Circuit in every possible way. As Bill observes in his oral history, our working relationship was mutually satisfactory and very productive. I concur fully and look back on that relationship with fondness and gratitude.

Bill's oral history vividly recalls an important and exciting period in the history of the Ninth Circuit, a time when the circuit not only survived efforts to divide it, but, I believe, triumphed as a model of court governance and administration.

THE INTERVIEW

Nafisi: It would help, Bill, to give the context of how you came to the Ninth Circuit, to say where you'd been before you came to the Ninth Circuit. I don't know that you necessarily want to start with childbirth back in Kentucky, but maybe you can bring us up to when you started contemplating a move to the Ninth Circuit.

Davis: Let's see. From 1979 to 1981, I, along with my family, lived in Haifa, Israel, and I was working at the Bahai'i World Center. About March of 1981, it became apparent that, for the health of one of my children, we would have to leave Israel, and I contacted Dorothy Nelson, who is a member of the Ninth Circuit, about some suggestions. I had no plans.

She advised me that the Ninth Circuit—I'm not sure if this was the exact timing, but somewhere in that timeframe—was in the process of recruiting a circuit executive. I arranged to make a trip to San Francisco, and I probably have the dates a little off, but I think it was in May, about six to eight weeks later. So I came to San Francisco and interviewed for a full week.

N: Was the interview with Judge Browning?

D: I interviewed with Judge Browning; I interviewed with Judge Goodwin. I saw Judge Alarcon, whom I had known when I was the staff attorney for the California Judicial Council from '73 to '75. He served on what was then called the Judicial Planning Committee for California, and I was staff to that committee and so I knew him from that experience.

I also interviewed with one or two other judges, but I cannot recall who they were. I saw Judge Browning numerous times during the course of that week, and I actually saw Richard Dean, who was the clerk of court at the time. I did not know, but I was the primary applicant for the position, and I was unaware of background.

I went back to Kentucky where I'd been the state court administrator before going to Israel. I was offered the job as executive director of the Public Utilities Commission in Kentucky. Then the chief justice [of Kentucky] said he would like me to come back.

This was an interesting experience. I left San Francisco not knowing what the wishes or thoughts of the court were. We had a home in Kentucky. Our belongings were stored in a warehouse in Kentucky. So when I left Kentucky and got on the plane to fly back to Israel to see my family, it was pretty clear in my mind that the simplest thing to do was just to go back to Kentucky. I mean, you get off the plane, put stuff back in the house, and you're back in business.

I arrived at the airport in Tel Aviv, and I remember with great clarity telling my wife, who is from California, that I thought we ought to go to Kentucky, and I remember the stone silence I met.

N: (Laughter) The four years that you were court administrator in Kentucky were your wife's first experiences with living in Kentucky?

D: No. I finished law school there when we came back from Chile in the early seventies. To say she wasn't anxious to return to Kentucky would be an understatement. In any event, I got back to Israel and, in fact, I'd made a preliminary commitment to the chief justice [of Kentucky] that we would come back. [My wife] was quite distressed.

About four days later, or maybe a week later, Judge Browning called me and said that the court had voted to offer me the job as the circuit executive. And I said, well, as I had not heard back from them and I did not know that I was the primary applicant, I had in the interim given the chief justice of Kentucky my acceptance to come back, and it had already been announced publicly.

Then there proceeded about a week of Judge Browning at his finest. We had a phone conversation, I can't tell you how long it was, but it was of some considerable duration.

N: You, of course, being in Israel.

D: Yes, of course. And I had no idea what time it was here because it was, I think it was late afternoon in Israel. In any event, we talked at length about why it would be a wise thing to come here and not return to where I'd been before. That was his position, and in the course of that, he made a number of observations about why working with the federal courts was a unique opportunity and why the Ninth Circuit was the place to do that.

Obviously, he was persuasive because I accepted. I had to find a way to graciously get out of all the other commitments. We arrived in San Francisco in July 1981; I think it was toward the middle of July. And I remember walking in the door, going up to his office in that spectacular conference room in front of the fireplace, seated in one of those enormously thick, heavy, leatherbound chairs and having him look at me and say, "I want it to be clear, if this circuit splits, it's your fault."

N: (Laughter) Oh.

D: And I thought—I didn't even know—

N: And, otherwise, welcome to the Ninth Circuit.

D: Well, he has this inimitable way . . .

N: Yes.

D: . . . of communicating real clearly what he wants.

N: Yes.

D: It didn't mean anything to me.

N: Yes.

D: And I thought, well, what is it? What does this mean? What am I supposed to do? I always appreciate the clarity and candor that I think our relationship enjoyed, and that was the beginning of what I would consider a very fruitful five-plus years of working with the Ninth Circuit.

N: How did you actually get started with a career in court administration? When you started, it wasn't even really called a career, was it?

D: It was an accident. I finished law school. After, I worked with the Peace Corps about five years. Then we moved west. I tried

being a lawyer in a tiny town. I wanted to be a benevolent dictator in a small town; and I went crazy after six months of doing divorces and probates and minor crimes, and I said I couldn't—if this is the rest of my life, I will die. I can't stand this.

So we literally got in our car and drove to California, and I came to San Francisco. My immediate boss in Chile had been a lawyer here. He introduced me to the director of the Administrative Office of the Courts of the State of California, Ralph Kleps, and I had an interview. Dates are a little foggy now, but it was in the spring of '72 or '73, and he offered me a job to do two projects funded by what was called the LEAA¹. As I hadn't taken the California bar—a job was a job.

N: Right.

D: I had a family and children, so this was something that I took up. I found in working there that it provided a nice marriage of two areas of interest, the law and administration, that I didn't really find in practicing law, and it gave me a chance to bring some of the things that I consider most enjoyable to me, to look at systems rather than just one case at a time.

So for two years I worked in California. We did a study on the use of tape recorders, which was one of the first in the United States at the time; we started the Judicial Planning Committee. I think the study that I enjoyed the most was the study on language needs that non-English-speaking people have in the justice system.

N: They're still undergoing those same studies.

D: Well, those issues are enormously complex; they're difficult—but it was a rich experience. I enjoyed it.

And then I got a call from a judge in Kentucky asking if I would come back and be considered for what was then called the Office of Judicial Planning, but Kentucky was in the process of adopting or proposing a constitutional change that would radically restructure the whole judicial system, and the opportunity was to come and direct that change.

Well, this is a once-in-a-lifetime opportunity; these things don't come but once, so with some significant persuasion, I convinced my wife and children to go back to Kentucky, which we did in 1975.

¹The Law Enforcement Assistance Administration was established by Congress in 1968 to funnel federal monies to state and local law enforcement agencies. The LEAA created state planning agencies, funded educational programs, research, and a variety of local crime control initiatives. It was abolished in 1982.

Then from '75 to '79, we had—well, it was the most demanding period of work in my entire life. It was unbelievable. It was politically tense, highly demanding. We eliminated nine hundred judges' jobs and about three thousand clerks, and literally cleaned the slate and started all over and built a brand-new system.

It was the first state in the United States to eliminate commercial bail bonds and make it a crime; first state in the United States to start a statewide pretrial release program, and created a court of appeals. Some of my contacts in California served, and we brought them there as consultants. I got to know Dan Meador in that time, Winslow Christian. Ever since then, it's just been a permutation of the same, some deviation of the same thing.

N: But it seems as if most people of roughly our generation just sort of, by mistake, wandered into the judicial administration field.

D: Well, I think two things coincided.

N: Coincidence.

D: You have to recognize Chief Justice Burger's vision and leadership. He really altered the discussion in the United States with respect to the organization and structure of courts. It was his leadership and his insistence that there needed to be created corollary administrative functions that supported the judicial function; his whole effort at creating the Office of Circuit Executives, creating the Institute for Court Management, coincided with this recognition that justice is an incredibly complex enterprise. It requires all manner of disciplines, not just the law, and the organization and structure of courts perhaps is one of the most complex enterprises in any society; to do it well requires more diversity than necessarily is brought by the lawyer and the judge.

So it was a serendipity—I just happened to be here in the early seventies when these things began to effloresce.

N: And, of course, the LEAA funding created so many jobs that for many of us were the first entrée. . . .

D: I think what LEAA funding did was it corroborated Justice Burger's assertions and it forced judicial systems to discover more about themselves than they were previously aware of, and in so doing, they began to recognize that this function warranted greater attention. We began what I consider the last twenty years or so of the real debate about independence.

I mean, we've gotten one thing. The debate of independence of the judiciary started with the notion of noninterference in

decision-making about cases and it has now evolved to the point where independence is really a discussion about noninterference—is subsumed in it. As a branch of government, a co-equal branch, do you operate in a way sufficient to draw attention to your confidence in your ability to manage your affairs, and independence has become more broadly defined than it once was. I think the advent of professional people who work in that area has contributed to that.

N: Now, when you joined the Ninth Circuit, I think there was still probably a majority of the clerks and circuit executives, and especially perhaps in the court of appeals, who were more traditionalists. They weren't graduates, let's put it this way, of the state court systems that much.

You were in one of the first tidal waves of people coming in; we were starting to see some changes, more recognition on the part of the judges of professionalization of the field of court administration. Almost concurrent with that recognition was sort of an uneasiness, even on the part of the judges, with regard to the role that professional court administrators are to play. It probably harkens back to the old policy administration dichotomy that so dots political science literature, but in the judiciary, it takes on a special twist.

I know you have had some experience with that while you were working here. What do you think is the proper role for court administrators? Is there any way for court administrators not to be involved in the policy process, and, if so, do judges have some things to be anxious about in that regard?

D: I would say the mature leader has nothing to be anxious about, but welcomes the participation of those who are informed and knowledgeable about how things work. Those who are less certain about themselves and their understandings have a tendency to be more resistant and are more anxious to put people in—and define their positions in much more limited ways.

I would also characterize—this is perhaps self-serving, so I hesitate to say it, but I will anyway—I think those of us who began to work in this business back in the early seventies started at a time when it was a discovery process, and consequently many of us had the benefit of uncovering these activities simultaneously with the people with whom we served, who were either justices or judges who were supervising the courts.

The role that evolved in my profession, my early life, was as much policy as it was administrative, and I never got lost in the dichotomy of the discussion until I came to the Ninth Circuit, where there were a number of members of the court who were perhaps unfamiliar with people with my background

and/or who were jealously guarding what they perceived to be their prerogatives.

My own definition was, when I sat at the table—whether it was with the council or the court—if I felt, and Judge Browning encouraged me to do this, if I felt I had something to contribute to the conversation that was occurring, then I had the obligation to make my observations, notwithstanding whether they could be characterized as policy or as administration.

This is something for which I've always been grateful. He was always open to that kind of dialogue; that was never an issue of discussion with him, my interfering in the policy-making process. Because actually, policy-making occurs because people are challenging thoughts and understandings based on their experience, and it is weakened when those individuals who have something to contribute are excluded from the process. It may in fact lead to erroneous conclusions if the information isn't provided that's adequate or is necessary to provide a strong policy position.

I see in the whole business of court administration—I would characterize it perhaps too harshly—that there has been in the last six to nine years very much of a winnowing away from the court administrator as a participant in the policy-making process and much more of an emphasis on the administrative, technical role, leaving the other to the judges alone, so to speak.

I don't think that's healthy. I think it's a cycle. As I said before, I think mature leadership will recognize that that's not a healthy way to do business and that ultimately it will come back and they will welcome—'they' being the judges—will welcome the participation of people who have got some things to say.

It doesn't necessarily mean you have to accept everything that people offer, but the wise, mature leader accepts good advice from whence it comes and then synthesizes that into a policy position.

So I think the court administration business is sort of redefining itself at this point.

N: Growing pains perhaps.

D: Perhaps, and then actually, I think you see it even more so, because in many cases, I find judges enjoy the court administration part more than they do the judging part. So you see this whole motion now of not what was originally postulated—that administrative people would assume these roles. Now you see proposals like the chancellor for the federal courts and other somewhat similar positions where judges would assume these roles. And think that's—well, I don't have an opinion. If

the people have the skill, it makes no difference to me what their background is.

Being a judge doesn't necessarily qualify, but federal courts are peculiar. In this sense, the state courts are much more egalitarian; the federal courts are more status conscious and hierarchy conscious: You're either an Article III,² or if you're not, you're something less, and therefore access to the upper stratosphere is limited.

N: You mentioned the difference between the state courts and the federal courts. I felt quite a culture shock moving from the state courts to the federal courts and perhaps maybe doubly so for you, coming from Kentucky, where you had been directing a major renovation, reinvention virtually, of the entire Kentucky court system.

There was certainly a mandate for change here in the Ninth Circuit, but what comparisons or contrasts struck you as you left Kentucky court administration reformation and began to participate in the changes that were under way in the Ninth Circuit?

D: I think the dominant one was the omnipresence of the Administrative Office of the Courts in every little detail of activity to the point that it created, perhaps not by design but certainly *de facto*, a complete state of dependency on the AOC for every aspect of day-to-day management, not recognizing that there were competent people who perhaps even had better and more appropriate experience than many of the people in Washington, or not recognizing that these judges who were constitutional officers with a vast array of experiences were perfectly capable of managing some of these things themselves.

The judicial conference and the AOC had wrapped themselves in the elaborate set of policy and procedures based on the presumption that you couldn't trust anybody outside the Potomac River; it was unbelievable, it was astonishing. It was incredible to someone who had actually come from a jurisdiction where we eliminated judges because of corruption because we couldn't figure out how to clean them up. The federal courts have never had that reputation, that you come to a system organized and constructed on the basis that not a soul outside Washington could be trusted with a single cent. This was phenomenal to me.

²Article III of the U.S. Constitution, of course, establishes the federal judiciary. Supreme Court justices, circuit judges, and district judges are Article III judges. Bankruptcy judges, magistrate judges, and judges of the court of claims, for example, are not.

Secondly, an elaborate statutory construct had been developed, i.e., under the label of judicial councils and [the] U.S. Judicial Conference, and this whole structure was premised on the notion that people could participate in development of policy and direction. But—well, I'll have to say this—the principle was adhered to in written form but not in substance. It was really a structure that was bent on control of the agenda by a very narrow group of people who intended to control the information available to the committees and who intended to control, therefore, the resulting policy development.

These things I saw as clear as day, and in my discussion with Judge Browning, I said these are things that we—notwithstanding the agendas that the Ninth Circuit would wish to pursue—have to confront the federal central system that had its own agenda, and it may or may not coincide with what the priorities were.

Now I've read, went back and looked at the original statutes regarding the councils and their roles, and this is completely opposite of the concept of the Judicial Council, which was a regional body that would be responsive to the local issues and, in this case, the Ninth Circuit, and would take initiative to address those issues and, where appropriate, would pass its recommendations on to the National Judicial Conference, and national policy would emerge.

What had occurred is, I guess, the councils (I know, because the councils had been weak, ineffective institutions)—I don't mean the Ninth Circuit only, I mean all of them—were replaced by an elaborate committee structure that supported the Judicial Conference, and the councils were set on the periphery and were not even conceptualized as being integral to the day-to-day administration.

And, in fact, when a council—in this case I'll speak of the Ninth Circuit—when we took initiatives, it usually was over the opposition of people in Washington. In fact, the frequent and sometimes affectionate refrain was we thought of ourselves as AOC West, but that wasn't altogether inaccurate.

We represented 25 percent of the country, and it was our view—I'm saying 'our' because I think this was the view shared by Judge Browning—that the strength of the system was dependent largely on the degree to which the smallest unit, i.e., a bankruptcy court or the next unit up, the district court and/or circuit or the Ninth Circuit, took initiatives to make things better. It wasn't dependent on some meeting that occurred twice a year called the Judicial Conference where they took votes on things. It was what you did every

day and how you initiated change and responded to the needs of justice at the local level.

So our whole concept of the council was that it was an engaging institution whose role was to provoke, promote change, and support initiatives.

N: You've referred to your working relationship with Judge Browning. How would you categorize that generally, and how did that work, practically speaking?

D: Well, it was a lot of work. Judge Browning is a fellow with a fertile mind and never-ending list of to-dos, and what I found in him and I think he found in me was a welcome participant in the notion that you can do anything you want to do, basically. And so we never started a conversation with 'you can't'; that was just never a discussion. Our conversation was, 'well, if it's this way, why can't we do that?'

Our working relationship was very stimulating; it was always a pleasant relationship. His good humor and sense of mission I found contagious, and I enjoyed that part of our relationship very much. I also enjoyed his willingness to listen, because he has a facility not many people seem to have, to hear other people. In that sense, I think our relationship was a wonderfully receptive, a mutually complementary relationship.

N: You met every day, did you not?

D: Every day. Absolutely every day between 9:00 and 9:30 as a norm, and because the list of things we had to do, or he wanted done, began to grow, we could never quite get a system that we would be completely satisfied with for following up. The only way we could do it was, he began to assign to his chief law clerk the task of sitting in on the meeting and keeping the ongoing list. The time it would take me to inform him of all the things I had done that we had talked about the day before would take a couple of hours to write, and who had the time to do that? So the law clerk filled that role.

I don't remember, in all honesty when I left here—the list probably had eighty items on it at a minimum, and they ranged from phenomenally significant to mundane. But I think the list was simply symptomatic of the range of concerns that he had, from a very great, detailed concern about the power of a light bulb to the concern about how you influence policy with respect to the Criminal Justice Act.

N: Surely you haven't forgotten the timing meters in the courtrooms.

D: [Laughter] I remember with great clarity the timing meters and the search for the perfect timing meter.

N: I think they finally found them.

D: Well, I'm elated that they found them, but that one never got on my front burner. I tried to get it on Franco Mancini's front burner.³ I remember, you know, we're trying to keep GSA on schedule with this infernal project in Pasadena, which is beset with 'the number of opinions is relevant to the number of participants,' and policy is decided by who spoke last, and the decisions of committees that are changed by the chair who didn't like them, and those issues of trying to find the money and keep that project going, and/or the project in Seattle, and/or . . . and then the timing meters, you can see. My heavens to Betsy (laughter)!⁴

N: All things great and small.

D: Everything had its place. It was a delight. It was always fun to go to the Judicial Conference with Judge Browning. He was always the best prepared judge at the meeting. There was just simply nobody in his league. And part of that was because of the process we devised here. We asked all of the Ninth Circuit committee members who served on Judicial Conference committees to give us information. We, of course, had formed a parallel structure, largely of Ninth Circuit committees so as to have the ability to articulate views from the Ninth Circuit perspective on similar questions, and he had a briefing book of equal size to what the Judicial Conference book was, which was usually about eight inches thick. So as he would sit in the meetings, he could call up and say, 'well, in Idaho, it means this or in Oregon it means that,' and no one at the table would have a command of information as he did. Consequently, his influence at the Judicial Conference was disproportionate to one person's vote of equals, because he was better informed and usually we had already talked through what the position should be. So—often when there were, let's say, more knotty or complicated issues—we would go a few days in advance and do some lobbying with the AOC staff and/or the committee chair so as to set the stage for whatever the position would be.

And we always visited Ninth Circuit senators. This was a normal process of just stopping by and saying 'hello, how are

³Franco Mancini worked for the Office of the Clerk from 1973 until 1982, when he transferred to the Office of the Circuit Executive. He was assistant circuit executive for Space and Facilities, and he retired in 1996.

⁴The General Services Administration (GSA) is the landlord for the federal government. The Pasadena project, initially contested by GSA, was the renovation of a former hotel and hospital into the Richard H. Chambers U.S. Court of Appeals Building. The Seattle project was the renovation and possible expansion of the U.S. Courthouse on Fifth Avenue.

you? We're doing fine, how about you?' This was all a part of the grand political strategy of keeping friends and not creating enemies so as to not divide the circuit.

Well, you went to Washington, you know. The only time you rested was between 10 at night and 7 in the morning. It was a full agenda. It was always rich and interesting and, I think, we were always a little more effective than some of our other counterparts.

N: You mentioned the Ninth Circuit committee system. That was part of, really, the overall governance structure that Judge Browning and you set up as part of the modernization of the Ninth Circuit Judicial Council.

D: Yes.

N: What did you and Judge Browning really hope to accomplish by that, and do you feel it really met its purposes?

D: Well, there were some very clear goals. First, it's recognized in professional organizations, professional people respect and adhere to policy development when they participate in it.

Second, this is an enormous geographical area, and except for the occasional [Ninth Circuit] Judicial Conference, many of the people didn't know each other and didn't have reason to trust each other, so to speak.

And third, the idea behind the Judicial Council was that this was a body that took its role seriously to make federal courts work better in its geographical area.

I remember writing the memo in 1982 suggesting that we build a parallel committee structure, where appropriate, and that we engage as many people as possible in the process of governance so as to have in all the courts someone who could say, 'well, I was at the committee meeting or I was on the committee that did this work,' so they would be the spokespersons at the local level on what was being discussed and developed.

And fourth, I guess it was really to recognize that there was no monopoly on wisdom here, that a lot of folks had a lot of things to say and contribute, that we needed to get their views in this process, and that by so doing, it would be a richer process and we would be better off as an institution if we could ensure that there was adequate participation.

And the Judicial Council debated it. We were in Tempe, Arizona. It was at the midwinter conference. I remember we had a long discussion about it, and there were no dissenting views. I think there was a really unanimity of view that this was a strategy that should be pursued.

So we set about doing it, and then we complemented that with strengthening the role of the annual [conference], by creating and encouraging the annual meetings of the different associations,

whether it was the magistrate judges or the bankruptcy judges or the district clerks or the bankruptcy clerks, or the chief judges—all with idea that if their folks had a role, not a social role necessarily, but a role in governance, then we had to encourage them to take leadership and initiate change and identify issues of concern, and then on that basis, identify things that the council ought to do in the Ninth Circuit or propose for the national level.

N: During that time, the role of the court of appeals in the governance of the council and in its relationship to the circuit, and certainly to the circuit executive, underwent significant changes. What are your recollections about those changes and have they evolved in the way that you would have liked to see them evolve?

D: Well, I remember one of them was a judge, whom I shall not mention, who wanted to spend \$13,000 or \$14,000 on a desk, and this matter went to the council. I remember this judge in the court meeting going through a meltdown, raising his voice and asserting that this was an infringement and that the council shouldn't be involved in these things because, heretofore, those things had been dealt with by the—the circuit and the council were the same.

N: You mean the court of appeals and the Judicial Council.

D: The court of appeals [and the Judicial Council] were the same institution until they split by a statute.⁵ And the Ninth Circuit, again under its leadership with Judge Browning, decided to create a council with equal membership of district judges and circuit judges and remove this administrative role from the circuit.

For the older circuit judges, this was very hard to do. They had gotten accustomed to making every little decision about space and assignments and all sorts of things, and so I think for some of them, it was a bit traumatic. It was not infrequent that you heard references made that this was a mistake, or if these guys ever did thus and such, we'd take it back and that sort of stuff.

Also, for some of the judges, it was clear they were relieved of having to deal with that; they didn't want to deal with those things. They didn't relish dealing with disciplinary matters. So there was a split. I don't know that I could ascribe a number to it, but it was a split.

⁵The circuit conferences and the circuit councils were created in 1939 [*Statutes at Large* 53(1939): 1224]. In 1980, the composition of the circuit councils was changed [*Statutes at Large* 94(1980): 2035]. See also Erwin C. Surrency, *History of the Federal Courts*, 2nd ed. (Dobbs Ferry, N.Y., 2002), pp. 120–22.

At the time, there were a whole bunch of new appointees, and they seemed to be much more willing to let the council do its work, and I think but for that, it would have been much more difficult because they came along at the same time as the council came along.

I can't articulate whether it's gone as it should have gone. I don't feel informed sufficiently today to know what the councils are doing except to know that there's been a profound change in the delegation of responsibility and increasing authority and responsibility to the councils. That's all impressionistic, but I don't know substance.

N: You mentioned that when you first visited with Judge Browning on your arrival from Israel, his opening words were, "If the Ninth Circuit splits, it's your fault." Well, clearly the Ninth Circuit didn't split on your watch. Do you consider that then your greatest accomplishment? What things do you really feel good about with regard to your legacy with the Ninth Circuit?

D: I think the most important thing was that we succeeded in getting a lot of people involved in trying to make the federal courts the kind of institution that they wanted to work in, and I think in that sense, the participation of lots of people in this process was a significant contribution. I don't take credit for it. I just think we recognized that need and found a way to give expression to it. In that context, the other thing that we did was, we proposed the decentralization of the budget process, and I remember the meeting at the Hotel Del Coronado of the Judicial Council. Then-Budget Director Ed Garabedian was present, and this was debated. I thought he was going to have a heart attack, he was so distressed over it.

The council voted to proceed with making the recommendation that every effort be made to find a way to delegate greater responsibility to district courts and give greater discretion to the circuit and district courts to oversee their expenditure of funds, and that they would be rewarded appropriately by giving some discretion over expenses.

Well, that was really throwing the gauntlet down at the time, and, in fact, a few short months later, Chief Justice Burger, in two public speeches, referred to me in very unkind words and made reference to these ideas.

N: That was sort of a conflict, inasmuch as, really Justice Burger himself was almost the Roscoe Pound of his era in terms of bringing about a new era in court administration, and yet with some other things, he was very traditional in his view about court governance.

D: I can't say whether this was his view. He spoke it, so it was his view, but my impression was that he was influenced more heavily by the Administrative Office of Courts than he was by his own conviction, and they had led him to believe that this could not be done, that you couldn't trust these folks to adhere to the limits, so he naturally supported that.

I remember several conversations, once in Judge Browning's office when Justice Burger called. Actually, I remember one day he called irate over [the fact that] we had approached a member of the Ninth Circuit who was on a Judicial Conference Committee for a draft of a report, and this person, I guess for whatever reason, had called the chair of the committee to see whether he could release it.

Now this strikes me as a very strange process. We're all in the same U.S. government, we're not fighting each other. These are all constitutionally confirmed officers, all of whom have the interest of the system at heart, and yet the system is designed so that you can't tell each other what you're talking about, what you're thinking about that might affect your own lives. This was amazing.

Anyway, he, I remember, expressed his views very strongly about what was the Ninth Circuit doing, who did we think we were, trying to influence these things? I think it's a natural tendency when you're the head of the system to want to try to control the outcome of things and manage things, and then you see a maverick like us, or perceive us as a maverick where we think we have something valuable to contribute and we're trying to do our best to add our salt and pepper to the mix. But, as you know, the funding business has now radically changed after a pilot study and I think . . .

N: You're talking about budget decentralization.

D: Right. I think budget decentralization will ultimately, in the long term, end up being a valuable contributor to the creation of a more dynamic and responsive federal judiciary.

N: You'll be surprised to hear that the JSP⁶ is now about to be laid to rest. They're going to give classification and compensation authority to the courts following the lead of budget decentralization. The millennium is arriving slowly but surely with regard to that.

D: Well, you know the federal courts don't live in a vacuum. The rest of the world has learned that you have to learn to

⁶JSP refers to the Judiciary Salary Plan, a centrally administered personnel classification system that some considered too rigid.

draw—you need to learn to define policy at the national level and take great strategic decisions, but ultimately it's wiser to leave some of the tactical decision-making to the people closer to the ground, and this is really a reflection of that process.

N: Sure. Do you feel, then, that setting up this system by which people would participate was really your greatest accomplishment while you were with the Ninth Circuit? And, if that is not the case, what was really the greatest challenge that you faced?

D: I don't know that I'm the best person to evaluate what I did, so let me come back and answer that two ways.

In my professional development, I see three patterns. I see one pattern that was my years in Kentucky—I really thought you had to have a certain kind of organizational structure, and once that was in place, the systems tended to sort of right themselves and work reasonably well. Then I came to the Ninth Circuit, and I thought, well, no, phooey, it's not the system, it's really the process. You've got to have processes that are in place that are consultative in nature and facilitate exchange and then processes that motivate people and things of that nature. And, third, I have moved from that to now, where I see the real issue is the people.

I say this in my talks in Latin America, that the world divides into thirds: One-third of the world never met a new idea they liked. They are characterized by saying "no" in the morning and "no" when they go to bed, and that's just who they are, and you have to understand them, treat them nicely, be civil to them. Then there is one-third that is unsure. They are never really quite convinced of anything; they're kind of in the middle. And one-third is "yes." And the "yes" group is the group with whom you work, because they are the ones that promote change and foster what I would consider the self-critical attitude that you need in any institution.

So the strategy should be to find out who's who, because the "no" people will be the loudest; they always are. They've always got a reason why something can't be done. I mean, if you've heard it once, you've heard it 800,000 times, "if it ain't broke, don't fix it." My rejoinder to that is, you haven't looked close enough, because there isn't any human activity that works so well that it can't be improved upon. So the challenge is to create the capacity to say, well, let's reevaluate, let's look at it.

That's something that Judge Browning and I shared, and I think because of that, we had this mutually beneficial working relationship. So, I would say, if you can in some way have

helped or fostered the participation of people in the governance of the system so they took ownership, they didn't feel as if they were dependent on someone else for their decision-making, and they felt as if this system was really contingent on their effort to make it better, and if I had some small [influence] in that, then it was worthwhile.

N: You mentioned working for Mr. Kleps in the California state court system. I think for many people, many Californians for sure, he was sort of their hero with regard to how courts should be administered, at least a modern court. Who would you say are the heroes today in court administration? Was he a big role model for you, and, if not, who else was?

D: That's a tough question. He was a role model in the sense that he was the first. I admired his long and distinguished public career. He had numerous distinguished posts before he became the administrative director.

I'm not altogether sure why this happened, but he and I became fairly good friends while I was working there, and he told me of this early experience at—oh, my, I can't remember the school over on the eastern slope of the Sierras where he went to high school and prep school—Deep Springs. His father died early, and he had gotten a scholarship there. A lot of the people who went to this school, from Seth Hufstедler to all sorts of other prominent Californians, all emerged with a very strong, keen public service commitment and in different ways had given life to that. I think that, probably more than anything else, [is what] I admired in him.

He was an astute, a political (small "p"), person. He was effective in the legislature. He had his troubles, as I think every administrative director does with judges, and particularly trial judges, and most notably Los Angeles trial judges. Then when I became the director of courts in Kentucky, we talked on occasion and I sought his advice, and then he had the change of chief justices. Chief Justice [Rose] Bird came, and he was asked to leave; that was very traumatic for him.

Who are my heroes? I haven't thought of that. I never thought I had a hero. One of my heroes was the chief justice in Kentucky, John Palmor. I enjoyed working for him as much as anybody I've ever worked with. He was a unique person. He was sent to Harvard during World War II after being a young lawyer; he was in the Quartermaster Corps, so he went to business school. They sent him to business school to run supplies during the war. He had the most unique sense of balance between very strong leadership and partnership with a person like me. And he, again like Judge Browning,

would seek counsel and then once the decision was made, we would do it, and we'd get in the car and drive anywhere.

I remember when we had a court reporters' strike in Louisville, and he said, "Go down and meet with them and tell them, you know, if they don't go to work tomorrow, we'll replace them all with tape recorders." I did that, and everybody but one came back the next day, and sure enough, we put a tape recorder in her place. And now there are no court reporters in Kentucky; they're all video reported.

But he was a delightful chap, a real gentleman, a Southern gentleman, and so, in a sense, I always admired his, what I would call "Southern gentleman's dimension." I admired his forthrightness. We had some much more difficult issues in the Ninth Circuit because the political nature had changed in the state. When you change local judges, the politics of that is unimaginable. The federal courts don't even come close to those issues. And everybody and their brother is touched, because—I've said it over and over—I continue to believe that nothing brings fear to a small town like an impartial judge. It scares people to death. And we actually saw that principle manifested in the Ninth Circuit. When we would assign a judge in Los Angeles to the Eastern District of Washington, watch the cases settle. People would settle cases hand over fist.

N: That's right.

D: So, it's the same principle. When you do it with a small town. . . . Anyway, Judge Palmor and I were an interesting duo together. I think my heroes today are the Italian judges who are taking on the Mafia. I think the true heroes of the day are those who are out in front confronting the great issues in their society and trying to build justice systems. I have some other heroes that are more international in nature.

N: You've always been a man of principles; they've been very important to you in your personal life. How have they assisted you in your career in court administration?

D: Well, I'll go back to Kentucky. I remember in December 1975 arriving back in Frankfort, Kentucky, and we rented a house. I went down to register to vote, and because of my religion—I'm a Baha'i—I don't belong in partisan politics, so I register as an independent.

Two days later, the chairman of the Democratic Party called me and said I'd made a mistake. I didn't know who this person was. I had no clue who he was. He presumed I would know who he was. I didn't have an idea. He called and said, "You've made a mistake." I said, "I beg your pardon, what mistake have I made?" And he said, "You've registered as an indepen-

dent." "Oh," I said, "That's not a mistake, I'm an independent." He said, "No, you're not. No one can be the head of a state agency in Kentucky and not be a Democrat." I said, "Well, you just met the first one."

So having principles helped me deal with what soon became a series of very difficult confrontations over the role politics has in the judicial system and/or with individuals who work in public service. But for that, I'm not sure I would have had the wherewithal, but I'm not sure what I would have stood for, so the principles have helped me define myself and what I believe in.

I've always believed very strongly that you're in a place for a reason. You give what you have, whatever it is—if it's adequate, if it's inadequate—and do the best you can. I don't think I've ever really been consumed with personal ambition, but maybe I have and I should reflect on that. But my sense has always been the principle—and this is Ralph Kleps' license, you know: make a difference, make a contribution. That's been consistent with me from my time of joining the Peace Corps when I graduated from college 'til today. And try not to be possessive about things. Let others have their say. That's not easy to do; my wife will tell me that.

N: You know, we're having this conversation because of the Ninth Circuit Historical Society's interest in preserving the oral record of people who participated in the federal courts. Is there anything that we haven't talked about that you'd like to add for the record, or make a closing statement, Counselor?

D: Well, as Judge Browning often said, "This great experiment, the Ninth Circuit." I always felt it was a privilege to be here at this time, or at the time that I was in the early eighties to the mid-eighties. It was a dynamic time, and I got to associate with some really remarkable people. Our work relationships were demanding, but the experience has been enormously valuable to me, and the friendships I still count are things I cherish. I think it's best to let others judge what contribution one made.

N: When talking with Judge Browning before talking with you, I asked him to single out anything that he felt you particularly contributed to the Ninth Circuit, and that question really puzzled him. He said, "Gosh, you know, Bill and I talked every day, and just as you described it, he said we had this very open and very engaging dialogue about how to solve problems, and I don't remember even keeping track whether I suggested it or he suggested it. If one of us suggested it and we decided it was a good idea, we went forward. He was, in many respects, an

architect of a lot of the things that we agreed to do, and it's really hard for me to pin [down]." He said, "We were like Siamese twins in working with the Ninth Circuit."

D: Well, as I think I've tried to articulate, it was a real partnership. It was a wonderful symbiosis of collaboration. He never took the posture that I'm the boss and you're the servant. His position was, let's figure this out. And as I said earlier, that is the characteristic of a wise and mature leader, and it's a characteristic that anybody in that environment would welcome.

It was a wonderful model for me. I've tried to use it subsequently in every other kind of environment I've been in, and so I retain this enormous affection for him and those years. I look back with a lot of affection.

N: Okay. Well, I thank you very much.

D: My pleasure. Thank you.



William E. Davis