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Cover photo: The Honorable Richard H. Chambers, chief judge of the Ninth Circuit from 1959 to 1976, pictured here in his San Francisco chambers, is the subject of this special, double issue of *Western Legal History*. (Courtesy of Kathryn Way, U.S. Court of Appeals Library, Pasadena)

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INTRODUCTION

Richard Harvey Chambers was, by all accounts, a remarkable man. This issue is devoted to a review of his career as a federal judge.

Appointed to the U.S. Court of Appeals for the Ninth Circuit by President Eisenhower in 1954, Chambers served until his death in 1994 at the age of 87. His judicial career was highlighted by his seventeen-year service as chief judge from 1959 to 1976; he was the longest-serving chief judge in the history of the Ninth Circuit. During that same period, he served on the Judicial Conference of the United States and for six years on that body's Executive Committee, from 1970 to 1975. By his longevity alone he would have left his mark on the Ninth Circuit. But had he served even less than half of those forty years, he would have left his mark through his unique style, personality, and vision.

First proposed by Terry Nafisi, deputy circuit executive for the Ninth Circuit, this issue is intended to provide perspective on Judge Chambers' judicial career and to capture, at least in some small measure, a sense of the man. Ms. Nafisi enlisted the support of Judge Chambers' widow, Eileen Chambers Woodworth, who provided invaluable assistance and support, and assembled an advisory committee composed of Circuit Judge Alfred T. Goodwin, Circuit Judge Cynthia Holcomb Hall, District Judge John S. Rhoades, and the editor. She helped recruit authors, supplied them with appropriate documents, and found photographs to illustrate the articles. She deserves our deepest appreciation for making this special issue of *Western Legal History* possible.

The task of sketching a biographical portrait of Richard Chambers fell to Caleb Langston, who was a journalist before becoming a law clerk to Judge Goodwin. He is now an associate in the firm of O'Melveny and Myers. Michael Eric Siegel, a senior education specialist at the Federal Judicial Center, brings his skill in leadership studies to his analysis of Chambers' administrative ability and vision. A former law clerk and a former judicial colleague, Circuit Judge Cynthia Holcomb Hall, contributes a personal perspective to these essays in her recollection of the judge's influence on her own legal career.

One of Richard Chambers' most significant legacies is the string of historic courthouse buildings he worked to preserve. Lee M.A. Simpson, an associate professor of history at Califor-

nia State University, Sacramento, with expertise in urban history and historic preservation, explores Chambers' pioneering efforts in saving and rehabilitating architectural gems in the Ninth Circuit. Circuit Judge Alfred T. Goodwin, who himself served a brief term as chief judge, offers a glimpse into his colleague's character and wit by retelling a favorite Chambers anecdote. Judge Chambers' wit, as well as his judicial philosophy, shines through in Rebekah Heiser Hanley's analysis of his published opinions and dissents. A specialist in legal writing at the University of Oregon School of Law, Hanley also has firsthand knowledge of the Ninth Circuit's inner workings from her time as a law clerk to Circuit Judge Harry Pregerson, another of Judge Chambers' colleagues. The issue is rounded out with a bibliography of Judge Chambers' opinions and dissents, so readers may delve more deeply into his writing.

To those who knew Richard Chambers as a colleague and a friend, I hope this volume will bring at least a faint smile of recognition and warm memories of this remarkable man. To others, I hope it will prove to be both an intriguing introduction to the Ninth Circuit's longest-serving chief judge and an invitation to explore his legacy in more depth through the magnificent courthouses he preserved and the hundreds of judicial opinions he wrote.

Bradley B. Williams, Ph.D.
Editor

BUILT TO LAST: JUDGE RICHARD H. CHAMBERS AND HIS PASADENA COURTHOUSE

CALEB LANGSTON

The plot-spoiling end of the story is right up front. It is spelled out in bronze-plated, government-issued lettering on a fifteen-foot-long slab of stylized, cream-colored concrete, perched in the manicured front lawns of the majestic old hotel:

Richard H. Chambers
United States Court of Appeals Building

So you already know how the story ends: they named the building after him. But as with most stories, you cannot really appreciate the ending without some context. Fortunately, the rest of the narrative is right there, too. It's not as obvious, and it takes a little digging and a little reflection, but it's there. And if you know where to look and what to look for, the small pieces comprising the larger tale begin to emerge from this grand hotel *cum* federal courthouse.

To get the rest of the story, you can drive through a leafy, sunbathed residential neighborhood in Pasadena lined with extravagant houses boasting pools out back. Driving north on Grand Avenue you follow a lazy bend to the right, and it starts to come into focus—an elegant, old-world building in the Spanish Colonial Revival style, stretching six stories high. Don't

Caleb Langston is an associate in the Transactions Department at O'Melveny & Myers in San Francisco. As a law clerk to Circuit Judge Alfred T. Goodwin, he spent a year working in the Richard H. Chambers U.S. Court of Appeals Building and first became acquainted with the stories about the judge.

worry about the incongruity of it all. This stunning building towering above the private homes surrounding it on all sides is a courthouse, a stone's throw from the hot tub and gazebo in one neighbor's backyard. As you approach the pillared walkway, and the soft scent of the rose bushes wafts around you, take it all in. But remember there is more to consider than the building's stunning facade and the roses' pleasant aroma. There's a story here about the man whose name is out front.

By the time you approach the front steps, that concrete sign with the bronze letters is a hundred feet behind you, and with the sights and smells competing for your attention, you may have already forgotten the name on it. There's no shame in that, for the sign itself doesn't offer much help; the letters indicating the purpose of the building, identifying it as a federal appellate courthouse, are three times as large as the letters identifying the man for whom it is named. It's a subtle detail, and its meaning may not be immediately obvious, but it is reflective of the character of Judge Richard Chambers. If his name just had to be on that sign, this probably is exactly how he would have wanted it. Yet were he so inclined, Chambers had plenty to boast about.

Richard Harvey Chambers was born on November 7, 1906, the only son of William Rock and Lida Chambers, in Danville, Illinois. Three months later, the family moved to Solomonville, Arizona, where W.R. worked as clerk of the district court for Graham County and as an attorney in private practice. The family moved to Safford, Arizona, in 1912. There young Dick Chambers blossomed. He graduated as class president from Safford High in 1924, before moving on to the University of Arizona, where he not only earned an economics degree, but also worked as editor-in-chief of the school paper, *The Wildcat*. Driven, as he noted years later, by the idea of being his "own boss," Chambers enrolled in and graduated from the prestigious Stanford Law School. Much later he would be awarded honorary law degrees from the University of the Pacific and the University of Arizona, in addition to receiving Gonzaga University's law medal.¹

He served as an officer in the United States Army Air Corps during World War II, and later wrote Barry Goldwater's speeches during the politician's early campaigns for a seat in the United States Senate.² Chambers practiced law with his

¹United States Courts for the Ninth Circuit, "Chief Judge Emeritus Richard H. Chambers of Tucson Dies," news release, October 24, 1994, pp. 1-2.

²Ibid.; Paul G. Rosenblatt to Brad Williams, February 17, 1995, Archives of the Ninth Judicial Circuit Historical Society.



Richard Chambers was the only son of William and Lida Chambers, pictured above, seated in the family's buggy in Safford, Arizona, about 1911. (Courtesy of Eileen Chambers Woodworth)

father in Tucson under the firm name Chambers and Chambers, and continued to practice after his father's death in 1938, before being appointed to the United States Court of Appeals for the Ninth Circuit by President Dwight D. Eisenhower in 1954. Once appointed, Chambers made his mark—eventually serving as chief judge of the Ninth Circuit for seventeen years, from 1959 to 1976, before taking senior status as the longest-tenured chief of any circuit, ever.³ His unique combination of foresight, political skill, and passion for preserving antiques figured prominently in the acquisition, restoration, and construction of courthouses in San Francisco, Portland, Tacoma, and San Diego, among other places throughout the sprawling Ninth Circuit.

³"Chief Judge Chambers Dies," p. 2.

Chambers could also have boasted about far more than his professional accomplishments. He was revered by many of his colleagues on the Ninth Circuit, and was held in especially high regard by the district judges throughout the circuit, to whose needs Chambers was uncommonly sensitive. And, for self-aggrandizing fodder, there was that glimmering courthouse in Pasadena with his name on it.

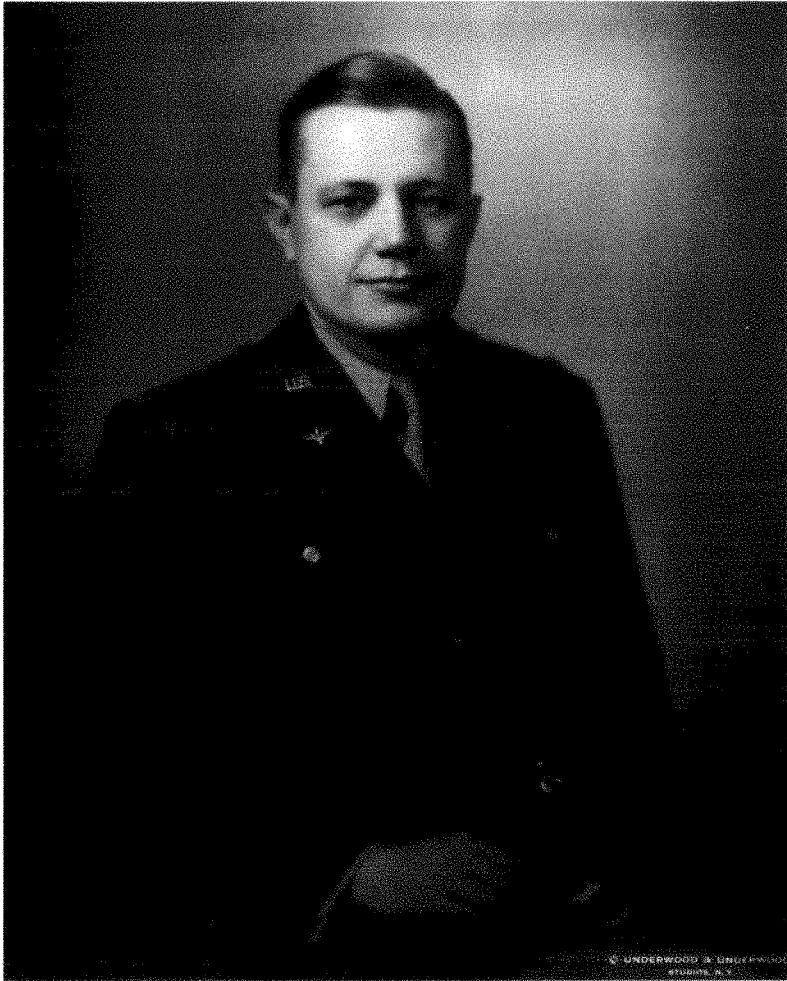
Despite his many and varied accomplishments, Judge Richard H. Chambers, known to his friends as Dick, was not given to vanity. He didn't seek praise or fame for the sake of being praised or famous, and he rarely, if ever, took advantage of an opportunity to call attention to himself or his various exploits.

"He just didn't operate that way," said Judge Alfred T. Goodwin of the Ninth Circuit, who knew and worked with Chambers. "He had a tremendous presence, he was extremely bright, and he was a fantastic judge. But Dick was not into personal preening. With Dick, you never got the sense that he did anything for the sake of exalting himself."⁴

As with much of Chambers' philosophy and personality, this fundamental humility can be traced in large part to the example set by his father, William Rock Chambers. A lawyer by trade and later an Arizona Superior Court judge, W.R. Chambers served as the Graham County, Arizona, district attorney during many of his son's formative years. In 1918, with the country gripped by World War I, W.R. Chambers prosecuted Tom and John Powers, brothers charged with the shooting deaths of a sheriff and two deputies sent to bring the brothers in for refusing to report to the draft board. Two days later, W.R. Chambers rode out with a group to look at the crime scene. While the others dressed the way "you would expect men [to dress] who rode horseback those long, tedious miles to the cabin high in the Galiuro Mountains," W.R. Chambers did not, opting instead for a black suit, tie, and hat. As Richard Chambers later recalled, his father took the job of district attorney seriously and always dressed the part. His job took him out to the Powers brothers' cabin to investigate the homicide scene, and it was important to W.R. Chambers that he dress in a way that "showed [the victims] the respect they deserved," rather than dressing as his fellow riders did for utility or, for that matter, pretense.⁵

⁴Hon. Alfred T. Goodwin, interview with the author, Pasadena, CA, February 13, 2007.

⁵Eileen Chambers Woodworth, "Trials and Times of W.R. Chambers," unpub. mss., in possession of author, pp. 8-12.



Chambers served as an officer in the United States Army Air Corps during World War II. (Courtesy of Eileen Chambers Woodworth)

W.R. Chambers appreciated not only the gravity of his job, but also the dignity with which that job should be done, and this simple lesson in humility and quiet grace sank in with his son. Like his father, Dick Chambers understood not only how to accomplish a given task, but how to do so with respect for the virtues of the task. When the University of Arizona law school sought funds for a new building, it offered to engrave on a plaque the name of anyone whose lifetime donations to the school exceeded \$1,000. Richard Chambers responded with a

short note declining to be included on the plaque and a check bringing his lifetime donation to \$999.99.⁶

Chambers also maintained a deep affection for his hometown of Safford, in Graham County, and a desire to preserve the little town's history. In 1992, shortly after the death of his childhood friend Ryder Ridgeway, Chambers quietly handed over a \$1,000 check to the Graham County Historical Society, on the condition that the gift be made in Ridgeway's name.⁷ "He loved to be involved, and he loved to see results, but he was never driven by recognition," said Eileen Chambers Woodworth, Chambers' widow, whom he married after his first wife Mary passed away. "He achieved a lot of wonderful things, but he never worried about being in the spotlight. He was just a very modest person."⁸

That basic modesty extended beyond Chambers' preference for anonymous giving. Richard Bilby, who spent a year clerking for Judge Chambers and eventually became a federal judge himself, recalled his introduction to Judge Chambers' humble style. Arriving for work in San Francisco, Bilby was struck initially not by the unique opportunity to work at the judge's side for a year, or the importance of the cases with which he would be involved; instead, Bilby wondered why Judge Chambers' offices were so shabby, asking him, "Why in the world do you have the worst offices I've ever seen?"⁹ In a telling response, Chambers revealed that he had much bigger things on his mind and distinctly different motivations than could be served by securing opulent office space for himself. Chambers knew he would soon assume the mantle as chief judge, a role that would require him to deal with the General Services Administration (GSA) on space and building issues. Forecasting the coming fights with GSA, Chambers was determined that he was "never going to give them a chance to say that I squandered a nickel of the government's money on myself."¹⁰

This anecdote reveals much about Chambers' skill and savvy as an administrator. If shabby offices for himself meant more ammunition for squabbles down the line with GSA, he

⁶"Naming Ceremony, Richard H. Chambers United States Court of Appeals Building," 990 F.2d xcv, cii [9th Cir. 1993].

⁷Hal Herbert, "The Banana Farm," Graham County Historical Society Symposium Papers: Link the Past with the Present, 2003, p. 26.

⁸Eileen Chambers Woodworth, telephone interview with the author, February 8, 2007.

⁹"Naming Ceremony," 990 F.2d cii.

¹⁰*Ibid.*

was content to make do. But his response is also indicative of just how little Chambers cared to burnish his own image or announce his own achievements.

It should come as no surprise, then, that Chambers was reluctant to have the Pasadena courthouse named after him, even after he spearheaded an exhausting eight-year effort to acquire, renovate, and open the building for the court's use. "He protested that idea repeatedly," Goodwin recalled with a chuckle. "I think he genuinely believed that nothing should be elevated above the work of the court and giving judges the tools they needed. I think he considered it inappropriate for anything, including his name on the building, to divert attention from that."¹¹

Nonetheless, that sign and those bronze letters eventually went up. But if you consider the disparate size of the sign's constituent words, and particularly if the name has slipped your mind by the time you reach the front doors, perhaps Judge Chambers had the last laugh in this naming business after all.

If Chambers was a modest man, he was also impassioned, fiercely driven, and competitive. No sign in the Richard H. Chambers Courthouse literally describes him in such terms. But once you've walked up the stairs and through the arched doorway and you're standing in the building itself, your surroundings have plenty to say about Richard H. Chambers.

Should you happen to step into the courthouse library, you have little choice but to look at the clock. It dominates the entire wall. Six feet in diameter and weighing more than a ton, with its cast-iron casing turned out in a coat of flat black paint, it demands your attention the instant you step into the room. Although its cast-iron hands rotate in near silence around its marble face, if you listen closely this clock will tell you another part of Judge Chambers' story.

The clock originally hung in a federal courthouse and post office in Chicago. Likely tapping his information networks once described as so vast they would make the CIA blush, Chambers learned in 1959 that the Chicago building was to be demolished, and much of its furnishings were to be replaced.¹² Before long, several moving vans stocked with antique pieces from Chicago, including the monstrous clock, were rolling toward Ninth Circuit headquarters in San Francisco.¹³

¹¹Goodwin interview.

¹²Gerald Adams, "A Very Special Salvage Job," *California Living Magazine*, July 4, 1976, 21.

¹³*Ibid.*

Chambers' unorthodox move drew heavy criticism initially, particularly from those who suspected that he intended to make personal use of the Chicago cache. Those rumors quickly dissipated, but while various other items from the haul were put to use throughout the Ninth Circuit, the clock languished, locked away in the basement of the Seventh and Mission courthouse in San Francisco. However, nearly thirty years later, at the tail end of his tortuous fight over the Pasadena courthouse with, among others, the GSA, certain community leaders, and local neighborhood associations, Chambers still remembered the clock.

Although he had long since stepped down as chief judge and taken senior status, Chambers was still hearing cases and was still deeply involved in circuit-wide business as the chairman of the Ninth Circuit Committee on Space Facilities and Security. Having finally prevailed in moving the Ninth Circuit's Southern California headquarters to Pasadena, Chambers was determined to hang that clock—which he had so artfully acquired for the circuit long ago—in the new courthouse.¹⁴ So he had the clock transported from San Francisco to Southern California.

Chambers considered and rejected eleven other applicants before choosing Richard Handley to restore the clock. Handley delivered as promised, and the clock, ready to hang, arrived in the Pasadena courthouse and was placed in an empty room on the first floor. The next day, in a bout of miscommunication and antagonism that typified much of the process of opening the Pasadena courthouse, a GSA official ordered that the clock be moved into the basement, because the room where it had been placed was under control of the GSA, rather than the court.¹⁵ Chambers did not let up. Instead, he directed that the clock be returned to the first-floor room. "Why?" he asked rhetorically in a memorandum to his colleagues on the committee tasked with the Pasadena project. "So it will be a damned nuisance and GSA will get busy and install it in the library."¹⁶

With the GSA annoyed to Chambers' satisfaction, he oversaw the planning and procurement of the five days of work required to install the clock, right down to devoting three hours to a phone call to ensure that Handley, who had rebuilt

¹⁴In a 1986 telephone conversation with Chief Judge Walter J. Cummings of the U.S. Court of Appeals for the Seventh Circuit, Chambers admitted that he had "stolen" the clock and invited any judge visiting from the Seventh Circuit to stop by and see it in Pasadena.

¹⁵James E. Dunleavy to Richard Chambers, October 22, 1985, Judge Richard H. Chambers Papers, U.S. Court of Appeals for the Ninth Circuit, San Francisco.

¹⁶Richard Chambers to Pasadena Committee, November 13, 1985, Chambers Papers.

the clock, would be on hand as an advisor during the installation.¹⁷ While he was almost singlehandedly responsible for the clock's presence in Pasadena, Chambers characteristically vetoed then-Judge Anthony Kennedy's suggestion that a plaque reading "The Chambers Chicago Clock" be hung below it. And characteristically, he handled the smallest details of ensuring that the plaque read simply, "The Chicago Clock."¹⁸

"That was Dick," Judge Goodwin said. "He was reasonable, and he was always willing to consider an alternative viewpoint. But he was very principled and determined. And once he decided something, he would usually get his way. And he was usually right."¹⁹

Chambers was not simply a man of perseverance. If he usually got his way, it wasn't through sheer stubbornness or force of will. While he possessed a certain ferocious devotion to seeing plans through, he was also a master at deploying different approaches as the means to an end. As circumstances dictated, Chambers would adjust his approach to the problem at hand.

When he deemed it necessary, Chambers could be direct, plainspoken, and forceful, if not downright acerbic. As the federal courts' dockets began swelling in the late 1950s while the number of judgeships remained static, Chambers was at the forefront of a move toward "sharing" judges among circuits—sending district judges from within the Ninth Circuit to sit with other courts when possible, and expecting reciprocation. Chambers favored handling the nationwide shortage of district judges in this somewhat informal way, and he was a vocal and strident opponent of proposed legislation that would vest broad scheduling power within the administrative branch, a move that he viewed as the first step toward stripping the judiciary of its status as an independent and equal branch of government.²⁰ After he had sent two judges to sit as visiting judges in the Southern District of New York, he in turn requested help from that court to relieve the Ninth Circuit's overburdened district courts. The chief judge of the Southern District balked, indicating that he preferred to wait for resolution of the proposed legislation to handle the staffing problems faced by district courts. Chambers minced no words in a two-paragraph letter to the judge:

¹⁷Richard Chambers to James R. Browning, May 8, 1986, Chambers Papers.

¹⁸Judge Kennedy to Judge Chambers, June 9, 1986, Chambers Papers; Richard Chambers to Pasadena Committee, June 16, 1986, Chambers Papers.

¹⁹Goodwin interview.

²⁰Richard Chambers to Warren Olney III, April 23, 1960, Chambers Papers.

You are incurable. You write thanking me for Judges Solomon and Powell when you have denied me help we desperately need at Los Angeles.

That wouldn't be so bad, but you are party to a setup which takes the first long step in making us a dependent judiciary.²¹

Chambers oftentimes used similarly aggressive tactics in his long-running clashes with the GSA over the Ninth Circuit's buildings and the appointments and equipment therein. As one story goes, Chambers once requested the GSA to install a curtain in front of the open railing of the jury box in one of the Ninth Circuit's district courts, so that women jurors would not feel exposed or uncomfortable. Fed up with haggling over the matter, with no curtain yet in place and with a jury trial scheduled the following day, Chambers had a cardboard sign hung on the railing, which read "GSA is too cheap to install a curtain here. It does not care that people can look up the skirts of women jurors."²² The curtain was in place when the trial started the following day.

Another time, before a going-away party for a court employee, Chambers asked the GSA to remove a number of grease spots from the carpet in the room where the party was to be held. On the day of the party, with nothing having been done, Chambers dispatched his law clerk to the store with specific instructions. As well-wishers gathered that afternoon, they stepped among insoles bearing the message "GSA won't clean this carpet," which had been scattered on the floor to hide the stains.²³

"Dick could be devious, especially when the direct route showed little promise," Judge Goodwin wrote of Chambers in 1999.²⁴ Recalling Chambers recently, Judge Goodwin added, "He was never mean-spirited, and he had a great compassion for people he felt weren't getting a fair shake. But he didn't mind ruffling a few feathers to solve a problem."²⁵

While Chambers could, and occasionally did, use such abrasive approaches, he was a master tactician with a brilliant sense of finesse. When it was more expedient, Chambers was an expert in the art of boxing, as opposed to the craft of punching. After five unsuccessful years of trying to have the grounds outside the Seventh and Mission courthouse in San Francisco improved,

²¹Richard Chambers to Sylvester J. Ryan, June 1, 1960, Chambers Papers.

²²Rollins Emerson to Cathy Catterson, January 15, 1993, Chambers Papers.

²³Chambers Woodworth interview.

²⁴Alfred T. Goodwin to John S. Rhoades, February 10, 1999, Chambers Papers.

²⁵Goodwin interview.



Chambers spearheaded an eight-year effort to acquire, renovate, and open the Pasadena courthouse that eventually carried his name. (Collection of the Ninth Judicial Circuit Historical Society)

Chambers bought a pair of potted cactus plants in Tucson for transport to San Francisco. He customarily took the train. On his arrival in San Francisco, he spread the word that he planned to get five hundred more cactus plants to spruce up the courthouse grounds. "I had to suffer the scuttlebutt that I was crazy and had ordered 500 cactus plants," Chambers would recall later. "But we sure were given the bushes and lawn right away."²⁶

While Chambers' innovative methods secured improvement of the grounds outside the San Francisco courthouse, he was acutely concerned with the activities inside the Ninth Circuit's courthouses. Partly because he believed courthouses should be formal, dignified places, partly because of his disdain for the slightest hint of loss of judicial independence, and partly because of the practical concern that federal courts should have room to grow, Chambers was never fond of a court sharing space with other governmental agencies, when it could be avoided.

In 1962, he traveled to Honolulu to meet with Martin Pence, chief judge of the District of Hawaii. Pence had recently received from the GSA the plans for a new federal building that

²⁶"Special Session to Honor the Memory of Honorable Richard H. Chambers, Chief Judge Emeritus," 61 F.3d cxxxii, lxxxix (9th Cir. 1995).

would serve as a post office, customs office, and district courthouse. Although he didn't care for the design, he also did not know how to avoid what he considered the inevitable construction of the building. Chambers considered the situation and came up with a solution: "Just tell GSA that your court won't move in," he advised Pence. "Because unless GSA has full occupancy they can't justify the building."

Rather than launch a full-frontal attack on the GSA, Chambers, armed with "his full understanding of the wheels within wheels of the judiciary," simply pulled the right lever to force the GSA's hand. When the next set of plans arrived on Pence's desk, they called for a stand-alone district courthouse, to be built alongside the new post office and customs house.²⁷ Chambers "knew exactly how and where to put the pressure," Pence later wrote. "[N]o one was more acutely aware of all of the political angles involved in dealing with those in power in Washington."²⁸

Never did Chambers need to draw more on his political acumen, power of persuasion, and operational creativity than when he took a primary role in the effort to secure the Pasadena courthouse for the Ninth Circuit. The building, originally operated as a hotel, was purchased by the government and used for various purposes over the years, including a tour of duty as an army hospital in World War II. It was later declared surplus property and sat vacant and decaying when Chambers, in response to a tightening space crunch in downtown Los Angeles, began looking in the late 1970s for a suitable location to base the Ninth Circuit's Southern California operations. Various administrative officials opposed the move because of the cost. Some in the local bar, and even some Ninth Circuit judges, opposed the move because they preferred to remain in the downtown area with its closer connections to Los Angeles' political and economic core. Various Pasadena constituencies worried about the increased traffic and noise, and feared the specter of chained criminal defendants being paraded up to the courthouse in their neighborhood. Not only did Chambers foresee most of these problems, but he also dealt with most of them nimbly and somewhat circuitously, patiently waiting the opposition out or maneuvering around them.

For example, Chambers pointed out that the \$10 million needed to renovate the courthouse, which the federal government already owned, was substantially cheaper than acquiring new space big enough to afford the type of expansion the Pasa-

²⁷Martin Pence to John S. Rhoades, March 1, 1999, Chambers Papers.

²⁸*Ibid.*

dena building could already absorb. To get attorneys and judges used to the idea of working in Pasadena, Chambers arranged for the court to rent space for judges' offices in Pasadena bank buildings, and borrowed Pasadena's city council chambers to hold court once a month.²⁹ Chambers passed word through the community that as an appellate court, rather than a trial court, the Ninth Circuit dealt with attorneys rather than criminal defendants, and that handcuffed prisoners would not be part of the court's operation. And while Chambers never did convince every Los Angeles-based Ninth Circuit judge to make the move, he did prevail on enough judges that he had sufficient capacity to justify the building with GSA. Circuit Judge Alfred Goodwin's relocation is illustrative. Born and raised in Oregon and based in Portland's Pioneer Courthouse, Goodwin had no inclination to move to Southern California. "But Dick gave me a call one day and said 'Ted, I understand your kids have grown up and settled in the area down here. Wouldn't you like to be a little closer to them? Why don't you just come down here for the winter and see how you like it.' Well, I came for that winter, and twenty-five years later, I'm still here."³⁰

Judge Goodwin and the other Ninth Circuit judges that call Pasadena home are there in large measure because Chambers, in his own way, would have it no other way. While opposition to the Pasadena project came from seemingly every direction, the most constant—and most serious—source of contention was the GSA. Perhaps because one man can't reasonably expect to overcome a bureaucracy face-on, Chambers took a different approach. As former Ninth Circuit Judge Shirley Hufstedler recalled:

When GSA moved to block the project, none of its leadership or its local constituency had any idea about what a fight would be like with the Chief Judge. The Chief Judge has always been an honorable man, but when it came to street fighting, he knew the ways of the old west from Arizona and he knew more about the skeletons rattling around in the GSA closet than any of the then leadership of GSA had any idea that he knew. As more little problems kept coming up, the Chief Judge would dig out those skeletons one bone at a time and wave them in appropriate directions to be able to assure the line of march continued his way.³¹

²⁹Dorothy W. Nelson to Colleagues, December 8, 1980, Chambers Papers.

³⁰Goodwin interview.

³¹"Naming Ceremony," xcvi.

Yet even after dealing with the GSA, the courthouse neighbors, Pasadena's city leadership, various citizen groups, architects, interior designers, parking problems, renovation problems, staffing problems, and other headaches, and as the Pasadena project—described by Hufstedler as “the realization of the Chief Judge’s dreams”³² and described by Chambers himself as “so exasperating I would not undertake it again”³³—neared completion, he still had one last finesse play in his pocket. With much of the restorative work done but with several substantial interior projects not yet completed, the Ninth Circuit began to plan the courthouse’s dedication ceremony. Chambers, as usual, was looking ahead and formulating solutions for problems that had not yet materialized. Writing to his colleagues on the court, Chambers advised that “[w]e should have a target date for the ceremony but we may get into a situation where to get the things G.S.A. should deliver, we shall want to temporarily refuse to move in. So, we do not want to get the date set in cement too early.”³⁴

Such foresight was among Chambers’ greatest attributes. “He just had a wonderful, lively imagination,” Judge Goodwin said. “He had a very rare ability to look down the road, identify problems, and go about fixing them. He often had a problem solved before most anybody else realized there was a problem.”³⁵ After he identified a problem, Chambers’ offbeat method of approaching it was another defining characteristic. “He went very slowly and often in a strange course,” Judge J. Clifford Wallace once remarked, noting that others had claimed “that if there is a front door and a back door, Dick Chambers will always come in the back door.”³⁶

Chambers’ willingness to use the most advantageous door seemed always harnessed for the benefit of the Ninth Circuit. But while his colleagues recall many of his tactics fondly, that viewpoint was not universal. Joseph Yiakis was among the GSA officials who locked horns with Chambers on the Pasadena project, telling the judge that he considered the project a wasteful expenditure of taxpayer dollars. Yiakis claimed he “was told to quit making noise,” which he was unwilling to do, and that he was removed from the project “to keep Judge

³²Ibid.

³³Richard Chambers to Thomas R. Horton, February 9, 1981, Chambers Papers.

³⁴Richard Chambers to James R. Browning, Members of Pasadena Committee, February 22, 1984, Chambers Papers.

³⁵Goodwin interview.

³⁶J. Clifford Wallace to John S. Rhoades, February 11, 1999, Chambers Papers.

Chambers happy."³⁷ While acknowledging that Chambers was "brilliant" and understood well the GSA's bureaucratic machinery, Yiakis also revealed just how difficult sitting across the table from Judge Chambers could be. "He knows where the pressure points are," Yiakis said of Chambers. "He knows the weakest points in the chain. He simply keeps going up the management chain till he runs into someone afraid to say no to him. . . . He is very constant. Either give him what he wants, or you're not a good bureaucrat, and he'll go over your head."³⁸

Chambers does not appear to have ever publicly addressed Yiakis' comments. While he knew and heard his critics, he seems to have considered taking such shots just part of the territory. "He always enjoyed the challenge of solving a problem, no matter the dimensions of it," his widow Eileen Chambers Woodworth said. "He enjoyed figuring it out and doing it the smartest way, and often that meant making people think he's coming from the east, when really he's coming from the west. There were tough times, and it would take a toll on Dick occasionally. But he enjoyed the challenge of it all."³⁹

While Yiakis had his difficulties with the judge's approach to the Pasadena project, it was vintage Chambers, who once offered this telling advice to Judge James R. Browning, his successor as chief judge of the Ninth Circuit: "Those who sit and wait often accomplish as much as those who spin their wheels."⁴⁰ This approach was also another aspect of Chambers' thinking that was informed largely by his father. After W.R. Chambers became a judge in Safford, the community leaders there wanted to build a fountain, an idea that he, for whatever reason, opposed. Rather than attacking the idea directly, he instead encouraged various factions to demand the fountain be used for their purposes. "He got the bird-watchers to demand that it be a fountain for birds, the horse people to demand it be for the horses, and so forth with dog lovers all thrown in making conflicting demands. The result was predictable—no fountain."⁴¹ On another occasion, W.R. silently killed a plan to erect a statue in the town's main square. Sandbagging his fellow city council members by saying that he was all for the project, Chambers then conditioned his support on the council's selecting a person worthy of the honor, and on whom every-

³⁷Claire Spiegel, "Judges Balk over Move to Pasadena Courthouse," *Los Angeles Times*, March 28, 1983, sec. B.

³⁸*Ibid.*

³⁹Chambers Woodworth interview.

⁴⁰Richard Chambers to James R. Browning, September 3, 1980, Chambers Papers.

⁴¹Wallace to Rhoades.

one could agree. After months of wrangling over competing candidates, the council had gained no traction, the project was shelved, and W.R. Chambers, silently, had won again.

"I believe he learned well from his father," Judge Wallace once said of Chambers.⁴² Perhaps so. If nothing else, he certainly shared both his father's ability to find innovative solutions, and his skill in subtle persuasion. Each trait is reflected in some measure by the Chicago Clock ticking away in Pasadena, acquired in unorthodox fashion and hung in part because Judge Chambers made it too much of a "damned nuisance" not to.

All those years ago, the Powers brothers and a third gunman were eventually apprehended and returned to Safford. Many in the small town were interested in dispensing their own style of justice, and, with the defendants put on public display, hundreds of citizens poured into the jail. Some of them spat on the defendants; some discussed the relative merits of lynching them. W.R. Chambers, as district attorney, decided that the defendants could not get a fair trial in Safford. To protect the defendants' lives and to preserve the integrity of the judicial process and its component parts, W.R. Chambers had the trial moved out of the county. He then went about trying the case, ultimately winning convictions against each defendant.⁴³

Judge Richard Chambers also believed deeply in the dignity of the judiciary. Conspicuous physical evidence of his beliefs awaits just down the hall and around the corner from the library housing the Chicago Clock.

As you pull open the heavy wooden door and step into Courtroom Three of the Chambers Courthouse, the visual sensation is overwhelming. The room itself is huge, with benches capable of holding about 150 spectators opposite a gigantic bench, three rows deep, with seating for thirty-one judges. Appointed simply—all dark wood and restraint—the room conveys a reverential mood.

Judge Chambers believed that courthouses and courtrooms should communicate a certain seriousness. He believed that they house a dignified institution, and that all parties involved should be reminded, by their surroundings, of the gravity of our judicial system. Yet, always a man of substance over form, Chambers was more concerned with maintaining the actual integrity of the judiciary, as opposed to projecting its mere image. As the Ninth Circuit gathered for a memorial service following Judge Chambers' death in 1995, Justice Anthony

⁴²Ibid.

⁴³Chambers Woodworth, "Trials and Times," pp. 12–13.

Kennedy wrote that in Chambers' view, no superlatives were necessary to describe the honor in, and the honor-bound nature of, the federal judiciary. "By his philosophy," Kennedy wrote, "being a federal judge is sufficient honor in and of itself. It needs no further adornment. . . . For him it was the office and its integrity, not the identity of its occupant, with which the law and judging should be concerned."⁴⁴

Yet precisely because that office is occupied by imperfect, frail human beings, Chambers also had a deep concern for the welfare of his fellow judges as people. As Justice Kennedy wrote, "Judges throughout this circuit idolized him because they knew that if they had any personal or professional problems of whatever kind, Dick would find out about them and then try to help."⁴⁵ Ninth Circuit Judge Cynthia Holcomb Hall, the first-ever female law clerk in the Ninth Circuit when she clerked for Judge Chambers, remembers him similarly. "He took care of his troops," remembered Hall. "If somebody had a personal problem, he would listen and help them through it. He never condemned anyone if they were going through a tough time. He would just find a way to help, without ever saying anything about it to anybody."⁴⁶ Chambers' compassion extended beyond those stationed on the Ninth Circuit, reaching to the district court judges throughout the circuit's nine western states and the Pacific islands. In 1971, with rumors swirling that Chambers was contemplating stepping down as chief, Judge Thomas J. Macbride of the Eastern District of California wrote Chambers on behalf of the other judges in the district, urging him to reconsider:

[W]e want you to know that we love you; that you must certainly be the greatest friend and helper at the Circuit level which any district judge could possibly have; and finally, that we are most grateful not only for your tremendous leadership over the years in administering the Circuit, but also for the compassion you have exhibited toward us district judges (even when you were wrong in reversing us) and for your understanding of our local problems.⁴⁷

⁴⁴"Special Session," lxxxii.

⁴⁵Ibid. at lxxxii-lxxxiii.

⁴⁶Hon. Cynthia Holcomb Hall, interview with the author, Pasadena, CA, April 30, 2007.

⁴⁷Thomas J. MacBride to Richard Chambers, November 24, 1971, Chambers Papers.

"Dick really did care tremendously about the integrity of the court as an institution, and about the judges and staff as people," said Goodwin, himself a former chief judge. "Part of his brilliance was understanding that the two things were intertwined."⁴⁸

* * *

As you stroll out of the cool quietness of Courtroom Three and back down the main hallway of the Chambers courthouse, you will see artworks everywhere. A full-color artist's rendition of the courthouse and the Colorado Street Bridge stretching behind it contrasts sharply with a series of haunting black-and-white photographs from all over the West. On one wall is a brooding black-and-white of the Rancho de Taos church in New Mexico, its adobe archway inviting the viewer through and toward the sanctuary in the background. Nearby is a photo of an interconnected maze of buildings carved into an unforgiving canyon wall in Colorado. Down the way is another photo capturing a stray, weathered scrub of mesquite coursing up a granite wall in Arizona. These taut black-and-whites contrast with the warm, orange-and-teal color scheme on the floor, which in turn feels, at first glance, at odds with the four-foot, bare iron statue that calls to mind a Hopi kachina. This statue, elegant in its monochromatic simplicity, shares little with the vibrant, colorful portrait of Judge Chambers, painted by his second wife and hanging on another first-floor wall.

The pieces in this eclectic collection of art may seem mismatched. But if you step back slightly, the seeming incongruities begin to disappear, and the scene coalesces into a carefully chosen, integrated whole. The southwestern flair of the carpet works naturally with the Spanish tile on the face of the main staircase, which fits right in with the statue, which complements the various western images captured in the photographs. In this way, the collection of artwork on the first floor may reflect more about Judge Chambers than anything else in this building that bears his name.

He was a complex personality and a man of deep contrasts. His approach to opinion writing could not have diverged much more from his administrative philosophy. Chambers wrote all of his own opinions, the vast majority of them by hand, and he often did so on the bench during oral argument. They were lean and to the point, and offered little in the way of the coy, cat-and-mouse style Chambers often employed as an administrator. As Justice Kennedy wrote, Chambers "was as circuitous and puzzling in one capacity as he was direct and clear in the other."⁴⁹

⁴⁸Goodwin interview.

⁴⁹"Special Session," lxxxii.

Chambers also had something of a coarse exterior, punctuated by his oftentimes slow, low, and deliberate speaking style. The gruff appearance, however, masked a mischievous sense of humor. Shortly after Chambers joined the Ninth Circuit, Chief Judge William Denman circulated a memo making it clear that a particular bathroom in the San Francisco courthouse was reserved for Ninth Circuit judges only and was off-limits to any other personnel. Previously, discussing the structure of the court, he had compared the role of a chief circuit judge to that of a four-star general in the army. In response, Chambers quietly saw to it that four stars were painted on the bathroom door.⁵⁰ After becoming chief himself, Chambers at one point felt that he had heard enough of Judge Walter Ely's rumblings and grumblings. Chambers found a plastic fire hydrant, and left it in Ely's office with a short note: "Dear Walter, now you have something to use other than me."⁵¹

"Dick just had an incredible sense of humor," Eileen Chambers Woodworth recalled. "He was very passionate about his work, and he took it very seriously, but there was humor stitched into every fiber of his body, and he rarely missed an opportunity."⁵²

Nor did Chambers miss an opportunity to solve problems on a large scale; patchwork solutions did not satisfy him. For example, in 1964, a half-dozen or so antitrust cases were filed in different cities throughout the Ninth Circuit, all arising from the same alleged conspiracy. Looking ahead of the curve and realizing that the number of suits could mushroom, Chambers tapped Judge Martin Pence because of his background and expertise in dealing with antitrust matters, and assigned him to sit on every subsequent case arising from the conspiracy, streamlining the disposition of the several hundred cases that arose. Similarly, Chambers accurately predicted that suits would arise all over the Ninth Circuit in the wake of the Northwest Airlines crash in 1987, and suggested that one district judge be assigned to handle the litigation, with one Ninth Circuit panel handling all the appeals.⁵³

Despite Chambers' ability to analyze and solve problems on a grand scale, he retained the common touch and a strong compassion for people in need. For example, attendants used

⁵⁰Douglas C. Allen to Brad Williams, March 8, 1995, Archives of the Ninth Judicial Circuit Historical Society.

⁵¹Chambers Woodworth interview.

⁵²*Ibid.*

⁵³Martin Pence, "Oral History of Judge Martin Pence," interview by Eileen Chambers Woodworth, March 30, 2000, transcript in possession of the author; Richard Chambers to Associates, August 20, 1987, Chambers Papers.

to operate the four elevators in the San Francisco courthouse. Most of these operators were elderly women, and over time they had accumulated homemade stools and footrests and various other small items, to make their work spaces more comfortable. As Judge Chambers entered an elevator one day, he noticed that the attendant had been crying. He came to find out that earlier that morning, GSA building inspectors had confiscated all of the operators' things and scolded them, evidently for using non-approved stools. Precisely how Chambers addressed the problem is a story lost to history, but by the end of the day, the building inspectors had returned to the courthouse bearing apologies and government-approved stools and footrests for all of the elevator operators.⁵⁴

Chambers also retained a deep-rooted reverence for rural Arizona, where he grew up, and for the people who lived there. Late in his life, he began to wonder whether better use might be made of a piece of his property in Arizona, nicknamed "The Banana Farm," which he had inherited from his father. The origin of the nickname remains unclear: some maintain that prior owners sold the property to seek the riches promised by investing in a banana plantation in Guatemala, while others claim that stock in the property was once sold on the promise that the climate and land were ideal for cultivating bananas. Regardless of how the name occurred, Chambers had used the property as a sort of shrine to local heroes, establishing a "memorial corral" by installing redwood posts dedicated to various people from the area whose influences had shaped him. One post was dedicated to the memory of his parents. Another was dedicated to "Zola Webster Claridge, a Graham County Woman for all seasons," and a third to George Ridgway, "Graham County Man for all seasons." Still, Chambers was moved "to try to repay whatever we have taken out of Graham County," where he had received, as he described it, "the finest education at Safford High School a boy could ever have had." Chambers wasn't content to just sit on land that could be put to use, and he finally decided to deed the Banana Farm to the Church of Jesus Christ of Latter-day Saints. Though Chambers was not an adherent to the Mormon faith, he had his reasons for the gift. "It is because we feel that it is the most permanent institution in Graham County—growing, but still the least subject to the vagaries of change," Chambers said. "The Church did not select its members from the social register or the blue book. It recruited its members from hardy, sturdy people—and, mostly

⁵⁴"Special Session," xcii–xciii.

disadvantaged people. From the outset, it insisted upon good education and good citizenship."⁵⁵

To those who knew him and understood Chambers' tendency to comfort the afflicted and afflict the comfortable, as well as his fierce sense of loyalty to his roots, the gift made perfect sense. "Dick could be gruff and seem prickly," Chambers Woodworth recalled. "But he had a very tender heart, and he felt a responsibility to help when he could." He also had a delicate sense of power and imbalances of power; and despite the grandeur of his job title and the extent of his influence, Chambers seems to have labored to remember the less fortunate. One day, as Eileen worked through some of the voluminous files Chambers left behind when he died, she came across a small note, scrawled in Chambers' handwriting. "When I come to disappear," it read, "let it be remembered that Richard Chambers never picked on little people."⁵⁶

Perhaps this credo was born of Chambers' sensitivity or basic modesty. Or perhaps it was because he genuinely hoped that others could remain as lighthearted as he did, despite the gravity of the pursuits to which he dedicated his life. This may be the most critical, stark contrast of Judge Chambers' personality. Despite the seriousness and care with which he approached his work, and despite the reverence with which he viewed the federal judiciary, Chambers—true to his word from the outset—never accorded himself great stature or took himself very seriously.

At his induction ceremony after being appointed to the Ninth Circuit by President Eisenhower, Chambers, who had been a practicing attorney in Arizona, wasn't sure what to expect. "I don't know what it is," he said, referring to his new job, "but I think it's going to be big."⁵⁷ If Chambers didn't know precisely what he was getting himself into, he had a keen sense of what he was *not* willing to get himself into. "It is my own basic feeling that there should be no reason why a judge cannot take his work seriously, cannot take his oath seriously, without taking himself seriously," Chambers told those at his induction. "If I find that the last element is necessary, that I also must take myself seriously, I promise you I shall be back here among you."⁵⁸

⁵⁵Herbert, "Banana Farm," pp. 22, 24, 26.

⁵⁶Chambers Woodworth interview.

⁵⁷"Induction Ceremonies on Behalf of Richard H. Chambers as Judge, Ninth Circuit Court," May 13, 1954, Chambers Papers, p. 12.

⁵⁸*Ibid.*, p. 13.

Chambers never did return to the practicing bar. Judging from his correspondence, he never took himself seriously enough to need to. Instead, the chief judge of the United States Court of Appeals for the Ninth Circuit, immersed in complex and important work, wrote a litany of memoranda to his colleagues under the pseudonym "Tom Chambers," the name of his beloved palomino horse, astride whom Chambers once estimated he had logged 60,000 miles. The content of these "Tom memos," each stamped with a horseshoe and signed "Tom" in Chambers' handwriting, ran the gamut. And while Tom often had wise counsel to dispense, he did so with a dry wit and a certain unmistakable tongue-in-cheek quality. In a 1983 mis-sive, Tom discussed some of the finer strategic points of the Pasadena project while attempting to galvanize the other Ninth Circuit judges involved; he saw fit to do so under the subject line: "The woes of responsibility and my dummy friend Dick."

"He certainly wasn't afraid to stray from the tried-and-true approach to certain things," Chambers Woodworth said. "He always thought that if he had something that was ridiculous, or sensitive, people would take horse sense from a horse, rather than a human being."⁵⁹

Chambers' alter-ego was so ubiquitous that Tom—channeling his message through Dick's body, of course—once gave a speech to the Tucson Literary Club. Another time, some poor attorney actually addressed a letter to "Chief Judge Tom Chambers." Setting the record straight with his usual self-deprecating style, Chambers wrote back:

I have received your letter of August 10 addressed to Thomas Chambers. That is the name of my palomino horse. I will discuss with him your problems in the Homeowners case and you will hear from us.

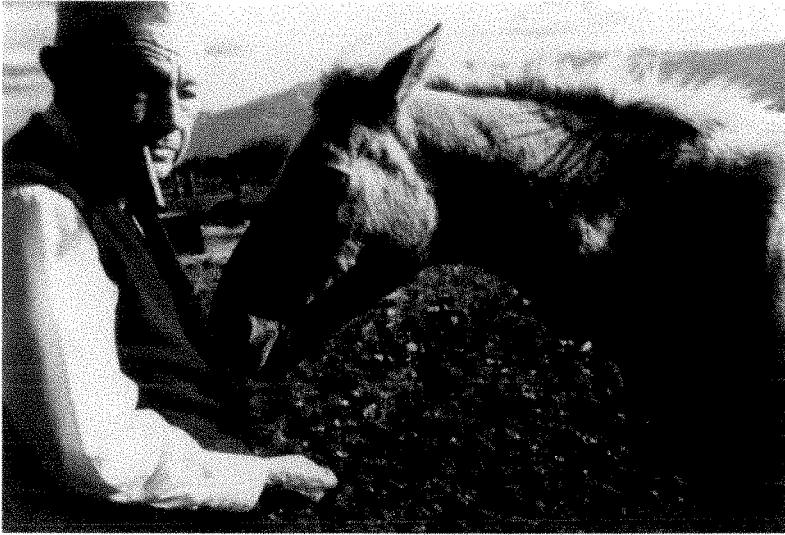
I know there are those who think I consult Tom too much and others who think that I do not consult him often enough. You are the first to bring the matter out in the open.⁶⁰

In 1984, Chambers told the *Los Angeles Times*, "my horse will be remembered long after me."⁶¹ The legend of Tom, who is buried at the Banana Farm near the memory corral, has not

⁵⁹Chambers Woodworth interview.

⁶⁰Richard Chambers to Messrs. Locklear and Wolfinger, August 15, 1972, Chambers Papers.

⁶¹William Overend, "Mavericks in Black Robes—West Is Their Bailiwick," *Los Angeles Times*, December 24, 1984, sec. A.



Chambers wrote numerous memoranda to his colleagues using the persona of his beloved horse "Tom," pictured above with Chambers in Safford, Arizona, about 1988. (Courtesy of Eileen Chambers Woodworth)

been forgotten. Indeed, in spring 2007, after a three-judge panel of Ninth Circuit judges managed to write four separate opinions to decide a single case, Judge Goodwin offered a memorandum to the court under Tom's name, pointing out, tongue-in-cheek, the unusual circumstance.⁶² But while Tom lives on in the memories of those who knew him, there seems little chance that he will be remembered beyond the judge . . . at least not for those willing to come to Pasadena, to take in the sights and sounds of the Chambers Courthouse, and to hear what the building has to say to explain the man.

⁶²*Irons v. Carey*, 479 F.3d 658 (9th Cir. 2007) [as amended].

RIDING TALL IN A SMALL SADDLE: THE CHIEF JUDGESHIP OF RICHARD H. CHAMBERS

MICHAEL ERIC SIEGEL

Although the title *chief judge of the United States courts* sounds magisterial to the uninitiated, those who have held the position know otherwise. Gilbert Merritt, chief judge of the U.S. Court of Appeals for the Sixth Circuit from 1989 to 1996, may have summed it up best. "When they handed me the reins of power," he quipped, "no one told me there was nothing attached."¹ When Richard Chambers was handed the reins of the Ninth Circuit U.S. Court of Appeals in 1959, he may have felt similarly, but he soon found something to attach them to: his strong vision of an independent judiciary, equal in stature to the other two branches of the federal government and extending its jurisdiction to a growing Ninth Circuit and its protections to all citizens, advantaged and disadvantaged alike. An analysis of Chambers' policy goals, management skills, political abilities, and decision-making will elucidate how he coped with limited power to become a successful, albeit unusual, leader.

As suggested above, the office of the chief judge is one of limited statutory power. In 1948, as part of the redefinition of Title 28, Congress replaced the term *senior district judge* with *chief judge* and provided only a few details on the actual responsibilities of the position, stipulating the time limits for

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¹Gilbert Merritt, overheard at a meeting of the Executive Committee, Judicial Conference of the United States, September 1992.

filling a vacancy and the age requirements for occupants of the office.² The limited grant of powers to chief judges is, perhaps, emblematic of the fact that the judiciary is not necessarily an environment hospitable to bold, forceful leadership.

Not only is the office limited by statute, but the chief judge must deal with colleagues who are also appointed for life and who pursue their own agendas; with court managers and staff who are often pressed to accomplish different sets of objectives from those of their judges;³ with a host of administrative agencies whose decisions exert a strong influence on the courts; and with Congress, which marches to its own tune. Clearly chief judges are limited in their exercise of power within the judiciary.

The affliction of limited power also reaches to the highest court in the land, the Supreme Court, where chief justices are similarly constrained in their application of power. In his 2006 book *The Psychology of the Supreme Court*, Lawrence C. Wrightsman quotes R.J. Steamer, who speculated on an advertisement in the "Help Wanted" section of the *New York Times* for the position of chief justice: "Although the Chief Justice will be responsible for assigning the writing of opinions among eight associate justices, he (or she) will have no legal authority to discharge or take minimal disciplinary action against any of their associates for any reason whatsoever. If any of them is slothful, senile, abrasive, or downright impossible, the Chief's ability to cope with such an exigency must depend solely on his powers of persuasion."⁴

In fact, a great position or an impressive title does not always guarantee leadership success.⁵ My previous research has shown that even presidents of the United States are constrained in the application of executive power:

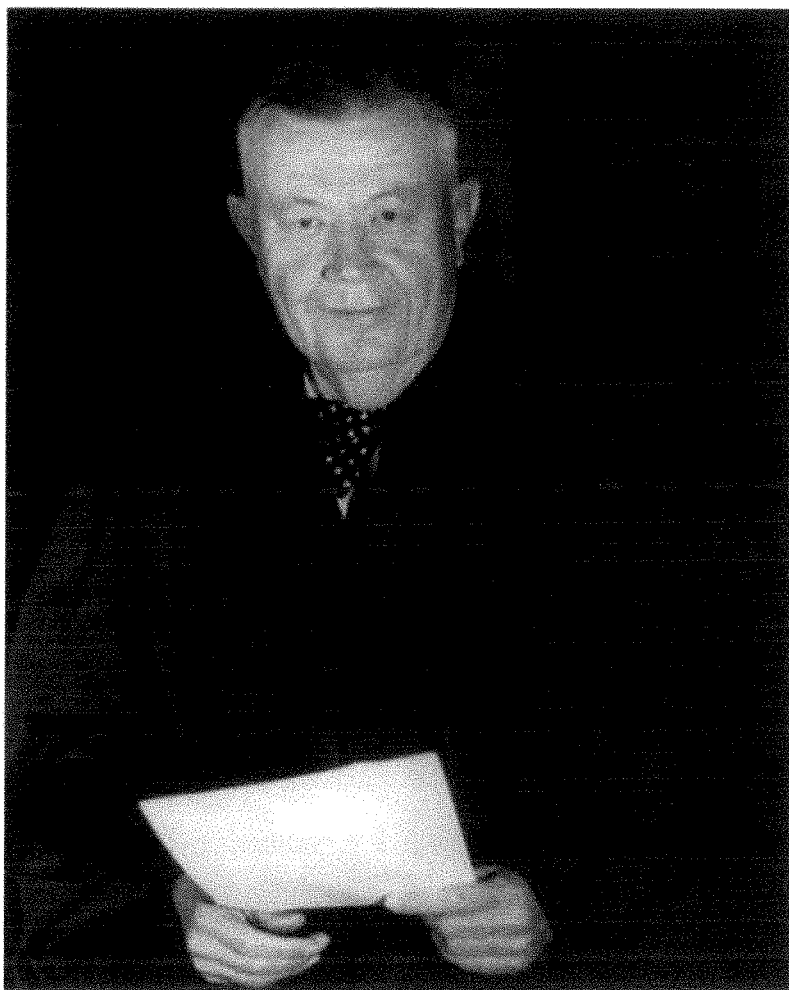
Besides the constitutional provisions of separation of powers and checks and balances, other factors can frustrate presidential hopes. The political realities of congressional power, interest groups, the media, and the electorate itself are extremely restrictive, as well. Both the Supreme Court's forcing Richard Nixon to surrender

²Federal Judicial Center, *Desk Book for Chief Judges*, 3d ed. (Washington, DC, 2003), 68.

³Dale R. Lefever, "Judge-Court Manager Relationships: The Integration of Two Cultures," *The Court Manager* (1990): 8–11.

⁴Lawrence S. Wrightsman, *The Psychology of the Supreme Court* (New York, 2006), 217.

⁵Michael Eric Siegel, "Lessons in Leadership from Three American Presidents," *Journal of Leadership Studies* 8 (2001): 34–47.



Chief Judge Richard Chambers held an unwavering vision of an independent judiciary and believed that people entering courthouses should experience the grandeur of the judiciary and the rule of law. (Courtesy of Eileen Chambers Woodworth)

Watergate tapes and the congressional impeachment proceedings of both Presidents Nixon and Clinton are practical examples of constraints on executive power.⁶

In a study of the post-Watergate presidents, I identified a way for U.S. presidents to overcome limitations on their power and fulfill their exercise of leadership. I suggested that presidents and other principals must achieve mastery by borrowing the four elements of successful leadership developed by Carter administration executives Ben Heineman and Curtis Hessler.⁷ Their four themes are as follows: policy (envisioned future, vision mission, goals); structure (management, initial organization, delegation pattern); politics (strategy, execution, implementation, persuasion); and process (decision-making, conflict management). An effective president, or any other leader, must enunciate a clear vision (policy), must avail himself or herself of an effective management support system and efficient organizations (structure), must develop a strategy to implement that vision, including a process of persuasion (politics), and must use effective decision-making techniques while managing conflict among his or her staff (process).⁸ With the help of this four-part rubric, we will explore the unique leadership style of Richard Chambers, who served as chief judge of the U.S. Courts, Ninth Circuit, from 1959 to 1975.

Chambers' seventeen-year career as chief judge was rather incongruous. He was clearly from the West but quite comfortable in the corridors of power in Washington, D.C.; he was a Republican, but he worked effectively with Democrats; he inherited a position of limited statutory power, yet he expanded the powers of his office in a way that almost matched his imposing physical presence; he was a solo operator suspicious of committees and bureaucracies, yet he presided over growing court institutions, structures, and caseloads that called for increased specialization of management and delegation of powers; he used humor in typically humorless situations—budget and GSA hearings, judicial council proceedings, and routine staff meetings. For example, he occasionally signed court memos with the name of his horse, Tom. This folk humor displayed his belief in the axiom of great leaders: they take their work

⁶*Ibid.*, 35.

⁷Ben W. Heineman, Jr., and Curtis A. Hessler, *Memorandum for the President: A Strategic Approach to Domestic Affairs in the 1980s* (New York, 1980).

⁸Siegel, "Lessons in Leadership," 35.

seriously, but they do not take themselves too seriously. Perhaps most amazing of all, Richard Chambers was not afraid of being outspoken. During testimony that he gave to the House Judiciary Subcommittee, which was inquiring into Chief Judge Chambers' opinion on the separation of powers, Chambers took the opportunity to state his view on the highly political topic of the death penalty as a federal punishment: "Personally, I would favor abolition of capital punishment. I do not think my country is 'lost,' but I think America has lost its capacity to enforce capital punishment promptly after the commission of the crime which resulted in the sentence. And capital punishment has no merit (it is a disgrace) when it is inflicted five years or more after the crime."⁹

As chief judge, Richard Chambers demonstrated the possibilities and limitations of leadership within the third branch of government, as well as the benefits and pitfalls of strong, determined leadership unbridled by institutional checks and balances. According to Judge James Browning, who succeeded Chambers as chief judge of the Ninth Circuit Court of Appeals from 1976 to 1988, "Dick was the last of the Chief Judges who really ran the Court personally."¹⁰

Chambers' zeal for leading from the trenches is astounding considering the enormous demographic changes that affected the Ninth Circuit during his tenure as chief judge. According to the U.S. Census Bureau, in 1960, a year after Chambers had assumed the position of chief judge, the Ninth Circuit's jurisdiction reached 12 percent of the U.S. population, and by 1980, five years after he left the position, it possessed jurisdiction over 16 percent of the U.S. population. An example that indicates the rapid expansion of the authority and responsibility of the Ninth Circuit during Judge Chambers' time is the Eastern District of California, which, during the six years immediately after its creation by Congress in 1966, saw its caseload increase 60 percent. The Eastern District of California encompassed one-half of the federal land in California, including fourteen military bases, six national parks, eight Army Corps of Engineers lakes, fifteen national forests, and five federal penal institutions.¹¹

It was a tremendous challenge for Chambers to maintain his style of personal leadership amid the rapid and extensive devel-

⁹Richard Chambers to House Judiciary Committee, transcript, Judge Richard H. Chambers Papers, U.S. Court of Appeals for the Ninth Circuit, San Francisco.

¹⁰James Browning, "Oral History of Judge James Browning," interview by Eileen Chambers Woodworth, August 27, 1999, transcript in possession of the author.

¹¹Thomas MacBride to Robert L. Leggett, November 21, 1973, Chambers Papers.

opment of the Ninth Circuit. Had he remained in power much longer, his leadership style would have proved problematic. Discussing Chambers' method of seizing initiative—his "take the bull by the horns" approach—Judge James R. Browning explained, "I think Dick was the last of the group of Chief Judges who regarded it as their responsibility to really run the Court. For instance, if Dick wanted to get judges to come sit with us, he'd call. He set up the calendars. We didn't know who we were going to sit with or what cases we were going to get until we got word from Dick. Dick handled it all. All those things now are done by a process, a procedure that's impersonal."¹²

Unfazed by the vastness of his circuit, Chambers delighted in its complexity and staggering variation. A colleague, Judge Martin Pence, recalled,

One of the reasons that he [Chambers] felt that the Ninth Circuit was so great was its great diversity. Within the circuit, you have San Diego, Los Angeles, the Mexican border, the Canadian border, the sheep and cattle country, the mountains, everything. The reason that he thought it was great was because of the great cross section of the whole United States. Big cities, wide-open spaces, farming areas, all. He wanted to keep the diversity.¹³

Given the daunting responsibility of managing a swelling enterprise, it would have been easy for Judge Chambers to devolve from a dynamic, loyal, and deeply involved boss into a petty, shiftless dictator, mindful only of expanding his own personal powers and without any regard for the yeoman's labor. But he had the interest of the judiciary in mind when he undertook his leadership responsibility. Awed by his workhorse mindset, a panel of his peers said about Judge Chambers, "He always took his fair share of the cases."¹⁴ He was not interested in personal aggrandizement, but in the achievement of great goals for the judiciary. Chambers shared characteristics of some of the great chief justices of the Supreme Court, as summarized by R.J. Steamer in Lawrence Wrightsman's book. Writing about Chief Justices Marshall, Hughes, and Warren, Steamer said that they

¹²Browning, "Oral History."

¹³Martin Pence, "Oral History of Judge Martin Pence," interview by Eileen Chambers Woodworth, March 30, 2000, transcript in possession of the author.

¹⁴William B. Luck to Ninth Circuit judges, "Testimonial to the Honorable Richard H. Chambers," August 2, 1976, transcript, Federal Judicial Center, Washington, DC.

had some things in common: "[A]ll were straightforward, moral men, personally, professionally, and publicly incorruptible."¹⁵

Of course, Judge Chambers also had his detractors. Some of his colleagues reacted negatively to his aggressive leadership style and his strong determination to achieve his objectives regardless of the cost. Some described how judges who got on the wrong side of his favorability ledger ended up with judicial assignments in Fresno or Fairbanks when there was inclement weather. He occasionally exercised questionable judgment, such as when he threatened a staff member with arrest because he suspected that the person was involved in dubious procurement practices.¹⁶ His competence in deal-making, which will be elaborated on later, was occasionally seen as manipulation, in the same way the legislative prowess of President Lyndon Johnson was interpreted by some in a more sinister fashion.¹⁷ Some who worked with Chambers allege that his unusually labored speech delivery was not a chronic condition, but one that could be turned on and off for effect. In the words of William Davis, who served as the circuit executive for the Ninth Circuit from 1981 to 1986, "When Chambers wanted to compel you to listen to him, he would use the very slow speech pattern."¹⁸

Chambers' devotion to the judiciary may have seemed brusque and uncompromising to some, the epitome of an outlaw riding wild and reckless. But for those who understood Judge Chambers, his style of leadership was his distinguishing trait. As one-time Ninth Circuit judge and current Supreme Court Justice Anthony Kennedy put it, "Dick was from another age, one just emerging from the frontier. Those were earlier, simpler, tougher, more honest times, and that was Dick's style."¹⁹ Few could really question the magnitude of Chambers' accomplishments or his executive abilities in an institution that frequently resists change. While Chambers was not an institution builder in the same way as his successor, James Browning, he was a passionate advocate for the interests of the judiciary—as Chambers defined them.

¹⁵Wrightsmann, *Psychology of the Supreme Court*, 207.

¹⁶Franco Mancini, interview by the author, January 2006.

¹⁷Robert A. Caro, *The Years of Lyndon Johnson*, vol. 3, *Master of the Senate* (New York, 2002).

¹⁸Bill Davis, interview by author, April 13, 2007, recording.

¹⁹Anthony Kennedy quoted in "Special Session to Honor the Memory of Honorable Richard H. Chambers, Chief Judge Emeritus," 61 F.3d lxxxiii.

THE FOUR COMPONENTS OF LEADERSHIP

Policy

Vision is vital to a leader's effectiveness. According to Ray Smilor, "vision is the organizational sixth sense that tells us why we make a difference in the world."²⁰ And according to Warren Bennis, a pioneer of contemporary leadership studies, "The first ingredient to effective leadership is a guiding vision. The leader has a clear sense of what they want to do—professionally and personally—and the strength to persist in the face of setbacks and even failures."²¹

What was Chambers' vision? What was his purpose? He had a strong vision of the federal judiciary as a grand institution. This feeling seems to have been one that Chambers inherited from his father, who was also a judge with strong respect for the role of the American court system as a protector of rights for everyone—from the smallest individual to the largest organization. Chambers believed courthouses should be beautiful; courtrooms should be impressive and large, and judges should have integrity and show respect for the powers of their office. Indeed, there were few who cared as profoundly and consistently about the integrity of the judiciary or about what former U.S. Supreme Court Justice Sandra Day O'Connor has called "the majesty of the law."²²

There were few, during Judge Chambers' time, who cared for the preservation of glorious courthouses, such as the one housing the U.S. Court of Appeals that sits at Seventh and Mission Streets in San Francisco, and few who could see the possibilities for a magnificent courthouse in a renovated resort hotel in Pasadena. Not many then or now argued as vociferously as he did against the centralization of judicial administration, the splitting of the Ninth Circuit, or the shrinking size of courtrooms in the name of economy and efficiency. Chambers felt that there was grandeur attached to the judiciary and the rule of law, and that people who stepped into courthouses, no matter how briefly, needed to experience that grandeur. According to William

²⁰Raymond W. Smilor, *Daring Visionaries: How Entrepreneurs Build Companies, Inspire Allegiance, and Create Wealth* (Holbrook, MA, 2001), 12.

²¹Warren Bennis, *On Becoming a Leader* (Reading, MA, 1994), 39.

²²Sandra Day O'Connor, *The Majesty of the Law: Reflections of a Supreme Court Justice* (New York, 2003).

Davis, "Judge Chambers believed that the federal judiciary in the West should be housed in edifices that were commensurate with the vital role that the judiciary plays in society, and he saw to it that this was accomplished during his tenure."²³

In his various fights to preserve or beautify federal court-houses, Chambers was a visionary. Collins and Porras, in their book *Built to Last*, state,

Having a great idea or being a charismatic visionary leader is "time-telling"; building a company that can prosper far beyond the presence of any single leader and through multiple product "life cycles" is "clock building." The builders of visionary companies tend to be clock builders, not time tellers. They concentrate primarily on building an organization—building a ticking clock—rather than on hitting the market just right with a visionary product idea riding the growth curve of an attractive product life cycle. And instead of concentrating on acquiring the individual personality traits of visionary leadership, they take an architectural approach and concentrate on building the organizational traits of visionary companies. The primary output of their efforts is not the tangible implementation of a great idea, the expression of a charismatic personality, the gratification of their ego, or the accumulation of personal wealth. Their greatest creation is the company itself, and what it stands for.²⁴

Chambers had a vision for both the majesty of federal court-houses and the user-friendly design of federal auxiliary buildings. He had a great passion for overseeing the reconstruction and improvement of all aspects of his federal court buildings. An example of his exuberance for building management as a policy of his circuit was his successful effort to revamp the San Francisco courthouse law library in the mid-1960s.

In letters to his fellow Ninth Circuit judges, Chambers showed an intense, enthusiastic, and "hands-on" style of leadership that got things done. He did not hesitate to discuss minute details, such as the size of bookshelves. He wrote,

²³Davis interview.

²⁴James C. Collins and Jerry I. Porras, *Built to Last: Successful Habits of Visionary Companies* (New York, 1994), 23.

It seems to me that I should not mumble in my beard when I have definite ideas of how the library should be arranged. . . . My notions about the Library: 1) The Judge's physical presence in the library will be irregular. Seldom will he stay long. However, the design should be primarily for when he goes down to it . . . , 2) We ought to have a goal of over 3,000 new volumes a year above the normal increase which amount to about 1,000 per year, 3) Somewhere there should be rows of block shelves (empty) with enough lineal feet in them to take 2,000 volumes. The block will be a reminder of our goal. On any basis we should have empty shelves waiting for books.²⁵

It is evident that Chambers was not one to allow the potential of his position to remain untapped. He had the heart of an architect who could see the value in old and abused buildings and structures, and he believed in the grandeur of the law both in the minds of the people for whom the law was designed and in the edifices where the production of the law could find a home. In a letter read at a Ninth Circuit Court session memorializing Judge Chambers, President Bill Clinton gave voice to the talents of Chambers as a court-builder:

Throughout his distinguished career, which included a record seventeen-year term as chief judge, Judge Chambers helped to advance the rights and protect the liberties of his fellow Americans. His commitment to the ideals of truth and fairness set an example for members of the legal community across the land. His dedication to courthouse preservation has helped preserve our nation's history for generations to come. Judge Chambers contributed immeasurably to the American judicial system and he remains an inspiration to every citizen who values justice."²⁶

Also at that 1995 ceremony, U.S. Supreme Court Justice Anthony Kennedy, a former colleague of Chambers in the Ninth Circuit Court of Appeals, shared an anecdote that reveals Chambers' great reverence for the federal judiciary and the men and women who served it as judges: "I had known Dick but a few months when I told him of the plans being made for a conference. I said we needed biographies of the federal judges in

²⁵Richard Chambers to Ninth Circuit judges, July 13, 1965, Chambers Papers.

²⁶Bill Clinton quoted in "Special Session," lxxxiv.

order to introduce them. He said, 'Our judges don't need biographies, the office the judge holds is all the introduction that is needed and appropriate.'²⁷

Judge Chambers was respectful of the federal judiciary and mindful of the temptations to abuse the powers of his office. Two years before he became chief judge of the Ninth Circuit, he was asked to comment on a controversial bill that was being debated in Congress. The bill was intended to set the age limit of chief judges in the federal judiciary to seventy years of age. Its impending passage was becoming a highly political issue, with some people questioning who would succeed the retiring judges. The politicization of the office of federal judge did not conform to Chambers' vision of the federal judiciary. In a letter to a colleague in Washington, D.C., in 1957, Judge Chambers wrote, "Speaking generally, and not in relation to the question of who should be Chief Judge, I have noted in my short term that one of the deficiencies of our system has been the tendency of the system to make 'second-class citizens' of our retired judges. This has discouraged retirement by some of those who should retire."²⁸

The heated issue persisted, demanding an opinion from Chambers. In personal correspondence with then-Arizona Senator Barry Goldwater, Judge Chambers confided that his view of the federal judiciary was not one of omnipotent judges with unlimited power. Taking a position that was in favor of the age limitations placed on federal chief judges (which subsequently would affect him personally), he wrote, "Among some there is an apprehension that Senators and Representatives might feel this bill a bad precedent—for themselves. However there is this difference in average Membership in Congress and term on the bench: Senator Greene [a contemporary senator over seventy] is there because the people of Rhode Island want him there. We are not subject to periodical plebiscites."²⁹

Finally, Chambers had a vision for the purpose of the courts—to protect rights. He extended the promise of "equal protection under the law" to denizens of far-flung parts of the circuit such as Hawaii, Guam, the Northern Mariana Islands, and American Samoa.³⁰ He believed that the courts, particularly the appellate courts, were designed to help those without

²⁷Anthony Kennedy quoted in "Special Session," lxxxii.

²⁸Richard Chambers to Walter E. Craig, Chambers Papers.

²⁹Richard Chambers to Barry Goldwater, February 14, 1957, Chambers Papers.

³⁰Sam King, interview by author, March 21, 2007, recording.

power or wealth. He lived the words of Justice O'Connor, who explained that "each and every petition for review, whether produced by a sophisticated lawyer in a high-rise or handwritten by a prison inmate or a private citizen in her home, is reviewed with care by each Justice."³¹ This magnanimous trait was consistent with the mindset of Chambers throughout his career as a lawyer and as a judge.

Nonetheless, although he had a passion for the physical grandeur and legal reach of the courts in the Ninth Circuit, Judge Chambers did not have a fully developed view of the need to develop institutions that could manage the affairs of the judiciary and its growing relationships with other organizations. He was, ultimately, a one-man show, and the breadth of his vision did not encompass the institutional framework needed for the growing complexity of the Ninth Circuit.

Structure

The structural component of leadership deals with issues of organization, delegation, and management. The best leadership intentions can go awry when frustrated by cumbersome organization structures. When considering how to structure their administrations, U.S. presidents ask the following questions: How will I organize the White House? Who will manage it? Will I have a chief-of-staff? Will I have an open or closed White House operation?³²

For chief judges, there is a paucity of guidance about how to create effective management structures. The judiciary is often seen as a management challenge because of the tremendous pull for judicial independence. Indeed, most judges identify more with their profession than with the organization in which they practice it, and they prefer making decisions independently. "Judges," says Dale Lefever, "focus on the management of their individual dockets, not on the coordination of these efforts across judges of the same court. Consequently, their decisions usually do not reflect an organizational consensus and can often create managerial inefficiencies for the whole system."³³ In addition, according to Terry Nafisi,

The fundamental difference (between judges and court administrators) . . . arises from a basic one of philosophy,

³¹O'Connor, *Majesty of the Law*, 6.

³²Siegel, "Lessons in Leadership," 34-47.

³³Lefever, "Judge-Court Manager Relationships," 8.

reinforced by role, training and work experience. Judges work for and are accountable to the public in a courtroom forum provided by the court organization. They must be independent and autonomous in their decision making. They do not work "for the court" in the same way that administrative staff do. Court administrators, on the other hand, identify and feel accountable to the court as an organizational entity.³⁴

And yet both judges and court managers have to find a way to manage the courts at some workable level. The increase in caseloads, the requirements for improved information technology, the need to renovate facilities, and the need to coordinate the efforts of hundreds, perhaps thousands, of court employees toward the accomplishment of its mission all contribute to a compelling need for management.

Richard Chambers was aware of these aspects of leadership. He did not, however, take kindly to the bureaucratic process or to the drudgery of building consensus and working through committees. Although he personally served on several governing judiciary committees, including the Executive Committee of the Judicial Conference of the United States, he preferred utilizing the structures necessary to get his vision accomplished and nothing more. He liked to be personally involved when it came to the work of his Ninth Circuit, a trait that was much admired by his peers.

Discussing Chambers' approach to management at the 1976 Judicial Conference of the Ninth Circuit shortly after the end of his tenure as chief judge, a panel of his fellow Ninth Circuit judges made the following statement:

As Chief Judge of the Ninth Circuit, Judge Chambers always stayed in close touch with the district judges. He carefully watched the business of each district court—and always did all in his power to obtain for the judges of those courts whatever was necessary to enable them to discharge their duties—be it equipment, additional space, or anything else that was necessary. Judge Chambers was always available to assist a district judge who had a problem with the Administrative Office of the courts, GSA, or any other agency. And assuredly Judge Chambers has the sincere appreciation of the judges. Not only was he their Chief Judge, he was their friend.³⁵

³⁴Terry Nafisi, "Purposes and Responsibilities" (seminar in advanced court management, Michigan State University, 2007).

³⁵William B. Luck, "Testimonial to the Honorable Richard H. Chambers."

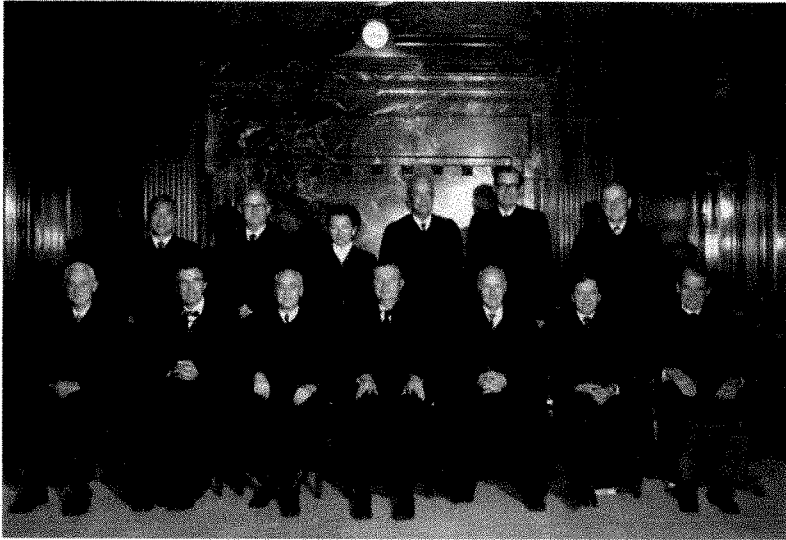
Chambers certainly disdained the ineluctable movement toward centralization of management of the courts from Washington, D.C. He was highly skeptical, for example, of the Advisory Committee on Inter-Circuit Assignments, sanctioned by the Judicial Conference in 1958, thinking that this new structure would distance him from the district court judges. The purpose of the committee, chaired by Judge Jean Breitenstein, U.S. Court of Appeals for the Tenth Circuit, was to help the judiciary, on a national basis, address the shortages of judicial officers in overworked districts. The committee, which also included Chief Judge Sylvester Ryan of New York, Judge Joseph Sheehy of Texas, Judge Randolph Weber of Missouri, and Ninth Circuit Judge Gilbert Jertberg, would gather evidence to "certify" that certain courts were in need of assistance in the form of additional temporary judicial officers. The committee would then recommend temporary designations of judges to the affected areas.

In an August 17, 1959, letter advising Chambers of his appointment to the committee, Judge Jertberg stated the objectives of the committee:

The Judicial Conference at its regular meeting in September 1958 was much concerned about the growing disparity in workloads among courts throughout the country. The statistics presented to the Conference showed that while many judges in courts are seriously overburdened, other judges and courts have comparatively little work. It was the sense of the Conference that much improvement could be made in the system for the assignment and designation of judges to serve in other courts and that, with additional impetus, the system could be made far more effective in distributing workload among the judges throughout the country. The Conference recognizes, of course, that any attempt to adjust caseloads is necessarily a very complicated and delicate task, but it is of the view that it ought to be undertaken.³⁶

Judge Chambers, keeping in mind the need to keep the federal judiciary from being politically blackmailed by policy makers in Washington, D.C., was normally a great advocate of the Judicial Conference as a means for federal judges to express their concerns and complaints, as well as their vision for

³⁶Gilbert Jertberg to Richard Chambers, August 17, 1959, transcript, Federal Judicial Center, Washington, DC.



U.S. Court of Appeals for the Ninth Circuit, circa 1969. Chief Judge Chambers is seated in the front row, center. (Courtesy of Eileen Chambers Woodworth)

improving the workings of the federal judiciary. As close to the Congress as the judges could manage, the Judicial Conference and other judicial councils offered an arena for helping leaders in the federal judiciary put their own house in order before they confronted Congress. It was no secret that, at times, Chambers' respect for the potential of the federal judicial system would bring him into conflict with lawmakers. Speaking before the House Judiciary Subcommittee on the Separation of Powers, Chambers eloquently defended the Judicial Conference and simultaneously expressed his frustration with the slow legislative process:

I challenge the statement sometimes made that judicial councils do not do their duty. They do almost all their work in a way that does not make a headline. Most of our problems lie in the circumstances of inadequate manpower, judges, and supporting personnel. And, that is a matter within the control of Congress. When we get judges and clerks, they are the ones we needed two or three years ago.³⁷

³⁷Richard Chambers to House Judiciary Subcommittee on the Separation of Powers, transcript, Chambers Papers.

Nonetheless, Judge Chambers took a dim view of the inter-assignments of judges. In his March 1, 1960, "Memorandum to Circuit and District Judges of the Ninth Circuit," he equated the work of the Breitenstein committee and its support by the Administrative Office of the U.S. Courts to "centralized control" of the judiciary and added, "they are hiring more employees in the Administrative Office to harass us."³⁸ It is clear that Chambers perceived the assignment committee as an intrusion on his prerogatives as chief judge of a large circuit. His concerns were echoed by Louis Goodman, chief judge of the Northern District of California, who "respectfully challenged the competency of a Circuit Judge from Colorado, a Circuit Judge from California, a District Judge from New York, a District Judge from Texas, and a District Judge from Missouri, acting through a head office in Colorado, to, in effect, by their recommendations to the chief justice, determine whether, e.g., the Northern District of California or the Eastern District of Pennsylvania needs judicial help."³⁹

Judge Breitenstein wrote to Judge Chambers on March 15, 1960, requesting an informal statement as to the needs of the Ninth Circuit for out-of-circuit assistance and as to the availability of judges in the Ninth Circuit for service in other circuits. Chambers responded to the request in a March 22 letter as follows:

If we had any net surplus of judges we would not be asking for one in Nevada and one in Northern California and laying out plans to ask this fall for one in Arizona and two for Southern California. On the other hand, we shall try to manage without outside assistance. I do not say we shall never put anything through the Committee, because I remember Studebaker once ran full-page ads saying "Studebaker will never build a car with four wheel brakes." And I realize that soon Studebaker was building cars with four-wheel brakes, and also that these ads were the beginning of the end of Studebaker. However, I find it hard to support something I do not believe in and something I believe is contrary to law.⁴⁰

³⁸Richard Chambers to Ninth Circuit judges, "Memorandum to Circuit and District Judges in the Ninth Circuit," March 1, 1960, transcript, Federal Judicial Center, Washington, DC.

³⁹Louis E. Goodman, "Memorandum re Report of Committee on Assignment and Designation of Judges," March 7, 1960, transcript, Federal Judicial Center, Washington, DC.

⁴⁰Richard Chambers to Jean Breitenstein, March 22, 1960, Chambers Papers.

Chambers was not easily swayed; his fervently held beliefs indicated his tenacious thinking. He seemed to believe in the power and independence of his own thought just as strongly as he believed in the power and independence of the judiciary.

Chambers worked with District of Columbia Circuit Judge Elijah Prettyman to disapprove two items in the February 19, 1960, "Report of the Committee on Assignments," which would compel judges to serve outside of their circuit, district, or court when the need arose. Chambers characterized these policies as leading to a "dependent judiciary."⁴¹

He also reinforced the idea of local control of judicial court assignments in a September 1962 memorandum to the Breitenstein committee, in which he stated, "I have this fundamental notion that assignments of judges should not be lodged any further up the tree than is necessary to make full and effective use of the manpower." He continued by saying that, subsequent to the passage of an omnibus judiciary bill with new appointments for all circuits reasonably covered, in a gesture to the "spirit" if not to the "letter" of the Committee on Inter-Circuit Assignments, he would consent to send eight or nine judges from the Ninth Circuit to the Southern District of New York for a month or longer. On December 4, 1962, Chief Justice Earl Warren wrote to Judge Chambers that the creation of seventy-three new judgeships and appointments had obviated the need for the inter-circuit assignment of judges and that "more attention must be given to the possibility of meeting the situation by an intra-state assignment." Chief Justice Warren also admitted that there had been a shortfall of oversight on the costs of the inter-circuit assignments and that he was putting a stop to them except for special circumstances.⁴² Such situations must have reaffirmed Chambers' strategy to use only the needed structures to accomplish his vision.

Chambers never integrated broader institutions within his vision. He was skeptical of higher establishments that imposed their own beliefs on his court. He acceded to decisions from above reluctantly, preferring to act individually and decisively. Fortunately, his political ability to persuade people balanced his own relentless independence.

⁴¹Richard Chambers to Ninth Circuit judges, January 24, 1961, transcript, Federal Judicial Center, Washington, DC.

⁴²Earl Warren to Richard Chambers, December 4, 1962, transcript, Federal Judicial Center, Washington, DC.

Politics

Politics refers to a leader's ability to transform vision into reality—to get things done. This aspect of leadership challenges the leader to develop an execution strategy.⁴³ Management expert Peter Block asserts, "We become political at the moment we attempt to translate our visions into actions."⁴⁴ Dr. Condoleezza Rice, who served as national security adviser in the first administration of George W. Bush and as secretary of state in the second, summed up the importance of politics in a 1994 interview with Richard Haas as follows: "You don't have a policy unless you can get it done. You can have the best policy in the world on paper; it can be intellectually beautiful and elegant, but if you can't get it done, it never happened."⁴⁵ Politics is the ability to make things happen.

Execution requires that the leader work with and through others, identify strategic allies, build a coalition for change, and engage in a relentless monitoring of the environment for opportunities to fulfill his or her objectives, as well as obstacles to overcome. Political skills in this context include persuasion and influence skills on the one hand, and well-honed listening skills on the other. Chambers knew how to get things done; he understood the need to translate visionary thinking into concrete results through a political strategy. He had strong political acumen, grasping almost by instinct the need to build relationships with members of Congress, local political leaders, and even judicial leaders.

Richard Chambers grew up in Arizona, but while the culture of the West flowed in his veins, he was more than comfortable in Washington, D.C. He developed excellent relations with members of Congress from both parties. According to William D. Browning (who served as chief judge of the District of Arizona), "Numbered among his friends were Senator Barry Goldwater (R, Arizona) and Congressman Morris Udall (D, Arizona), somewhat divergent in their political viewpoints, but both great friends and admirers of Judge Chambers."⁴⁶

Chambers never lost sight of the strategic vision that he had for the Ninth Circuit when he played the game of politics.

⁴³Larry Bossidy and Ram Charan, *Execution: The Discipline of Getting Things Done* (New York, 2002), 201.

⁴⁴Peter Block, *The Empowered Manager: Positive Political Skills at Work* (San Francisco, 1991), 58.

⁴⁵Richard N. Haas, *The Power to Persuade: How to Be Effective in Government, the Public Sector, or an Unruly Organization* (Boston, 1994), 52.

⁴⁶William D. Browning, "Naming Ceremony: Richard H. Chambers United States Court of Appeals Building," 990 F.2d xcvi, ci.

Although it would be easy to assume that the easterner's image of the American West and its inhabitants—rural, unorthodox, backward even—would work against Judge Chambers in Washington, D.C., he in fact used the growing importance of the states in the Ninth Circuit to his utmost advantage. In many ways a lone wolf, Chambers had a nose for sniffing out the best trail to what he stalked, which was the respect of the federal judiciary in general, and the needs of the Ninth Circuit in particular. The late Judge Martin Pence, a Chambers colleague who had been chief judge of the District of Hawaii, was very impressed with Chambers' acumen on Capitol Hill. He said,

One smart guy [Chambers]. He was very down to earth. He could predict what Congress was going to do, and tell you why. He knew all about the bills that involved the court. He could tell you ahead of time, "No, they're not going to do this." He'd go right down the line, he knew everyone there: all the Senators, how they voted, and everything else. I've never known anyone who had such a knowledge of how other people thought.⁴⁷

Perhaps no episode more vividly illustrates the political dimensions of Chambers' leadership than his aggressive involvement in the conversion of a former resort hotel in Pasadena, California, into the courthouse that today is named for him. The Hotel Vista del Arroyo opened in 1931 and was taken over by the federal government during World War II for use as an army hospital. In 1975, it was declared surplus property and appeared on a list of surplus buildings that was presented to Chambers.⁴⁸ According to then-U.S. Circuit Judge Shirley Hufstedler (who subsequently served as the first secretary of education under President Jimmy Carter), "There were so many dogs among the list of buildings that you could almost hear the 'yips.'" But one, the luxury hotel in Pasadena, had possibilities. Hufstedler admits that she did not initially see the possibilities, but Judge Chambers explained the basic structure of what used to be grand public space. "Like any artist, the Chief Judge was able to strip away the partitions, the debris, the desolation and to show us the vision of what cosmetic surgery could do for an old girl."⁴⁹

Chambers decided he wanted to convert the old hotel into a beautiful courthouse to house Ninth Circuit appellate judges

⁴⁷Pence, "Oral History."

⁴⁸For a history of the Vista del Arroyo Hotel, see Thomas D. Carpenter, *Pasadena: Resort Hotels and Paradise* (Pasadena, CA, 1984), 102–15.

⁴⁹Hufstedler, "Naming Ceremony: Richard H. Chambers," 990 F.2d xcvi.

who were struggling to find adequate space in the district court in downtown Los Angeles. He was absolutely determined to get this done, but he faced several obstacles: some of the judges adamantly opposed moving; Congress needed to provide funding for the conversion; the GSA needed to be convinced of the integrity of the conversion; and Pasadena citizens wanted assurance that their neighborhood would be safe, and prisoners in transit would not endanger them. This was the kind of challenge that Chambers seemed to welcome. Former Judge Hufstedler described a multi-step process that Chambers used to accomplish the daunting task of converting the old hotel into a courthouse.⁵⁰ In each step, his political skills were evident.

The first step was to have Pasadena designated a venue for holding court, and finding temporary quarters in the city for the court while the Vista del Arroyo was renovated. Judge Chambers worked the halls of Congress for its authorization and worked Pasadena's City Hall for a loan of its council chambers as a temporary courtroom.⁵¹ In addition, he needed to rent twenty-one rooms at the Mutual Savings Bank for regular court hearings.

The next step was, perhaps, the most daunting of all. Chambers had to convince Congress to authorize the money to make the building suitable for court operations. Chambers seemed to have followed Lyndon B. Johnson's advice that "the best time to make friends is before you need them." He used his extensive network to drive the appropriations bill through the House and the Senate. Judge Chambers encouraged his colleague, then-Circuit Judge Kennedy, to speak to his family friend Congressman Harold T. "Bizz" Johnson from Reading, California. Johnson happened to serve as chair of the House Appropriations Committee at the time and was persuaded that the Pasadena courthouse was a worthy endeavor.

Next, Chambers needed assistance in the Senate. He knew that Democratic Senator Daniel Patrick Moynihan from New York was interested in developing better rail transportation in the New York-Connecticut corridor. He arranged meetings between Bizz Johnson and Pat Moynihan,⁵² helping to cement a deal for the supplemental appropriation for the building conversion and the expansion of transportation corridors in the Northeast. Judge Chambers, the consummate dealmaker, had

⁵⁰Ibid.

⁵¹Erwin C. Surrency, *History of the Federal Courts*, 2d ed. (Dobbs Ferry, NY, 2002), 82–83.

⁵²Alfred T. Goodwin, interview by author, January 16, 2007, recording.

arranged some good, old-fashioned congressional "log-rolling," the reciprocity that enables members of Congress to influence one another and reach legislative compromises and deals.⁵³

Chambers also needed to persuade the GSA to approve the use of the facilities for judicial purposes. Judge Hufstedler explained Chambers' approach to dealing with the GSA:

When GSA moved to block the project, none of its leadership or its local constituency had any idea about what a fight would be like with the Chief Judge. The Chief Judge has always been an honorable man, but when it came to street fighting, he knew the ways of the old west from Arizona, and he knew more about the skeletons rattling around in the GSA closet than any of the then leadership of GSA had any idea that he knew. As more little problems kept coming up, the Chief Judge would dig out those skeletons one bone at a time and wave them in appropriate directions to be able to assure the line of march continued his way.⁵⁴

As for the judges who were reluctant to move, Chambers was able to identify the location of their children and other family members and convinced his colleagues that they could more easily visit their families from Pasadena than they could from downtown Los Angeles.⁵⁵ He successfully persuaded others by appealing to his opponents' own interests. He mastered politics, even the art of telling half-truths, to achieve his ends. For example, he once failed to disclose his true identity as a federal judge so he could sit in on a jury in Tucson, Arizona, in 1982.⁵⁶ His cogent persuasion skills, mixed with humor and levity, helped him reach his political goals. Chambers knew what other people wanted, and he knew what he wanted. That combination helped him make decisions and manage conflict.

Process

The final dimension of leadership relates to the methods a leader uses to make and announce decisions. The leader must consider whether he or she wants a great diversity of opinion or a more narrow range of options. The following questions are

⁵³Malcolm E. Jewell and Samuel C. Petterson, *The Legislative Process in the United States*, 3d ed. (New York, 1977), 335.

⁵⁴Hufstedler, "Naming Ceremony: Richard H. Chambers," at xcvi.

⁵⁵Goodwin interview.

⁵⁶Davis interview.

relevant to decision making: How will I make and announce decisions? Will I deliberately encourage dissenting opinions? How will I handle conflict among my own advisers? How will I apply "damage control" when needed?⁵⁷

Leaders need to understand their particular decision-making style and be cognizant of available resources to assist them in making the best choices. At times, leaders may find their closest advisers and confidants deadlocked. Effective leaders must demonstrate to the people whom they hope to lead that they, as leaders, are not afraid to make decisions and resolve discord. Judge Pence recalls how Chambers efficiently solved quarrels:

In 1961, in the summer before I went on the bench, William O. Douglas made a speech at the Ninth Circuit Judicial Conference in which he brought in a really dirty story. . . . It upset a lot of people. . . . Well, Dick took care of that problem. I asked Dick how he shut him up. He said, "There is a widow of a very good circuit judge who won't take anything from Douglas. She will tell him off, so I seated her right next to Douglas at every Conference from then on."⁵⁸

Chambers' intuitive understanding of people and their reactions helped him manage conflicts.

As chief judge, Chambers relied largely on his own devices and on the powers granted to him by a penetrating intellect and a flexible mind. He was not averse to allowing others to assert themselves, but he was deliberate in assigning roles to the people with whom he worked. Chambers was an astute judge of character, and he knew how to assess the talents of his staff and judges to match them with the ideal position. This skill was probably both a part of his nature and also a result of the way he was nurtured. As Judge Pence explained, "Some people are just damn good poker players. You know what gave Dick that? He came from the back country of Arizona, and his father was a judge before him. He grew up evaluating people's conditions and circumstances. He knew how to play poker."⁵⁹

Leaders may be tempted to think of their vision as solely encompassing great events in which they can surf to glory on the sweat of their subordinates. Chambers was not a leader who was easily seduced by such visions. He expected loyalty and

⁵⁷Siegel, "Lessons in Leadership," 37.

⁵⁸Pence, "Oral History."

⁵⁹Ibid.

returned loyalty. Discussing Chambers' infectious work ethic, Judge Pence said, "Dick worked the tail off every one of the judges, but then if you wanted something, you got it. Whatever you wanted, you got it. And when he wanted something, he got it."⁶⁰ Chambers announced his decisions with a confidence that guaranteed their success. He related his strategy to Judge Pence, who recalled,

In 1962, the second set of plans for the new courthouse came across my desk. . . . [Chambers] said to me, "How do you like the plans?" I said, "I don't like them at all." . . . He said, "Then tell them that you won't move in." I said, "I have that power? I can tell GSA and everybody else that I won't move into the new place?" He said, "You tell them and see what happens."⁶¹

It is clear that Judge Chambers was comfortable with his decision-making style. That style could be characterized by a ready willingness to make tough decisions guided by a strong vision and the best resources he could find.

Indeed, Chambers seemed to possess a bifocal vision that simultaneously took in the present and future needs of the courts. Interestingly, when the engineers and policy makers gathered to discuss the repair of the Ninth Circuit Court of Appeals on Seventh and Mission Street following the devastating 1989 earthquake, it was Judge Chambers who brought the information about earthquake-proof building techniques.⁶² Steven Hayward, one of the numerous biographers of Winston Churchill, explained how Churchill had an uncanny ability to glimpse into the future. For example, he could see how nuclear weapons would change the course of warfare twenty years before the production of the first atomic weapon.⁶³ Similarly, Chambers could envision the future, particularly in terms of the physical needs of the judiciary. He understood that as the criminal dockets of the courts increased, there would be a need for the construction of secret passageways that could safely transport prisoners between courtrooms and prison cells.⁶⁴

Chambers left relatively few tasks to be delegated. He had personal relationships with the judges and called them regu-

⁶⁰Ibid.

⁶¹Ibid.

⁶²J. Clifford Wallace, interview by author, January 4, 2007, recording.

⁶³Steven F. Hayward, *Churchill on Leadership: Executive Success in the Face of Adversity* (New York, 2004), 84.

⁶⁴Eileen Chambers Woodworth, interview by author, April 23, 2007, recording.

larly; he handled all judicial complaints; he handled all the building matters in the Ninth Circuit; and he wrote his own opinions. Occasionally, however, his direct, hands-on form of decision making and problem solving interfered with the legitimate prerogatives of his administrative staff and judicial colleagues. Judge James Browning explained,

It's true of any common enterprise. After you reach a certain boundary, you just can't have any single . . . [person] determine every little thing that goes on. Dick really did it all. He put the judges together in their panels of three—told them where they were going to sit. Dick handled every detail. . . . Dick was perfectly capable of delegating, of getting people to relate to [him.] That was just not the image for a Chief Judge at that time. It was regarded as a sign of a kind of weakness.⁶⁵

Sometimes Chambers verged on a micromanagement style, second-guessing members of his own staff and taking away their decision-making autonomy. He also displayed a proclivity to make unusual hires, including the choice of a train conductor to become his clerk of court! While this situation might be considered an insult to the profession of court administration, it could also be viewed as indicative of the high regard Chambers had for trains and the professionals who made them run on time!

Chambers' style exemplifies a readiness to make decisions and manage conflict. He seemed to feel that his strength as a leader depended on his ability to handle everything and make even the most detailed choices. But even then, he disdained the growing complexity of the judiciary and the need for administrative structures that impeded on his decision-making authority. Judge Jones explains:

He would take great delight in sticking it to the GSA whenever he could; I knew that; I could see it; I could see it coming. They would fight with him over paper clips . . . or light bulbs, or ballpoint pens . . . and they knew when Dick Chambers was coming, and they must have respected him because he always won. He didn't particularly like the GSA; he had some misgivings about bureaucracy and the way they operated, and it simply wasn't his style.⁶⁶

⁶⁵Browning, "Oral History."

⁶⁶Charles Jones, "Oral History of Justice Charles Jones," interview by Eileen Chambers Woodworth, May 5, 2000, transcript in possession of the author.

Chambers viewed bureaucracy more as a necessary evil than a tool to achieve his vision. However, his unyielding self-reliance was integral to his ardent determination and leadership success.

SUMMARY

A strong chief judge can have as much impact on his court system as a chief justice of the United States has on the Supreme Court. Although a chief justice's power is limited, he or she certainly has the potential for exerting a lasting influence on the Supreme Court and the nation. It is, after all, a common practice to identify a particular period in the Court's history with the name of the sitting chief justice (e.g., the Warren Court, the Rehnquist Court). Former Justice Abe Fortas believed that the position of chief justice carried additional clout: "This prestige not only affects the public, the bar, and the bench generally, but it also makes [it] possible for the chief justice to influence the output of the Court to a much greater degree than colleagues of equal or superior personal and professional caliber."⁶⁷ Lawrence Wrightsman nicely reinforces Fortas' notion by adding, "In short, the Chief sets the tone and, in many subtle ways, significantly influences the output and atmosphere of the Court."⁶⁸

Richard Chambers undoubtedly influenced the "output and atmosphere" of the U.S. federal court system in general and the Ninth Circuit in particular during his seventeen-year tenure as chief judge. A good deal of his influence was positive and led to laudable outcomes: the preservation and restoration of glorious courthouses signifying the "majesty of the law"; the promotion of "equal justice under the law" for all citizens of the Ninth Circuit; the protection of the working conditions and prerogatives of all judges, especially those at the district court level; the adequate deployment of judicial resources to areas of greatest need and the application of needed resources and personnel to address the jurisdictional expansion of the Ninth Circuit; the defense of judicial independence not only through the sovereignty of the law but also in terms of the judiciary's ability to assert itself within the complex competing branches of government and the judiciary's own centralizing tendencies; and the guarantee of reasonably efficient and timely renderings of judicial business.

⁶⁷Wrightsman, *Psychology of the Supreme Court*, 201.

⁶⁸*Ibid.*



A strong chief judge can have as much impact on his court system as a chief justice has on the U.S. Supreme Court. Here Chief Judge Richard Chambers is seated next to Supreme Court Chief Justice Warren Burger. (Courtesy of Eileen Chambers Woodworth)

And yet, although his vision of the grandeur of the judiciary was unassailable, Chambers did not appreciate the growing complexity of judicial business and the corresponding need to develop governance and administrative structures to manage the courts. His passion for architecture was not matched by an interest in public administration. Chambers believed in the need for judges to control their own business and was deeply suspicious of intrusions on that arrangement. He railed against making judicial assignments through a national committee associated with Washington, D.C., argued vociferously against splitting the Ninth Circuit, and refused to hear of reducing the size of federal courtrooms or accepting the plans and schemes of the GSA or other governmental agencies that, in his mind, would diminish the splendor of the third branch of government. He was highly independent, and working with groups or committees was simply not his style. He championed the common man and refused to cater to the interests of bureaucrats. Chambers used the essential structures, and nothing more, to accomplish his goals. Believing as he did in judicial independence and the autonomy of the individual federal judge, he acted individually and decisively. He was not a man who easily accepted compromise on issues of great importance to him.

Because Chambers could not be swayed, he relied on swaying others. He accomplished many of his goals through a political acumen characteristic of some of our nation's most capable deal-makers, from the urban ward bosses of the nineteenth and early twentieth centuries to the log-rolling prowess of legislative giants such as Lyndon B. Johnson. Chambers fulfilled his vision with a seriousness of purpose offset by sarcasm, mischief, and a sense of humor. He made friends, cultivated allies, and persuaded opponents—making their objections disappear as if by magic.

Chambers understood what others wanted, and he knew what he wanted. He had an unparalleled understanding of people and their reactions; he strategically placed people in situations to minimize conflicts. He had a flexible and imaginative mind, and he easily accessed the criteria he needed to make firm decisions. His multifaceted personality allowed him to adjust his own style so he could lead individuals—for he valued their individuality as much as his own. A confident decision maker, Chambers readily confronted the GSA and single-handedly bore the responsibility to make his vision a reality.

CONCLUSION

In 1976, when Chief Judge Chambers stepped down, it was virtually a day of mourning for district judges. They offered him a gift: a beautiful saddle. Nothing like that had ever happened before. In the words of Judge Pence, "There was only one Dick Chambers."⁶⁹ What kind of person could inspire such loyalty and admiration?

Chambers was not successful because of his power or his status as chief judge. If anything, he struggled to cope with limited power; he was riding in a small saddle. Furthermore, he had to accept his own deficiencies as a leader. His management structure was almost too independent, isolating the potential of larger institutions, and his decision-making process was too detailed and personal to work in larger settings. But an examination of the policy, structure, politics, and process of Chambers' leadership indicates that, in spite of his many incongruities and unusual habits, he was consistent in one area: he had an unwavering vision of a majestic and independent judiciary, devoted to protecting others, and he was relentless in his pursuit of that dream. He was a leader because, in the words of Judge Browning, "He was the court."⁷⁰

⁶⁹Pence, "Oral History."

⁷⁰Browning, "Oral History."

A FORMER LAW CLERK REMEMBERS

HON. CYNTHIA HOLCOMB HALL

Judge Richard H. Chambers of Arizona was newly appointed to the Ninth Circuit Court of Appeals in 1954, when I was one of two women graduating from Stanford Law School. At that time, law firms did not hire or even interview women, so Stanford sought jobs for its two female graduates outside of the private sector. Professor John McDonough, the executive director of the California Law Revision Commission, agreed to hire one of us as his assistant. Judge Chambers, himself a Stanford graduate, said he would be willing to interview a woman student in his search for a law clerk.

Judge Chambers interviewed me for the position and hired me as his only law clerk for the 1954–55 term. I was the first female law clerk on the Ninth Circuit, but the judge didn't treat me any differently because of my gender. In fact, Judge Chambers made it clear that I would not be excused from any duties, including carrying his heavy briefs and papers to court. My responsibilities were mostly the same as any law clerk then or today. I reviewed the briefs and records, researched the law, and wrote a memorandum that concluded with my recommendation about how I would decide the case in question. I still recall discussing cases with the judge in his chambers with his door closed while he smoked and chewed on a cigar. By the time we finished, the room was blue with smoke and I had a headache, but you can be sure I did not say a thing because I was so grateful to have a job.

Everyone who knew Judge Chambers knew how much he loved his horse, Tom. He spent his winters in Tucson to be with Tom, even though most Ninth Circuit judges remained in San Francisco year round. Later, he even brought Tom to San Francisco with him in the summers. In another exhibition of independence, Judge Chambers insisted on traveling

Judge Cynthia Holcomb Hall has served on the U.S. Court of Appeals for the Ninth Circuit since 1984.

everywhere by train and writing all of his opinions by hand on yellow legal pads—a sure sign of how times have changed. He was rightly proud of his writing style; his intelligence, wit, and careful analysis always shone through.

When we held court in San Francisco, Judge Chambers and I frequently took the same commuter train into the city. We would walk together from the train station to the courthouse through the Mission District of San Francisco. Despite his status as a judge, he seemed to fit right into his surroundings. He loved to peruse the secondhand stores in the area, where he would purchase “treasures” for himself and his friends. One find was a number of fine bone china spittoons adorned with the seal of the Palace Hotel, which became gifts for his dear friends. I still have a picture in my mind of Judge Chambers in a very expensive tailored suit, with his hat down on his head, shuffling along Mission Street, sometimes with a cigar in his mouth.

One of the judge’s best qualities was his brilliant sense of humor. He constantly teased me for having brown bag lunches with the other law clerks, all of whom were male, but who in no way shunned me as a “girl.” He also poked fun at my experience as a Wave officer during the Korean War, once giving me a china saucer bearing the Navy emblem and marked clearly in crayon “104¢.” And he was ever the practical joker. Once he sent me a florist’s box of the kind that is used to send long-stemmed roses. When I opened it, there, nestled in the tissue paper, was a fly swatter with a sunflower for a head.

Judge Chambers was extremely perceptive and politically shrewd. He always seemed to know what you were thinking before you realized it yourself, and he used this talent to his advantage. Indeed, it was due to Judge Chambers’ political wiles that the Ninth Circuit now holds court in the beautiful Pasadena courthouse on Grand Avenue. Before the building became the courthouse, it was a vacant, government-owned hotel-turned-army hospital.

The General Services Administration (GSA) was adamantly against the Ninth Circuit using the property, but Judge Chambers fought fiercely for the building to become our courthouse, and he won every step of the way. The GSA first argued that the building was not appropriate as a courthouse because the Circuit could have a courthouse only in an area currently designated to hold court sessions. Judge Chambers quickly solved that problem by getting Pasadena designated as a place for holding court. The judge then convinced the city directors to lend us their boardroom as a temporary courtroom and rented chambers in the nearby Mutual Savings building.

By that point, the Ninth Circuit was in business in Pasadena, but Judge Chambers still had to win over the neighbors and

assure them that they would not be living next to a criminal trial court with dangerous prisoners coming and going. In the end, it took all of Judge Chambers' extraordinary skills to achieve the beautifully restored building that is now the Richard H. Chambers United States Court of Appeals Building. Ironically, the courthouse has earned the GSA numerous awards from various organizations.

After I finished my clerkship, Judge Chambers and I remained good friends, but he told me he would never do me any favors, and he stood by his word. I was appointed to the Tax Court in 1972, then to the District Court in 1981, and, thirty years after my clerkship with Judge Chambers, to the Ninth Circuit Court of Appeals. Judge Chambers made it clear to me that he was not involved in my appointment to the Ninth Circuit, nor with my earlier appointments. This was no surprise, for during my clerkship, Judge Chambers had taught me the importance of thinking and achieving for myself, and I carried that lesson with me throughout my life. In fact, only a few years after my appointment to the Ninth Circuit, I sat with Judge Chambers on a case, in which I joined Judge Kennedy's opinion, and Judge Chambers dissented.¹ Although I'm sure he would have liked to persuade me otherwise, I know he appreciated my independent thinking, just as I had always appreciated his.

¹See *Neuschafer v. McKay*, 807 F.2d 839 (9th Cir. 1987).

PRESERVING THE NINTH CIRCUIT

LEE M.A. SIMPSON

"I've never believed in putting gold dust on horsefeathers."

—Richard Chambers, 1976

INTRODUCTION

Within the Ninth Circuit Court, five courthouses stand out for their architectural and historical significance: San Francisco, Portland, Pasadena, Tacoma, and San Diego.¹ All owe their survival and resurrection to the vision and tenacity of Judge Richard Harvey Chambers. In numerous obituaries, reminiscences, and memorials, Judge Chambers is remembered for his strong leadership abilities, his sense of humor and sardonic wit, and his role in the preservation of these courthouses. Indeed, Chambers' influence is writ large on these structures. From the interior decorations and furnishings to the parking and security, Chambers or one of his colleagues oversaw every step of these projects. In the process, Chambers ran into numerous and infamous conflicts with the General Services Administration (GSA) and sometimes with local preservationists, including neighborhood groups and historical societies.

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¹In this article, I have chosen to identify these courthouses by their city of location as opposed to their official names. The dates that identify each section refer to the date of dedication for each restoration. Officially these buildings are known as the James R. Browning U.S. Courthouse in San Francisco, the Pioneer Courthouse in Portland, the Richard H. Chambers U.S. Court of Appeals in Pasadena, the Union Station Courthouse in Tacoma, and the Jacob Weinberger U.S. Courthouse in San Diego.

In all, Chambers campaigned for the preservation and restoration of nearly two dozen historic buildings. He was drawn to preservation in part because he loved old buildings, and in part because he understood the importance of impressive structures in establishing authority for the courts. New construction, he believed, failed to capture the grandeur of the judicial system and instill in attorneys and the public the appropriate respect and awe of the bench necessary for the enforcement of decisions.² Not one to engage in preservation out of some romantic notion that all old buildings have intrinsic value, Chambers chose his battles carefully. To observe his efforts is to witness the power of an individual to overcome inertia, bureaucracy, and his own detractors.

FEDERAL PRESERVATION EFFORTS

When Richard Chambers was appointed to the Ninth Circuit Court of Appeals in 1954, only a fledgling federal historic preservation program existed. Historic preservation generally has not been a priority for either the federal government or the American people, in part because of the relative youth of the nation, and in part due to the fact that Americans have been slow to recognize that they have a past worthy of preserving. To many Americans, historic preservation is simply un-American. It runs contrary to our nation's cultural emphasis on modernity, progress, and the ultimate perfectability of mankind. Newer is most often seen as better.

Prior to passage of the National Historic Preservation Act of 1966, the federal government limited its involvement in preservation to a few specific sites, with an emphasis on either archaeology or national glory. Although Congress established the first national historic site in 1889 (the Casa Grande reservation in Arizona), no federal protective legislation existed until 1906, when the Antiquities Act authorized the president to protect archaeological sites on federally owned lands. Ten years later, Congress established the National Park Service to take over the administration of nine existing national monuments.³ Another

²Gerald Adams, "A Very Special Salvage Job," *California Living Magazine*, July 4, 1976.

³The National Historic Preservation Act of 1966, Public Law 89-665, 89th Cong., 2^d sess. (October 15, 1966); *Sundry Civil Appropriation Act*, U.S. Statutes at Large 25 (1889): 961; *The Antiquities Act*, Public Law 209, 59th Cong., 1st sess. (June 8, 1906); *The National Park System Organic Act*, U.S. Statutes at Large 39 (1916): 535.

dry period ensued until the 1930s, when Congress authorized the creation of the Colonial National Monument in Virginia and the Historic American Buildings Survey. In 1935 Congress passed the Historic Sites and Buildings Act that codified as national policy the preservation of "historic sites, buildings and objects of national significance for the inspiration and benefit of the people of the United States."⁴

Between 1935 and 1966, only one other major piece of legislation came through the federal government. In 1949 Congress chartered the National Trust for Historic Preservation.⁵ The National Trust, however, is not an agency of the federal government. Instead, like the Smithsonian, it is a private organization that melds funds from private philanthropy and memberships with monies appropriated from Congress. In essence, it is an ally of the government whose connection is secured with the appointment of the secretary of the interior, the attorney general of the United States, and the director of the National Gallery as ex-officio members of the board of trustees. Patterned on the British National Trust, the organization was designed to receive contributions of property and funds to administer these historic sites. While it became the leading national voice for preservation, it is not an official government entity and therefore has no power to compel or enforce preservation policy.⁶ Thus, in 1954, the state of historic preservation in the United States was fledgling at best. What preservation did occur took place on the local level under the leadership of men and women primarily in the private sector.

As the junior member of the court in 1959, Judge Chambers was named custodian of the court, and he took this job to heart. Foraging in basement storage rooms to scavenge furniture, light and plumbing fixtures, and other relics from historic federal buildings slated for demolition around the country, Chambers returned federal treasures to places of honor in his renovated courthouses. Salvaging artifacts from Spokane, Key West, Carson City, and Cheyenne (including the tables and chairs used in the infamous Teapot Dome trial⁷), Chambers sought to furnish his newly restored courthouses with period-appropriate

⁴*The Historic Sites and Buildings Act*, Public Law 292, 74th Cong., 1st sess. (August 21, 1935).

⁵*Charter of the National Trust for Historic Preservation*, Public Law 408, 81st Cong., 1st sess. (October 26, 1949).

⁶William J. Murtagh, *Keeping Time: The History and Theory of Preservation in America* (New York, 1997), 39–50.

⁷See David H. Stratton, *Tempest over Teapot Dome: The Story of Albert B. Fall* (Norman, OK, 1998).

antiques. For Chambers, this was not a mere scavenger hunt; old furniture, he believed, belonged in old buildings.

Within the judicial community, Chambers' tactics were legendary. His obituary in the *Los Angeles Times* in 1994 noted several of his more colorful techniques, including sending memos to fellow judges signed by his horse Tom, and taking out a classified advertisement in the Pasadena newspaper to encourage a letter writing campaign in support of the destruction of bungalows that were in the way of a parking lot for the courthouse. "The paid advertisement," he said, "enabled me to put my message in the paper without being edited."⁸ Such tactics as these often put him at odds with both the local preservation community and government officials, because it circumvented their authority and leadership. But an assessment of the history of historic preservation usually reveals that unorthodox methods lead to successful outcomes.

SAN FRANCISCO (1963)

"That was the start of a minor war."

—Richard Chambers, 1976

Judge Chambers' forays into historic preservation began in San Francisco, the site of his initial posting to the Court of Appeals. At the time, the combination federal courthouse and post office had seen better days. Indeed, the entire neighborhood surrounding the structure left much to be desired. In a 1975 article in *Americana*, Susan Cheever Cowley described the structure that Chambers encountered:

[T]he turn-of-the-century federal courthouse was a run-down reflection of the derelict neighborhood in which it stood. The exterior of the building was chipped, cracked, and peeling. Panhandlers lounged on the courthouse steps. The gold leaf and elaborate carving on the interior walls had been covered over with layers of drab green paint. Neglect and lack of concern had all but destroyed the majesty of the immense building, which had once been a proud example of the finest architecture and interior design the late nineteenth century could produce.⁹

⁸Myrna Oliver, "R. Chambers: Federal Judge, Preservationist," *Los Angeles Times*, October 27, 1994, sec. A.

⁹Susan Cheever Cowley, "Restoration by a 'Raiding' Judge: A Collector's Courthouse," *Americana*, March 1975, 8.

Despite its condition, Chambers recognized that underneath the layers of paint and grime rested architectural treasures worthy of restoration by the federal government. When the General Services Administration attempted to move the court to a \$50 million glass and steel high-rise, Chambers recommended to his colleagues that they stay put and seek funds to restore the existing courthouse.

The Structure

The San Francisco courthouse is a fine and early example of Beaux-Arts classical style. In 1897, construction began on the building designed by James Knox Taylor, supervising architect of the Treasury Department. Although the initial proposal was for a five-story structure, engineering roadblocks (the site was located on a sand wash) limited the size of the building to three stories. Funds that had been earmarked for construction were then shifted to interior design and ornamentation, including marble corridors and fireplaces, mosaic frescoes, and redwood burl paneling. The resulting monument to the Belle Époque, the United States post office and courthouse was officially dedicated on August 29, 1905.¹⁰

Just over seven months after completion, the structure faced the first true test of the quality of its construction when the April 18, 1906 earthquake struck. Living up to its reputation as "the best constructed public building in the country," the courthouse survived the quake but suffered significant damage from the ensuing fire and the dynamite used by the city to demolish unsafe buildings.¹¹ Nonetheless, it remained one of only a few structures left standing in the fire-damaged section of San Francisco. Repairs were not completed until 1910.

From 1910 to 1930, the building continued to serve the city as a post office and federal courthouse. But the increased

¹⁰General Services Administration, *Historic Structures Report United States Court of Appeals and Post Office, Seventh and Mission Streets, San Francisco, California*, project no. 72131 B (November 1982), 3; General Services Administration, *United States Court of Appeals Building for the Ninth Circuit* (2003), 3; see also *Western Legal History* 18:1 & 2 (2005), which commemorates the building's centennial.

¹¹Francis J. Dyer, "A Post Office That's a Palace," *Sunset Magazine*, August 1905, 339; "Account of San Francisco Earthquake and Fire of April 18, 1906: How the U.S. Post Office Dealt with the Disaster," undated and unpublished manuscript, Judge Richard H. Chambers Papers, U.S. Court of Appeals for the Ninth Circuit, San Francisco; A.L.A. Himmelwright, *The San Francisco Earthquake and Fire: A Brief History of the Disaster* (New York, 1906); Octavius Morgan, "An Architect's Impression of the San Francisco Earthquake and Fire," *Architect and Engineer of California* (1906).

population of San Francisco and the entire Pacific Coast, with the concomitant increase in caseload and mail, stressed the facility's ability to meet demand. By 1930, it was clear that either a new building was needed or the existing structure had to be altered. Construction on an addition began in 1933 and was completed in 1934.¹² The new structure remained faithful to the exterior design of the original, with less ornamentation on the additional fourth floor. Likewise, the interior, including two new courtrooms, reflected the austerity of the Depression era. The design of the courtrooms is essentially box-like, and the minimal ornamentation of the sculptured eagles and the Art Moderne light fixtures reflect the economic realities of public construction in the 1930s.

Like its predecessor, the expanded facility gradually became overcrowded. In 1961–62, the GSA opened a new federal building at 450 Golden Gate Avenue and transferred the United States District Court for the Northern District of California to that location. Intending to tear down the Seventh & Mission Street courthouse, the GSA also put pressure on the Court of Appeals to move. But Judge Chambers convinced his colleagues that as just one of many tenants in the new building, the court would not receive the attention it deserved. He thus garnered their support in securing funding for the restoration of the older building.

In 1964, under pressure from Chambers, the GSA renamed the building the United States Court of Appeals and Post Office.¹³ In 1971 the building was placed on the National Register of Historic Places. The structure remained largely untouched except for maintenance until October 17, 1989, when the Loma Prieta earthquake caused major structural damage. Faced with the option of tearing down the uninhabitable structure or restoring it, the GSA eventually chose to undertake a \$91-million seismic retrofit and restoration, which was completed in 1996—two years after Judge Chambers' death.¹⁴

The GSA hired the firm of Skidmore, Owings & Merrill to design plans for the rehabilitation and expansion of the courthouse. In addition to the seismic retrofit and upgrading, the firm redesigned the existing atrium and old post office space to create a 45,000-square-foot law library and offices. The retrofit began in 1993, with the installation of a "base isolation" system to offset the shock waves of future temblors. At the time,

¹²Stephen J. Farneth, "'A Post Office That's a Palace': U.S. Court of Appeals and Post Office Building," *Western Legal History* 1:1 (Winter/Spring 1988), 72.

¹³*Ibid.*, 73.

¹⁴GSA, *U.S. Court of Appeals Building*, 3.

the Court of Appeals building was the largest and heaviest structure in the United States and the first historic building to use this system.¹⁵ The new library was located in the middle of the building, where the old postal sorting room had stood. In a beautiful blend of new and old architectural styles, the atrium library provided needed space and allowed visitors to view the courtyard façade, previously hidden from public view. On August 30, 2005, the building was named the James R. Browning United States Courthouse in honor of the judge with the longest active tenure on the Ninth Circuit Court of Appeals and an innovator in moving the federal court system into the information age.

The Battle

Judge Chambers cut his teeth on the battle for preservation of the San Francisco courthouse. In the process of securing funding for the retrofit and renovation, Chambers perfected many of the techniques he would use in subsequent battles with the GSA—most importantly the use of humor and logic to deflect what he saw as bureaucratic obstacles to project completion. Arguing that the “GSA would sell the front of the White House if given the chance,” Chambers understood that GSA officials would not respond to arguments favoring preservation on historical or aesthetic merits alone.¹⁶ They would have to be convinced by political pressure and by being caught in their own logical inconsistencies.

In an interview with the *Arizona Daily Star* in 1976, Chambers recalled the 1961 attempt by the GSA to force the court to move out of its historic building. The GSA developed a memo stating that the court could conduct business only in “central” San Francisco. Chambers refused to sign this edict and instead returned the document to the GSA with an amended statement “that the business of the Court of Appeals could well be conducted at Pioche, Nevada, or Safford, Arizona.” Chambers recalled that “that was the start of a minor war that lasted for three years.”¹⁷

In the battle with the GSA, Chambers honed his administrative skills. He learned to identify friends and foes, to plan and strategize. His greatest strength lay in his practical wisdom.

¹⁵Ibid., 49–50.

¹⁶Edmund Lawler, “Longtime GSA Foe Tries to Save Treasures of Federal Architecture,” *Arizona Daily Star*, February 19, 1976.

¹⁷Ibid.

Although the GSA eventually embraced the restoration of the San Francisco courthouse, it delayed completion of the building's landscaping interminably. Judge Chambers eventually took matters into his own hands:

We tried for five years to get our grounds in front of the building . . . fixed up. Finally, I got two potted flat-leaf cactus plants in Tucson and I carried them to San Francisco. . . . We summoned the top GSA men in the region and told them that we were getting 500 more of these cactus plants if they wouldn't give us a lawn and some bushes. For two weeks I had to suffer the scuttlebutt that I was crazy and had ordered 500 cactus plants, but we sure were given the bushes and the lawn right away.¹⁸

Judge Chambers would use similarly imaginative methods to overcome bureaucratic obstacles in his other preservation endeavors. He learned in his San Francisco battle to turn his irritation with the GSA into tenacity. Tenacity tempered with humor proved to be his greatest weapon.

PORTLAND (1973)

"The first thing you do is shoot your brother."

—Richard Chambers quoted by Ben Duniway, 1973

In the midst of the San Francisco project, Judge Chambers found himself drawn into the conflict to save Portland's Pioneer Courthouse, which had housed the federal courts from 1875 to 1933. Working closely with Judges Gus Solomon, John Kilkenny, and Alfred (Ted) Goodwin, Chambers helped rescue the old courthouse from the wrecking ball. In contrast to San Francisco, where the court still occupied the building at the time of its renovation, Portland's Pioneer Courthouse had been abandoned by the courts in the 1930s and had stood empty for nearly twenty years before its rehabilitation began. The battle to save this structure included conflict with the Portland business elite, GSA efforts to build a new federal facility, and cantankerous judges who could not see the potential in the dilapidated building.

¹⁸Quoted in Dorothy W. Nelson in "Special Session to Honor the Memory of Honorable Richard H. Chambers, Chief Judge Emeritus," 61 F.3d (9th Cir. 1995) lxxxix.

The Structure

Unlike the San Francisco courthouse, built a mile from the business district and located in what had become an “unsavory” neighborhood, the Portland Pioneer Courthouse was close enough to the downtown area that it eventually found itself situated in the center of the Portland business district, occupying some of the city’s most expensive and desirable real estate. Built between 1869 and 1875, the Pioneer Courthouse is “the oldest surviving federal structure in the Pacific Northwest and the second oldest courthouse west of the Mississippi River.”¹⁹ The structure was originally designed to house the post office, the Internal Revenue Service, the federal courts, and the customs office. Its original architecture illuminates this mixed use with the post office operations located on the first floor, courtrooms on the second, office space on the third floor, storage on the fourth floor, and an observation cupola above the fourth floor. From this perch, customs officials could watch for approaching river traffic.²⁰

The Italianate structure of the Pioneer Courthouse is typical of late nineteenth-century public buildings. Designed by Alfred Bult Mullett, supervising architect of the Treasury Department, and built at a total cost of \$611,165, the building required six Congressional acts between 1869 and 1875 to fully fund its construction. Mullett’s design proved inspirational to many Portland architects and engineers. Built on sloping terrain, the courthouse includes a series of stepped walls and walkways to permit easy access to all four facades.²¹

Like most federal buildings, the new structure quickly became stressed by population growth and increased demand on services. As early as 1889, Postmaster C.W. Roby began to complain about a lack of space. Even after the departure of the Internal Revenue Service, the booming Portland population overtaxed the space needs of the U.S. Postal Service. In response, Mullett’s successor, James Knox Taylor, obtained funding from Congress in 1902 to expand the facility. Taylor added two wings on the west side of the building that doubled the size of the first floor. Completed in 1905, these wings significantly altered the interior layout of the structure but remained faithful to Mullett’s exterior design.²²

¹⁹General Services Administration, *Re-Dedication of the Pioneer Courthouse* (n.p., 2005). The oldest courthouse, built in 1861, is in Galveston, Texas, and now houses the Galveston Historical Foundation.

²⁰*Ibid.*

²¹*Ibid.*

²²*Ibid.*

In 1933, the federal government opened a new U.S. courthouse and designated the Pioneer Courthouse as obsolete and surplus property. Unable to find a buyer at the height of the Depression, Congress authorized the demolition of the building in 1939. The local department store, Meier and Frank, eyed the location as an ideal spot for a parking lot to service its downtown store. Although this led to local outcry, the structure was saved ultimately by the demands for military office space that grew out of World War II and the Korean War.

In the late 1950s, the federal government again put the building up for sale. Without a buyer, it remained empty and abandoned for more than ten years until, in 1969, Congress finally authorized its restoration. Under the guidance of architect and preservationist George McMath, the restoration project was completed in 1973. In 1977 the Pioneer Courthouse was listed on the National Register of Historic Places. A seismic upgrade and a final rehabilitation program that included installation of a base isolation system were completed in 2005.

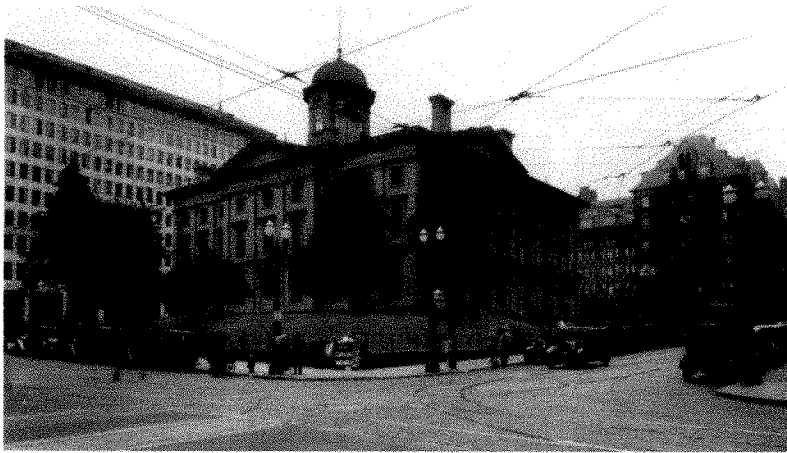
The Battle

The battle to save the Pioneer Courthouse began in earnest in the early 1960s. In the late 1950s, when the city of Portland began discussing what to do with the structure, the *Oregon Journal* labeled it "classically an eye sore" and "questioned the wisdom of preserving one of our worst mementos of the past."²³ Noting the high value of downtown real estate in 1961, the *Journal* argued that, should the building be declared surplus by the federal government, the city should purchase the property, tear down the structure, and "develop a beautiful open space park or plaza, along the lines of Union Square in San Francisco," that would include plenty of underground parking to satisfy downtown shoppers, who would help generate tax revenue through their purchases. Couching its resistance to restoring the building in the language of urban renewal and downtown revitalization, the *Journal* argued that such a project would be a "rejuvenating shot in the arm" to Portland's core.²⁴

Other Oregonians had a different vision for the property. Coming to the building's rescue in 1962 was Thomas Vaughn, director of the Oregon Historical Society. Noting that the historical society had shown no interest in the building until it affixed a bronze plaque to the facade in 1960, Vaughn found

²³*Oregon Journal*, "Better Use for Post Office Block," November 23, 1961.

²⁴*Ibid.*



In 1933, the federal government designated the Pioneer Courthouse, pictured here a year later, as obsolete and surplus property. (Courtesy of the Oregon Historical Society, #COP 01181)

the impetus to protect the building in a letter of interest from the Oregon chapter of the American Institute of Architects (AIA), which unanimously voted to support preservation of the structure in late 1961. In response, the historical society voted to undertake a comprehensive review of the site and assess the society's obligations to it.²⁵

In February 1962, Gene Vestberg, preservation officer of the AIA, delivered a compelling speech to the Pioneer Post Office Committee, a local preservation group, outlining the benefits of preserving the structure. First, Vestberg acknowledged the prevailing attitude toward preservationists as local enthusiasts, the "sentimental fringe." Contrasting them with the "bulldozer brotherhood" of urban renewal supporters, Vestberg argued that, by 1962, preservation represented a philosophy "which wishes to preserve the distinctive character and personality of each city."²⁶ Preserving the Pioneer Courthouse would preserve the character of Portland. Vestberg argued that the real reason Portlanders were not behind preserving the courthouse was ignorance. The job of the Oregon Historical Society, the AIA, and any other interested parties was to demonstrate the importance of the building to the citizens. Then, he argued, they

²⁵Thomas Vaughn to John W. Foster, January 3, 1962, Chambers Papers.

²⁶Gene Vestberg, "An Address Given Before the Pioneer Post Office Committee, Feb. 15, 1962," Chambers Papers.

will "cherish it and protect it, and we hope . . . restore it and develop it."²⁷

Finally, responding directly to the *Oregon Journal's* call for a Union Square-type redevelopment of the site, Vestberg stated, "I think you will have to agree that we are not going to be able to develop a multi-acre Union Square on a Portland 200 x 200 block or even on two of them. You might very well achieve, instead, something much nearer the derelict-ridden Pershing Square of Los Angeles or indeed have another Lownsdale Park difficult to maintain and police which would move the transient and his winebottle this much further into downtown."²⁸ He concluded that the best use for the building would be to house the Oregon Historical Society and its museum. This would attract tourists who would then contribute to the economic health of downtown.

In 1963, the GSA began to assess its options in Portland in earnest. Still considering selling the courthouse as an outdated, surplus structure, the GSA requested \$15 million from Congress for a new Portland federal building that would house all of the disparate federal offices, including the Ninth Circuit courts, which were currently scattered about the city.²⁹ Once again, Chambers and his colleagues came into conflict with the GSA over assignment to the new building. At the same time, costs of acquiring the property for the historical society had spiraled out of control.

By 1967, Judge Chambers had identified the courthouse as a potential alternative to the GSA proposal for a new building. Bringing together the district judges in Oregon, Thomas Vaughn of the historical society, state archivist David Duniway, and other interested parties, Judge Chambers began the process of convincing his fellow jurists that the courthouse was another federal treasure that could be rescued and returned to its earlier architectural glory. Choosing to sidestep the GSA as much as possible, Chambers worked through local civic groups to undertake a feasibility study that turned out to favor Chambers' proposal. The study further demonstrated that the GSA would actually save money this way.³⁰

²⁷Ibid.

²⁸Ibid.

²⁹*Oregon Journal*, "U.S. Building for Portland in GSA Budget," February 16, 1963.

³⁰U.S. Court of Appeals, Ninth Circuit, "Dedication Ceremony, The Pioneer Courthouse," Portland, Oregon, May 1, 1973, 16.

Once the GSA was on board, Chambers had to turn his attention to his fellow judges and to Congress to appropriate money for the project. Just as in San Francisco and Pasadena, many of Chambers' colleagues saw only a decaying building. One of those who needed to be swayed was Circuit Judge Benjamin Duniway, brother of state archivist David Duniway. At the dedication ceremony in 1973, Judge Duniway recalled his resistance to the project: "I didn't think it was the business of the Court of Appeals of the Ninth Circuit to pull the Oregon Historical Society's chestnuts out of the fire." He credited his brother with helping to persuade him otherwise, and remembered Judge Chambers' influence in the matter:

Well, not long after that, my brother, David Duniway, the State Archivist, who is sitting over here on the side of the Courtroom, went to this dinner party that Judge Kilkenny referred to and he was enthusiastic about the project and he said to Judge Chambers, "How can I be of help to you?" And Judge Chambers said, "The first thing you do is shoot your brother."³¹

Needless to say, Judge Duniway came around.

After years of wrangling, in 1969 Representative Edith Green, supported by the rest of the Oregon congressional delegation, managed to appropriate funds for the project. Working closely with Thomas Vaughn, Judges Kilkenny and Solomon took the lead in overseeing the details of the renovation. On May 1, 1973, the Pioneer Courthouse was dedicated. In an ironic turn of events, at the ceremony, GSA regional administrator Roy Vernstrom downplayed the GSA's resistance to the project, claiming that "the General Services Administration feels a particular kinship toward the building, because we and our predecessor agencies have been its sole custodian since it was first built, and it is our hope that this building will continue to serve the citizens of Portland and all of Oregon for generations to come and that each generation will be as proud of this century-old heritage as we are proud of it today."³²

Despite the GSA's acceptance of responsibility for the building, the restoration was not actually complete on May 1, 1973. Several important issues remained unresolved, including restoring the flagpole to the cupola, nominating the structure to the National Register of Historic Places, and completing

³¹Ibid., 38.

³²Ibid., 21.

exterior and interior signage. The nomination was secured by Judge Kilkenny in 1977. The flagpole and signage followed as funds were appropriated in the ensuing years.

PASADENA (1986)

"[O]ld men chase rainbows sometimes. . . ."

—Judge Joseph Sneed, 1993

One of Judge Chambers' more unusual achievements was the renovation of the Hotel Vista del Arroyo and the subsequent move of the U.S. Court of Appeals for the Ninth Circuit from the federal courthouse in Los Angeles to the former hotel in Pasadena. Unlike the San Francisco and Portland courthouses, the Pasadena project was not a basic restoration of an existing structure for continued use in its original capacity, but an adaptive reuse of a structure.

The Structure

The property upon which the Vista del Arroyo sits was originally owned by one of the founders of Pasadena, Dr. Thomas B. Elliot. He and his wife built a two-story home, at the time considered one of the finest mansions in the West, which the family opened to paying guests.³³ Dr. Elliot died in 1881, and the property was sold to Charles R. Foote, who built a one-story bungalow there. About 1883, he sold the property to Mrs. Emma Bangs, who added a second story to the bungalow and opened the Arroyo Vista Guest House, a "high class boarding house."³⁴ After Mrs. Bangs' death in 1903, the property passed through the hands of several hotel operators, who made additions to the original structure and built six more bungalows. In 1919, Daniel M. Linnard purchased the property and, envisioning a much larger and more luxurious hotel, renamed it the Hotel Vista del Arroyo. Although he sold the hotel to Stephen Royce and A.J. Bertonneau, Linnard remained closely involved with the expansion of the boarding house into a large, Spanish colonial revival hotel.³⁵

³³*Pasadena Star News*, June 14, 1930.

³⁴*Pasadena Star News*, March 15, 1924, and June 14, 1930; *Pasadena Evening Star*, March 16, 1905.

³⁵Russ Hudson, "Old Pasadena Hotel Undergoes Metamorphosis," *Los Angeles Times*, June 12, 1985; Kathleen Tuttle, *Sylvanus Marston: Pasadena's Quintessential Architect* (Santa Monica, CA, 2001), 22–23.

In 1926, Harry O. Comstock of Nevada purchased the hotel and commissioned Los Angeles architect George H. Wiemeyer to enlarge and modernize the building. Wiemeyer added four floors and stamped it with his own distinctive design. Maintaining the Spanish colonial revival design of Linnard, Wiemeyer added a domed belvedere tower to the main structure, aping the Pasadena City Hall. Wiemeyer's remodel created a hotel that now dominated other hotels along the arroyo.³⁶

In 1943, under the War Powers Act, the federal government acquired the hotel for a 1,050-bed army convalescent hospital and renamed it McCornack General Hospital. Underutilized as a hospital, in 1944 McCornack was turned into a rest and recreation center for the army. When that function ceased, it hosted a variety of federal agencies as the Pasadena Federal Service Center under the management of the GSA. In 1974, all remaining federal employees were relocated to other offices, and in 1975, the GSA declared the property surplus.³⁷

Restoration plans that were developed in 1983 instructed architects to return the structure to its 1930s period of significance. Under the guidance of Pasadena architects Neptune & Thomas, and using a corps of Hollywood set builders, most of the decorative molding and elaborate ceiling grills were recast in plaster and fiberglass. Each courtroom was painted in its own pastel color scheme and furnished with the many antiques Chambers had acquired from around the country.

On February 3, 1986, fifteen hundred guests attended the dedication ceremony. Chief Judge James R. Browning presided, and Chief Justice Warren E. Burger delivered the main address. On September 29, 1992, Congress passed H.R. 5822, designating that henceforth the Vista del Arroyo would bear the name of the judge who had painstakingly overseen all the details of the structure's restoration. On February 23, 1993, a special session of the Ninth Circuit Court convened to rename the courthouse in honor of Judge Chambers. Chambers quipped, "Life is a funny thing. On December 30, 1930, they wouldn't let me in the hotel to see my cousin. . . . Now I have a key to the place."³⁸

³⁶Hudson, "Old Pasadena Hotel."

³⁷Ibid.

³⁸Quoted in Eileen Chambers, "The Buccaneer of Bungalow Land: Story of the 'Raiding Judge' and Many Lives of the Pasadena Courthouse, The Richard H. Chambers U.S. Court of Appeals Building," unpub. ms., Chambers Papers, 19.



One of Judge Chambers' achievements was the renovation of the former Hotel Vista del Arroyo in Pasadena and the subsequent move there by the U.S. Court of Appeals for the Ninth Circuit. (Collection of the Ninth Judicial Circuit Historical Society)

The Battle

In 1978, it appeared that the Hotel Vista del Arroyo was headed for demolition. A proposal to house Ambassador College at the site fell through, and Judge Chambers recognized a unique opportunity. At the time, the Court of Appeals for the Ninth Circuit occupied two floors of the U.S. courthouse at 312 North Spring Street in downtown Los Angeles, which was home to the U.S. District Court for the Central District of California. The court of appeals occasionally heard cases there, although most of its calendar was heard at its headquarters in San Francisco. The increasing number of appeals generated out of the Central District of California and the addition of ten new judgeships in the court of appeals in 1978 demanded expanded space for the court in Southern California. Chambers began a search for new quarters for the court of appeals among a number of surplus federal buildings. Judge Shirley Hufstедler noted that the judge was "presented with a number of surplus buildings. There were so many dogs among them that you could almost hear the yips."³⁹

³⁹Shirley M. Hufstедler, "Naming Ceremony, Richard H. Chambers United States Court of Appeals Building," 990 F.2d (9th Cir. 1993) xcvi.

Judge Chambers had developed an affection for the Vista dating back to his early years as a lawyer in the 1930s, when he was denied admission to the hotel. As he pursued the property in the 1970s, he ran into tremendous congressional roadblocks. Many in Congress were concerned about the fairly exclusive neighborhood surrounding the Vista. In response, Judge Chambers found a local telephone directory with a cover depicting a portion of the building and downtown Pasadena in such a way that it appeared that the Vista was in downtown. The judge "cut this out and sent it to the Senate with a notation that here was 'exactly the kind of building you want to have restored. It's in this redevelopment area.'" ⁴⁰

For all intents and purposes, the building looked as if it should be sitting on Skid Row in 1978, and many of Judge Chambers' colleagues were skeptical about the move. Judge Joseph T. Sneed recalled Judge Chambers' vision for the property. "He knew where the thing was going and he knew the possibilities. Not one chief judge in a million would have been willing to take on rescuing that building in Pasadena. They just wouldn't have done it. . . . I thought, well, old men chase rainbows sometimes . . . that's probably the way I felt about it. Because it was a wreck. . . . I walked through it. We all did, at his insistence. It was pretty disastrous." ⁴¹

That this "disaster" turned into the structure celebrated today as a crown jewel on the Pasadena landscape can be attributed to Adam Schantz, an expert in construction and an old friend of Judge Chambers. Shantz convinced Chambers that the building was structurally sound and worth the effort and investment to restore. His vision, combined with Chambers' powers of persuasion, set in motion the coming restoration. First, however, he would have to overcome the opposition of the GSA, which scoffed at the idea, calling it a "boondoggle." ⁴²

As the project unfolded, Judge Chambers became intimately involved in every detail. He was particularly interested in the architectural side of the restoration. He and Circuit Judge Anthony Kennedy set to the business of selecting architects and interior designers. The two spent countless hours poring over plans, proposals, bids, artists' renderings, and furnishings. While the GSA initially sent in its own architect, Kennedy and Chambers fought diligently for an outside architect. Kennedy

⁴⁰Quoted in Chambers, "Buccaneer of Bungalow Land," 16.

⁴¹Joseph Sneed, "Oral History of Judge Joseph Sneed," interview by Eileen Chambers, May 14, 1999, transcript in Chambers Papers.

⁴²Chambers, "Buccaneer of Bungalow Land," 10; Oliver, "R. Chambers."

established the criteria for evaluating candidates: "(1) the architect must understand that it is your building, not his, (2) the architect should be local, and (3) you should like him."⁴³ Eventually the two settled on the Pasadena firm of Neptune & Thomas, with Rudy Freeman as the principal architect. In a 1978 memo to the Pasadena Courthouse Committee, Judge Shirley Hufstedler wrote, "[T]he wreck of the [Vista's] interior spurs our Brother Chambers into his expert flights of restoration fancy."⁴⁴ Yet these flights of fancy were always tempered by Judge Kennedy's financial acumen. Judge Alfred T. Goodwin credited Kennedy with the "financial magic that got the Pasadena building really accomplished."⁴⁵

Kennedy and Chambers were a formidable pair. Chambers understood the *quid pro quo* of Congress and how to work through the layers of bureaucracy. Kennedy was well connected with California politicians, particularly with Congressman Harold T. "Bizz" Johnson from Northern California. At the time, Johnson was chairman of the Public Works Committee of the House of Representatives, the committee that held the purse strings for public building appropriations. Kennedy lobbied Johnson to get behind the Pasadena courthouse project. At the same time, Chambers lobbied Senator Daniel Moynihan of New York. Moynihan needed House support for a Metroliner railroad connection between Washington and New York. In exchange for garnering support in the Senate for the Pasadena appropriation, Johnson successfully lobbied for House support of the Metroliner.⁴⁶ Although Chambers now had the money for the project, he still lacked the support of his own colleagues. In March 1983, the *Los Angeles Times* announced, "A towering, decrepit, old hotel in Pasadena is being renovated with \$10 million to serve as a new federal courthouse for judges who, it turns out, are refusing to move in."⁴⁷

Using his typical wit and humor to win over critics on the bench, Judge Chambers penned a memo from his horse, Tom:

There have been a lot of lies told about the Vista Tower Building at Pasadena. Among them:

⁴³Quoted in Chambers, "Buccaneer of Bungalow Land," 13.

⁴⁴Judge Shirley Hufstedler to Pasadena Courthouse Committee, May 22, 1978, Chambers Papers.

⁴⁵Quoted in Chambers, "Buccaneer of Bungalow Land," 11.

⁴⁶*Ibid.*

⁴⁷Claire Spiegel, "Judge Pursues Preservation of Old Courthouses, Furnishings," *Los Angeles Times*, March 28, 1983, sec. B.

That we wanted it so we could have a swimming pool for Judge Barnes.
That we wanted it so Judge Ely could play golf on the lawn.
That we wanted it so Judge Hufstedler and Seth could practice mountain climbing on the slope out behind.
The truth is that I am 22 years old, which is old for a horse, and so I want to be retired to pasture on the Vista lawn and eventually be buried on the brow of the hill overlooking the Rose Bowl.

—Tom, Dick's Horse⁴⁸

Despite these drawbacks, by the time the building was dedicated in 1986, a majority of Chambers' colleagues had been convinced of the benefits of the new building and were eager to move in. Like Portland, however, the project was not complete at the time of the dedication. Chambers and his allies would continue to battle the GSA over "rotten row," the bungalows on the property that were in the way of a proposed parking lot, and continued renovations and additions to the property. Taking her lead from Chambers, Judge Cynthia Hall campaigned for these projects. Judge Hall battled a resistant Pasadena Heritage, the Advisory Council on Historic Preservation (ACHP), and the GSA. She eventually sought help from Supreme Court Justice Sandra Day O'Connor in overcoming the negative findings of the ACHP. By the time the building was renamed in honor of Judge Chambers, most of these conflicts had been resolved to the satisfaction of the court.⁴⁹

TACOMA (1992)

"Old Railway Stations have never charmed me."

—Richard Chambers 1986

Like Pasadena, the Tacoma courthouse was another adaptive reuse project—this time a historic railroad station. One of the

⁴⁸Quoted in Chambers, "Buccaneer of Bungalow Land," 9.

⁴⁹Somewhat ironically, despite its original objections to the Pasadena courthouse renovation, the GSA today is quite proud of the structure and has accepted, with pride, nine awards, primarily from the Building Owners and Managers Association for the restoration of the Hotel Vista del Arroyo. The finest award was for the best reconstruction of an old building, not just in the United States, but internationally. Judge Cynthia Holcomb Hall to Brad Williams, June 18, 2007, Archives of the Ninth Judicial Circuit Historical Society.

key differences between the two projects was the interjection of state and local interests into the Tacoma project on a scale beyond that experienced in Pasadena. Whereas the federal government owned the Pasadena courthouse, the city of Tacoma owned Union Station, and any preservation or adaptive reuses of the structure would have to be done in agreement with the city. The competing needs and interests of the federal, state, and local entities led to a protracted battle over the future of the building.

The Structure

In 1873, the Northern Pacific Railroad chose Tacoma as the location of its western terminus for the northern trans-continental line due to the city's location on the shores of Commencement Bay, with easy access to a deep waterway. The railroad erected its first passenger station to the west of Pacific Avenue. This small wood-framed structure was moved to the present site of Union Station in 1892 to accommodate increased passenger service.⁵⁰

In 1906, the railroad commissioned the St. Paul architectural firm of Reed & Stem to design a new depot for the site. Specializing in railway station design, the firm had sixty-one railway stations under construction at the time of the depot's opening. Their most famous station is New York's Grand Central Station. Although plans for the structure were announced in February 1907, construction was delayed for two years as negotiations over development around the station dragged on between the city and the Northern Pacific Railway. Eventually the railroad granted the city twenty-two feet of Pacific Avenue frontage for creating a park-like setting, "making it Tacoma's beautiful front dooryard."⁵¹ For the city, the station represented the connection of Tacoma to the nation and to the world.

Actual construction began in September 1909, and opening ceremonies were held May 1, 1911. Total cost for construction was \$750,000 with another \$20 million spent by the Milwaukee, Great Northern, Union Pacific, and Northern Pacific companies on land acquisition and construction of track and support facilities in Tacoma between 1906 and 1914.⁵² Designed

⁵⁰Washington State Office of Historic Preservation, "Tacoma Union Station, Statement of Significance," 1.

⁵¹Judith Kipp, "Historical Summary," November 3, 1987, Kipp and Associates, 2, Chambers Papers.

⁵²Washington Office of Historic Preservation, "Tacoma Union Station," 1-2.



Judge Chambers became involved with the renovation of Tacoma's Union Station in 1986, when the city proposed turning it into a courthouse for the district court. (Collection of the Ninth Judicial Circuit Historical Society)

in the Beaux-Arts style, the building became a symbol of pride for the city, a statement of its importance and prestige as a commercial and transportation hub.

Union Station was built to accommodate considerable future growth. The forty-nine-thousand-square-foot building contained a vast waiting area, dining facilities, and concourses that in the 1930s could easily handle the twenty-eight passenger trains arriving and departing daily. Yet the building's heyday corresponded with the proliferation of the automobile, and, except for a brief surge during World War II, railway ridership began a steep decline into the 1960s. In 1970, Congress passed the Rail Passenger Service Act in an effort to revitalize passenger train travel in the U.S. The ensuing creation of Amtrak freed Burlington Northern from providing active passenger service, and the company transferred most of its Union Station offices from Tacoma to Seattle. In 1984, Amtrak opened a new, smaller, passenger-only station approximately one mile southeast of Union Station. Burlington Northern abandoned the building the following year, and the concourse was torn down to make way for a highway spur. The city then acquired the building for one dollar.⁵³

⁵³*Ibid.*, 2.

In 1986, U.S. Representative Norm Dicks of Bremerton, Washington, wrote an amendment to federal budget legislation providing money to turn the station into a court complex. The legislation specified that the station should be restored and called for additional facilities to be erected to meet the needs of the U.S. District Court for the Western District of Washington. The result was a new, three-story addition to the north of the building. The addition houses eight of the ten courtrooms in the complex.⁵⁴

The modern renovation of the building was completed under the direction of Tacoma architects Merritt and Pardini in association with TRA (The Richardson Associates) of Seattle. The new courthouse addition, completed in 1992, was the result of a collaboration between Merritt and Pardini and the Seattle firm of Bassetti Norton Metler Rekevics. Today the station serves as the lobby for the courthouse, with court business conducted in the new construction. The lobby serves many purposes and is available for rental for public functions such as weddings and parties.

The Battle

The process of preserving Union Station began in the early 1980s, when a local group of preservationists formed Save Our Station to fight efforts to demolish the structure. Like many cities around the country, Tacoma recognized the value of the structure as the historic point of entry for the city. Unlike Pasadena, where the Vista del Arroyo hotel was already under federal ownership, Tacoma's Union Station was owned by the city. Searching for partners to help pay for renovations on the structure, the city tapped both federal and state support. The city thus made overtures to the courts.

Judge Chambers' involvement with the project began in 1986, when he notified Judge Browning that "all of a sudden the city of Tacoma turns up with an interesting proposal" to turn Union Station into a courthouse for the district court. Unlike in Pasadena, Chambers was not initially enamored with the Tacoma project. Writing to Browning, he said, "Although I still take the train now and then, old railway stations have never charmed me. I cannot foresee [sic] quite how it would work out, but we shall see."⁵⁵ Nonetheless, he was willing to check out the project, and he praised Tacoma city officials for their initia-

⁵⁴Ibid.

⁵⁵Richard Chambers to James Browning, July 24, 1986, Chambers Papers.

tive. After touring the building on July 25, he came to the conclusion that "with some modification, the plan could work."⁵⁶

The proposal to fund restoration proved innovative. Recognizing that it could not fund restoration by itself, the city proposed issuing bonds to finance the project, with a caveat that the building would be leased to the GSA for twenty years (later extended to thirty) to pay off the bonds. The city would then deed the structure to the government for one dollar.⁵⁷

Negotiations between the state and the city began in 1987. For Tacoma, this was an opportunity to redevelop a decaying area of downtown. As it entered into negotiations with the GSA and the courts, the city sought to protect public access to the rotunda—an area of the property it considered key to any larger rehabilitation project. Additionally, the city was concerned with rehabilitation of the larger historic district in and around the station. The GSA, on the other hand, entered negotiations seeking as much as possible for the smallest expenditure. In its initial offer to the city, the GSA asserted that it would not pay for any renovation costs, thus setting the stage for the protracted negotiations that continued for the next three years.⁵⁸

Judge Chambers recognized that many in the federal government would not support renovation of the station. In a memo to Judge Betty Fletcher, he recalled the government's failures with both the Union Depot in Nashville and the Union Station in Washington, D.C. Both stations had been accepted by the GSA as gifts, and neither proved adaptable for use as federal offices. Additionally, opponents of the project would argue that the cost of restoring the structure would exceed the cost of new construction. Chambers countered with the following argument:

At Tacoma the cost of reconstruction of the depot and adaptation will undoubtedly cost more than a new building. I am for it. How do I justify it? Well, here we get the land free. This is a terrific cost item in downtown areas today. In Tucson the site we wanted for the district court annex would have cost \$225,000 eight years ago. Today we could buy it for \$2,000,000. On an adjoining high rise, with free land, if we could get the land free (and

⁵⁶Richard Chambers to Circuit Judges of the Ninth Circuit, July 28, 1986, Chambers Papers.

⁵⁷*Ibid.*

⁵⁸Joseph Turner, "GSA Stance on Depot: It Won't Pay to Renovate," *Tacoma News Tribune*, January 9, 1987; Mark Higgins, "Union Station's Rotunda May Be Off Limits," *Tacoma News Tribune*, April 23, 1987.

we could get the land free if we were all dedicated to it), it would be a terrific deal for the government.⁵⁹

Chambers thus urged supporters of the Tacoma project to arm themselves with the key reason why Tacoma was different: "mainly free land."

Muddying the waters was the state of Washington, which in 1986 had earmarked \$100,000 for the station's restoration. As the city and the GSA worked on language that would make the rotunda open to the public, the state interjected that in addition to public access, the state wanted the rotunda to be used by the state historical society for a museum or exhibit space. Lawmakers were considering using the building for state offices. State Representative Dan Grimm even suggested that "an ice skating rink and stores might be added to make the station a focal point of interest for the city."⁶⁰ At stake for the city in 1987 was a further state appropriation of \$1.5 million.

By 1990, the U.S. District Court had negotiated a thirty-year lease on the property, thus moving, after seventy-nine years, out of the downtown post office building. The court took possession of the building on February 23, 1990 and expected to occupy it when reconstruction was completed in 1992. The lease agreement was designed to help pay off the bonds financing the 120,000-square-foot building's renovation. Total cost for the renovation was originally billed at \$34 million.⁶¹

While Judge Chambers remained informed of all of the developments in Tacoma, U.S. District Court Judge Robert J. Bryan took the lead in representing the federal courts in planning for the renovation. He envisioned a "temple of justice and one of the finest courthouses in the nation."⁶² The battle to save and adaptively reuse the structure was not easy. The city feared being stuck with an albatross around its neck and thus engaged in two years of hard-fought negotiations with the GSA. At a time when Tacoma, like many cities in the U.S., was dealing with a decaying downtown, this preservation project represented hope for rebirth of an entire preservation district across Pacific

⁵⁹Richard Chambers to Judge Fletcher, May 27, 1987, Chambers Papers.

⁶⁰Mark Higgins, "City: Three's a Crowd on Union Station" *Tacoma News Tribune*, August 1987.

⁶¹George Foster, "Tacoma's Union Station Gets New Lease on Life," *Tacoma News Tribune*, February 24, 1990.

⁶²Quoted in *ibid.*

Avenue.⁶³ The final product, a structure that housed the courts and did provide public access, appears to have fulfilled all of the concerns of the three parties engaged in the negotiations.

SAN DIEGO (1994)

*"It's never too late until someone else has been given the key."
—Richard Chambers, quoted by the
San Diego County Bar Association 1987*

In the midst of the continuing restoration of the Pasadena and Tacoma courthouses, Judge Chambers jumped into a new project—preservation of the San Diego courthouse. After the building sat vacant for about ten years, the federal government rediscovered it and circulated plans to renovate it for use by the Immigration and Naturalization Service. Once again, believing that courthouses should be used for the courts, Chambers came to the building's rescue. This time, however, he would not be the point man on the project. Instead, he would coach a new advocate—Judge John S. Rhoades. Just weeks after Rhoades' appointment to the bench, Chambers approached him to fight for the structure. Rhoades remembered, "I didn't follow the rule I learned in the Navy—Never volunteer."⁶⁴ Had he realized he was committing to a ten-year crusade, he might have reconsidered.

The Structure

Opened in 1913 to house the post office, customs house, U.S. District Court, Immigration and Naturalization Service, and the U.S. Weather Bureau, among others, the San Diego courthouse is a melding of two architectural traditions—monumental classicism and Spanish colonial revival. Like its sister structures in San Francisco and Portland, the San Diego courthouse was designed by the chief architect of the Treasury Department, James Knox Taylor.⁶⁵ Reflecting one of Taylor's

⁶³Jim Syzmanski, "Union Station Embarks on a New Trip," *Tacoma News Tribune*, February 24, 1990.

⁶⁴Quoted in Jesse Hamlin, *Jacob Weinberger United States Courthouse* (n.p., 1999), 22.

⁶⁵There is disagreement over whether Taylor actually designed the building. It may have been designed by one of his underlings, Oscar Wenderoth, Lewis Simon, or Warren G. Noll. Regardless, the architect of the Treasury was responsible. Hamlin, *Weinberger Courthouse*, 11.



Believing that courthouses should be used for the courts, Judge Chambers rescued the San Diego courthouse, left vacant for about ten years, from being renovated for the U.S. Immigration and Naturalization Service. (Collection of the Ninth Judicial Circuit Historical Society)

defining features, the San Diego courthouse blends the federal mandate for classical style public buildings with the imperatives of local architectural style. Thus Taylor combined a classical revival façade and ionic colonnades with a red clay tile roof and wrought iron grillwork.⁶⁶ Taylor described the building:

An adoption of the Spanish Renaissance, a style suitable to the traditions of the country—to the history of the state, the climate and the desires of the people—it would follow the Mission style. It would have three stories with a basement and attic; stone up to the first story; stucco above that; a roof of tile (Mission style) with towers at the end of the main façade as an attractive feature of the design and Mission idea. A colonnade on F Street would extend through two stories and have the effect of giving a unity to the general design—windows

⁶⁶Hamlin, *Weinberger Courthouse*, 1–2.

quite large and arranged so that they will open in the form of casements so that the entire area of the casement openings will be made efficient and an abundance of fresh air and light can be admitted. The public lobby would have a monumental effect. Floors of terrazzo with marble borders—corridor will run the entire length of the building front about 121 feet.⁶⁷

From 1920 to 1960, the interior of the courthouse was re-configured to accommodate the ever-growing federal agencies housed there and to meet San Diego's expanding population. In the process, much of the original fabric was covered over or destroyed. The first alterations came in 1928, when a four-thousand-square-foot addition was built on the southeast side to expand postal operations. Ten years later, the post office moved out, and, in 1939, destruction of the interior spaces began in earnest to make room for the FBI, the FCC, and other agencies.⁶⁸

By the 1960s, the district court in San Diego had one of the busiest criminal dockets in the nation. Although three new courtrooms were added, the building could no longer meet the needs of the federal government. In 1976, a new federal courthouse and office building opened just a block away, and the old courthouse was abandoned.⁶⁹

At the request of Judge Chambers, Judge Rhoades came to the rescue of the building in 1985. Securing \$12.9 million in funds, Rhoades helped guide the renovation of the structure, in consultation with architects Harry C. Hallenbeck and Pam Helmich. The lobby and main courtroom were restored, while new offices and courtrooms were added to the structure, all in a style that remains true to Taylor's original plan.⁷⁰ The restored structure reopened in 1994.

The Battle

Although placed on the National Register of Historic Places in 1975, the building sat empty until 1977, when Congress allocated funds to restore the structure for use by the Immigration and Naturalization Service. At the time, the courts had plenty of space in their new building and did not oppose the

⁶⁷Quoted in Hamlin, *Weinberger Courthouse*, 12.

⁶⁸Hamlin, *Weinberger Courthouse*, 19.

⁶⁹*Ibid.*, 3–4.

⁷⁰*Ibid.*, 4.

project. Work, however, did not proceed until 1985, when the government began to consider either demolishing the building or rehabilitating it, still for use by the INS. Jumping into the fray somewhat belatedly in spring 1986, Judge Chambers contacted Arthur Barton at the GSA seeking to get the project moving. Noting lessons from past projects, Chambers wrote, "You have taught us you can do things even in stringent times by the use of your emergency powers." Now, he suggested, was the time to call upon those powers.⁷¹

Additionally, Chambers began to put together a local committee to press for restoration of the courthouse for court use. Noting that the courts had been trying to protect the building since as early as 1956, Chambers urged the GSA to organize local support for the project. Regarding earlier efforts, he wrote, "At that time we could find no community support for saving the old building. Things are different in San Diego now and there is much community support, which Judge Rhoades of our committee is starting to uncover." He suggested that the GSA could easily make a case on cost savings alone. "Our case is going to be that the government can put us into the building at hundreds of thousands of dollars less than Immigration will require."⁷²

Throughout spring 1986, Chambers rallied his supporters and pushed the GSA to rehabilitate the building as a courthouse. Building on Chambers' earlier argument for cost savings, Chief Judge Gordon Thompson wrote to Arthur Barton pointing out the obvious, that if the courts needed more space (which they did), it made sense to put them in a building originally designed as a courthouse. He wrote, "It seems to me that a building built as a courthouse, which still bears the name across the top of 'United States Courthouse', and which looks like a courthouse, and stands among the Federal facilities, such as the Metropolitan Correctional Center, the Federal Building, and the new Federal Courthouse building, should be continued as what it was meant to be, namely a courthouse."⁷³

By the middle of 1986, Chambers had passed the baton to Judge Rhoades, the local man on the scene, to rally support from the San Diego Bar Association, the mayor, and other interested citizens. Rhoades made contact with the local newspapers and secured favorable endorsements of the project from both the *San Diego Union* and the *San Diego Tribune*. At the time, much of the interior of the building had been gutted;

⁷¹Richard Chambers to Arthur Barton, April 30, 1986, Chambers Papers.

⁷²Richard Chambers to Steve Rochford, May 21, 1986, Chambers Papers.

⁷³Gordon Thompson to Arthur Barton, June 11, 1986, Chambers Papers.

inspired by Chambers, however, Rhoades believed the building "looks like a courthouse, smells like a courthouse, should be a courthouse."⁷⁴ By the middle of 1987, Rhoades had secured the support of not only the San Diego County Bar Association and the San Diego Chamber of Commerce, but Congressman Jim Bates and Senator Pete Wilson, a former mayor of San Diego. In July 1987, after an eighteen-month battle, Wilson announced that the GSA had finally agreed to support rehabilitation of the structure for use by the courts.⁷⁵

Despite this propitious announcement, the project experienced further delays between 1988 and 1992. This time the main culprit was asbestos and lead abatement requirements that stalled the project and increased the price tag. San Diego Congressman Bill Lowery jumped into the fray and sought relief in the form of a \$7.7 million appropriation from the Federal Buildings Fund's \$3 billion pool of money.⁷⁶ Yet the project remained sidetracked by Senate infighting. According to a memo from Judge Rhoades, the culprit was Senator Quentin N. Burdick of North Dakota, who apparently was holding up voting on all federal courthouse projects until he could bring a new courthouse to the city of Fargo.⁷⁷ By October, the logjam had finally been breached, and Congressman Lowery could advise the GSA to move forward. The project was completed in 1994.

CONCLUSION

This brief retrospective of Judge Chambers' involvement with the restoration and preservation of these five courthouses reiterates the point that the federal government's commitment to historic preservation has been negligible at best. Although Chambers was not the lead proponent on all of these structures, he recognized the need for an individual to take ownership of the project, or the bureaucratic roadblocks of the GSA and congressional appropriations would permanently derail them. Preservation clearly takes political will. As Chambers wrote in 1986, "We have not started on any restoration project where we have not been told that it was impossible and of-

⁷⁴Quoted in Hamlin, *Weinberger Courthouse*, 4.

⁷⁵Pete Wilson, "Wilson Applauds GSA Decision to Keep Courts in Historic San Diego Courthouse," news release, July 7, 1987, Chambers Papers.

⁷⁶Sharon Spivak, "Courthouse Gets Renovation Reprieve," *San Diego Union-Tribune*, March 31, 1992.

⁷⁷John Rhoades to Gil Harelson, July 7, 1992, Chambers Papers.

ten that it was too late, anyway. But we have a batting average of 67 percent."⁷⁸

Despite his commitment to working on nearly two dozen projects, Chambers should not be remembered as an ideological preservationist. He clearly made distinctions between structures worthy of preservation and chose his battles carefully. As he noted during the Tacoma project, "[T]he federal government can't go around and buy every old local ark for the sake of preservation alone."⁷⁹ Perhaps Judge Gordon Thompson summed up Chambers' philosophy about preservation best when he explained the need to preserve the San Diego courthouse for use by the courts:

Unless history and tradition have no place in our society, there's no question that the Old Courthouse . . . in San Diego should be used as a courthouse. Legal history, history important to the people of San Diego and Imperial Counties, was made in the Old Courthouse. The halls and walls, yes, the entire courthouse, are steeped in the history of another era, an era which helped form the basis of what we have today.

Is it enough to let the raw numbers of an accountant decide if this lovely old building should be relegated to the role of an office building, or does each of us as members of the federal family have a greater responsibility of ensuring that the past is not obliterated? For we know that to destroy the past is but another way to destroy the present and the future.⁸⁰

⁷⁸Richard Chambers to Joe Hughes, June 3, 1986, Chambers Papers.

⁷⁹Richard Chambers to Judge Fletcher, May 27, 1987, Chambers Papers.

⁸⁰Gordon Thompson to Arthur Barton, March 5, 1987, Chambers Papers.

JUDGE CHAMBERS CONFERS SAINTHOOD: A REMINISCENCE

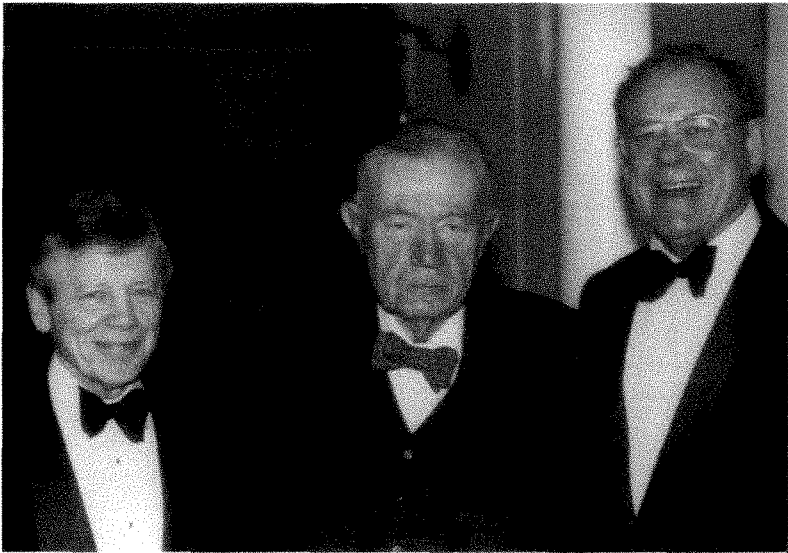
HON. ALFRED T. GOODWIN

Any judge who spends forty years on the bench will leave an impact on the culture of his or her court. With self-deprecating humor, Richard Harvey Chambers downplayed his own accomplishments. However, he was quick to recognize the achievements of others. A story involving one of his colleagues illustrates the point.

Clifton Mathews, who was appointed by Franklin Roosevelt to the Ninth Circuit Court of Appeals from Globe, Arizona, took senior status in 1953. A year later, President Dwight Eisenhower filled that seat by appointing Dick Chambers, of Tucson. The two Arizona judges began to share experiences and stories in their San Francisco courthouse. Judge Chambers learned from Judge Mathews how President Roosevelt, while failing to obtain from Congress his desired increase in the number of justices on the Supreme Court in 1937, was able, with the help of two Arizona senators, to unpack the inferior federal courts and fill a large number of vacancies with district and circuit judges who might look with favor on New Deal legislation that had been frowned upon by the Supreme Court.

Judge Mathews, who had been the Arizona attorney general, as well as a highly regarded lawyer representing mining companies and railroads, was on excellent terms with Senators Henry Ashurst and Carl Hayden. Judge Mathews suggested to his friends in the Senate that if a slight amendment to the pending court bill could be enacted into law, a number of the Harding and Coolidge judges might be interested in taking senior status. That step had not commended itself to aging Republican judges whose salary on retirement would be frozen at the Depression-suppressed levels that prevailed in the 1930s. They were waiting

Judge Alfred T. Goodwin has served on the U.S. Court of Appeals for the Ninth Circuit since 1971 and was chief judge from 1988 to 1991.



Judge Chambers stands between his successors, Judge James Browning, left, and Judge Alfred T. Goodwin. (Courtesy of Eileen Chambers Woodworth)

to become senior judges later, if a pay increase ever came through, because the law then provided that judges electing senior status would be paid for life at the rate that prevailed on the date of their "retirement." The amendment Judge Mathews suggested simply provided that, on taking senior status, a judge would receive the "salary of the office." The main bill to enlarge the number of Supreme Court justices failed, but the amendment passed, and Judge Mathews became known to his fellows as "Saint Clifton."

Judge Chambers recalled "Saint Clifton" with affection, and, in planning the Pasadena courthouse, he made sure that a room set aside for visiting judges contained the chambers furniture used by Judge Mathews, together with his portrait. He also caused the bench furniture from the Globe, Arizona, federal courthouse to be installed in Courtroom 3, as a reminder of the court's connection with Arizona, where it rarely sits.

MATTERS OF STYLE, MATTERS OF OPINION: THE VOICE AND LEGACY OF RICHARD CHAMBERS

REBEKAH HEISER HANLEY

INTRODUCTION

Judge Richard Chambers authored opinions for the Ninth Circuit Court of Appeals from 1954 through 1992. Unlike his judicial tenure, and unlike the decisions of many other judges, Judge Chambers' judicial opinions are succinct, folksy, and blunt, reading more like stories than formal opinions. This essay is not so much about the stories Chambers told but about how he shaped those tales into conversations with his audience. A typical Chambers opinion reveals more than just the judge's reasoning and result; it also reveals his personal view of the lawyers, the courts, the facts, and the law. It is a written record of the judge's personality and disposition.

This essay describes the legacy Chambers built through the careful crafting of his judicial opinions, distilling the essence of his published decisions. It examines his motivation and his productivity, then highlights the qualities and themes that run through his works. It next places Chambers' works in context,

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revealing that his overall approach was not altogether unique; rather, Chambers' writing style mirrors that of noted jurists like Justice Oliver Wendell Holmes, Justice William O. Douglas, and Judge Learned Hand. Notwithstanding Chambers' membership in this esteemed group of judicial stylists, his prose has a distinctive flavor.

Chambers' judicial career was long, and his opinions numerous and varied. Still, despite the variety of subjects they address, his opinions share a common feel. The quotations presented here allow Chambers' voice to resonate. His style can be described, but not recreated; his voice cannot be heard without his expression.

WHY HE WROTE: INSISTENCE ON PUBLISHED OPINIONS

Chambers was passionate about doing the court's work. And for him, the court's work was resolving controversies through written, published opinions.

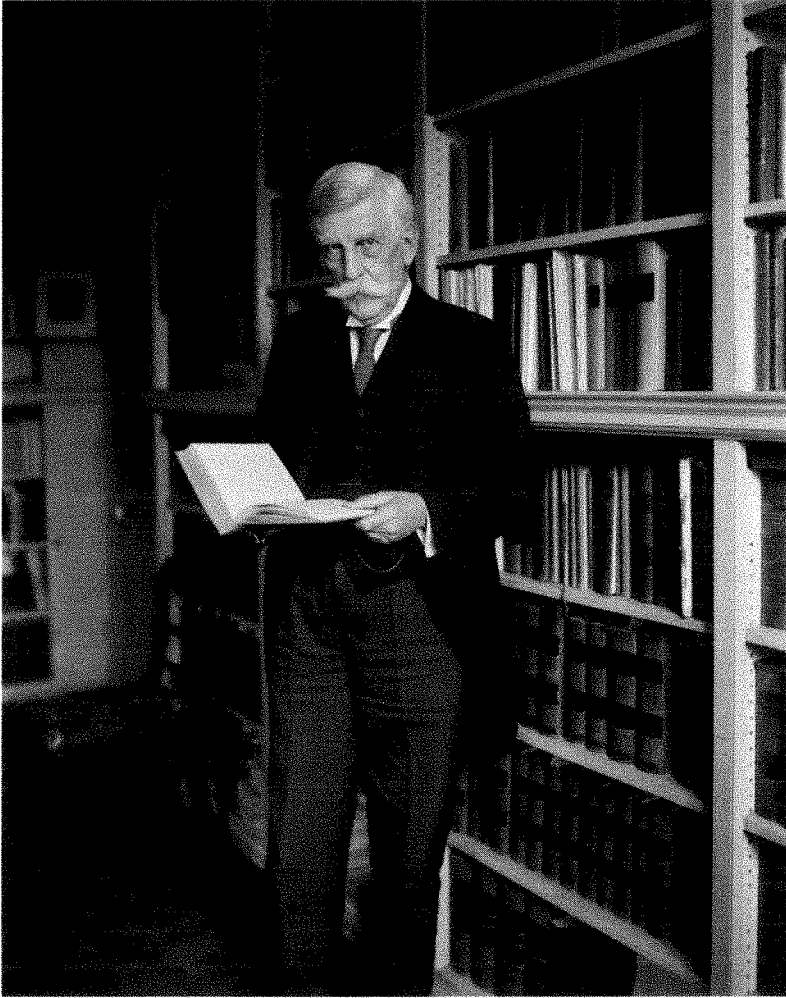
Why did Chambers insist on publishing opinions? According to United States Court of Appeals Judge Patricia Wald, judges issue opinions for two main reasons: first, they write to reinforce their authority "to tell others . . . what to do";¹ second, they write to ensure transparency, promoting a sense of legitimacy by demonstrating to the public the court's consistent application of the law.² In addition, Judge Wald recognized that some judges may write to satisfy an academic urge or to reap the various personal and professional rewards that can accompany publication.³ One of those rewards is citation and republication: create precedent and work your way into the law school textbook, the law review footnote, and the next opinion issued by the court. Of course, that precedent is important for a host of reasons, including predictability, continuity, and stability.

Some judges are motivated to write opinions by more immediate or practical objectives. For example, writing a full opinion, rather than merely announcing a result, can help a judge test the strength of her own reasoning. A written opinion can bolster a judge's confidence in her own decision. An opinion can also provide a vehicle for a judge to communicate her

¹Patricia M. Wald, "The Rhetoric of Results and the Results of Rhetoric: Judicial Writings," *University of Chicago Law Review* 62 (Fall 1995): 1372.

²*Ibid.*

³*Ibid.*



Chambers' writing style is similar to that of Justice Oliver Wendell Holmes, pictured above, c. 1924. (National Photo Company Collection, Library of Congress)

perspective to audiences over whom she has no power, such as legislators and judges on her sister and superior courts; in this way a judge can use an opinion to send a message beyond her jurisdictional reach.⁴

⁴For a lengthy summary of twentieth-century judges' views on the need for and purpose of opinions, see Haig Bosmajian, *Metaphor and Reason in Judicial Opinions* (Carbondale, IL, 1992), 27–33.

Judge Chambers was driven to write and publish opinions by at least two concerns: first, creating precedent was critical to him. He viewed the court's precedent-setting function as fundamental, championing the continued reliance on the binding written opinion and rejecting as self-destructive a 1960s proposal to move toward the use of (what later became known as) the memorandum disposition.⁵ In characteristic metaphor, Chambers wrote to his associates on the Ninth Circuit, "It is suggested that we label some opinions as not worthy of the court—no precedential value. I would doubt that this court in its long history has ever jabbed a saber into itself so deep as is now proposed."⁶ In Chambers' eyes, facilitating predictability in the resolution of future disputes through crafting binding authority was the court's core duty, and he would not embrace self-imposed impotence.

Second, transparency and accountability were paramount concerns supporting Chambers' devotion to published opinions. Chambers was a champion of open access to the court's writings; he boldly wrote to an attorney with a San Francisco law firm that "the suppression of judicial opinions is midwifery for tyranny."⁷ Chambers recognized that even the decisions that the court declined to publish were noteworthy for the public and therefore newsworthy for the press.⁸ When possible, he insisted on publication; he used strong language to do so in his dissent from a court order withdrawing a disposition:

My brothers in this case suppress the memorandum [without proper justification]. . . . Someone here has the horse headed the wrong way between the shafts of the buggy. His head is up against the single tree and the

⁵The appellate courts adopted the use of limited publication after 1972 because of their increased caseloads in the late 1960s and early 1970s. See Bryan White, note, "But What Will They Do Without Unpublished Opinions? Some Alternatives for Dealing with the Ninth Circuit's Massive Caseload Post F.R.A.P. 32.1," *University of Nevada Law Journal* 7 (Fall 2006): 241.

⁶Richard Chambers, "Memorandum to Associates," June 4, 1962, Judge Richard H. Chambers Papers, U.S. Court of Appeals for the Ninth Circuit, San Francisco.

⁷Richard Chambers to Eugene Prince of Pillsbury, Madison & Sutro, June 25, 1962, Chambers Papers. See also Richard Chambers, "Memorandum to Associates Re: 'Not for Publication,'" November 2, 1962, Chambers Papers ("I take the view that an opinion once filed is published. If we must have some of this suppression business . . .").

⁸Richard Chambers, "Memorandum to Mr. Mathews," February 16, 1973, Chambers Papers.

dashboard, and I do not think the first memorandum should be "depublicized."

This dissent, I wish published.⁹

This forceful message demonstrates the depth of Chambers' conviction regarding the importance of publication. The demand for publication of his dissent teases apart his commitment to publication and the goal of creating precedent, as dissents lack the cachet of majority opinions. For Chambers, court opinions were not for litigants' and attorneys' eyes only. Rather, they were public documents promising present accountability and a historical record for the future.

Writing may have been particularly satisfying to Chambers because of his speech impediment. He described himself as having "'halting speech'" caused by a heatstroke he suffered while in the military reserves.¹⁰ In his book *Stutter*, Marc Shell noted that writing may allow "the stutterer to escape his prisonhouse of silence."¹¹ For individuals with deficiencies in oral communication, the importance of writing was recognized long before Chambers joined the Ninth Circuit; in 1930, Wendell Johnson explained that because they struggle to express themselves through speech, stutterers often find an alternative avenue of expression, like art or writing, that "serves to make one's personality apparent."¹² Chambers likely recognized that his written words could reach his audience more gracefully than his interrupted speech, and he may have relished his writing responsibility as a result.

Chambers did not routinely utilize the sort of detailed reasoning designed to test the soundness of his conclusions, although he did sometimes pen decisions with exhaustive discussion of the law. Nor did he seem to focus on assuring his readers that his decisions had solid footing in logic and legal precedent. Many of his opinions—especially, but not only, his concurrences and dissents—are remarkably light in citation to legal authority.¹³ This void is likely linked to his broad

⁹*Fenner v. Dependable Trucking Co.*, 716 F.2d 605, 605–606 (9th Cir. 1983).

¹⁰Ernie Heltsley, "Senior Circuit Court Judge, 81, Still Works in His Chambers Daily," *Arizona Daily Star*, May 31, 1988.

¹¹Marc Shell, *Stutter* (Cambridge, MA, 2005), 40.

¹²Wendell Johnson, *Because I Stutter* (New York, 1930), 51–52.

¹³See, e.g., *Smith v. United States*, 337 F.2d 237, 239 (9th Cir. 1964) (citing no legal authority other than a general reference to the Federal Tort Claims Act); *United States v. Carpenter*, 496 F.2d 855, 856 (9th Cir. 1974) (Chambers, J., concurring) (citing no legal authority at all, noting, "I think we deal with a matter where one can use his common sense as a layman," and providing a personal anecdote as precedent). The short and engaging Carpenter concurrence is worth reading in full.

conception of audience. He knew that judicial opinions were often of public interest, and he feared the loss of accountability that would accompany non-publication. But Chambers did not simply want his opinions to be available to laypersons; he also wanted his opinions to be accessible to them. So he wrote opinions that would serve the needs of the parties and the lawyers but that would not simultaneously alienate the general public.¹⁴ Formulaic, traditional legal writing, littered with citations to authority, makes the stories in judicial opinions less accessible and less compelling. And by and large, those stories were the focus of Chambers' opinions.

HOW MUCH HE WROTE: CHAMBERS' PRODUCTIVITY AND CONCLUSIONS ABOUT HIS STYLE

Chambers published 586 opinions for this broad audience during almost forty years of writing for the court: 398 panel or majority opinions, 120 concurring opinions, and 78 dissenting opinions.¹⁵ No doubt he also drafted many per curiam opinions that do not carry his byline.¹⁶ That amounts to a

¹⁴Cf. *Pac. Rock & Gravel Co. v. United States*, 297 F.2d 122, 125 (9th Cir. 1961) (recognizing the divergent interests of various segments of his audience by comically noting that, for litigants, the opinion should have been longer and better supported with citations, but *Federal Reporter* purchasers needed money and shelf space more than citations, and future litigants did not need detail in an opinion of little precedential value).

¹⁵LexisNexis Terms and Connectors Search [Ninth Circuit—US Court of Appeals Cases & Bankruptcy Appellate Panel [Sept. 30, 2007]] (opinion by [Chambers] or concur by [Chambers] or dissent by [Chambers]) (retrieving 586 documents), <http://www.lexis.com>; FOCUS searches revealed breakdown of total decisions into majority, concurring, and dissenting categories, with some opinions categorized as both concurring and dissenting. Of course, Chambers' unpublished dispositions are not included in this tally.

¹⁶Indeed, his per curiam opinions may represent some of his most memorable works. At the special session honoring the memory of Judge Chambers on March 28, 1995, Justice Charles Jones, who worked as Chambers' law clerk in the early 1960s, described Chambers' per curiam opinions as "quite remarkable." He said that they "probably have become classic examples of western jurisprudence. If not, they ought to be." 61 F.3d lxxvii, xcvi. He then quoted a full opinion, which is as noteworthy as promised:

Brown is a noted neurosurgeon. The government took exception to some of his income tax returns and deficiencies and fraud penalties were asserted by the commissioner.

Brown tried his own case in the tax court. He there handled the case about as badly as the three judges of this panel would have handled a neurosurgical operation. The tax court entered a decision against him, finding a considerable deficiency and fraud with its usual fifty per cent penalty.

significant contribution to federal jurisprudence. His opinions span a 753-volume range in the law libraries' shelves, volumes 213 through 966 of the second series of the *Federal Reporter*.¹⁷ Chambers' extended tenure with the court and his devotion to the published opinion as a means of resolving an appeal clearly set the stage for this abundance; but other factors, such as an affinity for writing, may have helped him become prolific as well.

This abundance has positive and negative consequences for anyone who undertakes a study of the style Chambers used in writing his opinions. There are many resources to draw from, but also many materials to synthesize. There are many eras and legal doctrines to read about, but also many variables other than the author's style that may have shaped each opinion.

One of these variables is the effect of the panel on an authoring judge. In writing an opinion, a judge's form of expression may be shaped by a desire—or need—to persuade another judge or judges to join his decision. The author may self-censor or may circulate a draft opinion and later compromise with those who join it. As Judge Wald has noted, on an appellate court "consensus is a formidable constraint on what an opinion writer says and how she says it. Her best lines are often left on the cutting room floor."¹⁸

On appeal, too late, he has hired very competent counsel. But stuck in the mud with the trial record, counsel simply cannot pull the doctor out.

We find there was competent evidence to sustain the decision unless absolute mathematical certainty be required. And it is not required. The fact that there was some conflicting evidence does not prevent a conclusion that there was clear and convincing evidence to sustain the tax court's findings and conclusions.

The decision is affirmed.

Brown v. Comm'r of Internal Revenue, 418 F.2d 574, 575 (9th Cir. 1969) (per curiam).

¹⁷Chambers seemed proud to have been a prolific judge. In 1990, he received a list of his 394 majority opinions to date from Judge John Rhoades, a district court judge for the Southern District of California. John Rhoades to Richard Chambers, June 25, 1990, Chambers Papers. Later that year, in response to a request for information by a college student writing a term paper, Chambers noted, among few other autobiographical facts, that he had written 394 [majority] opinions. Richard Chambers to Julie Sauser, December 19, 1990, Chambers Papers.

¹⁸Wald, "Rhetoric of Results," 1377. Judge Wald further remarked, "In the press to get an opinion accepted and into circulation, the writing judge will usually sacrifice her own rhetorical preferences to hard-pressed 'suggestions' of her colleagues. Rhetoric is the hostage of judicial politics. Minority judges must find their rhetorical outlet mainly in dissents." *Ibid.*, 1380. Judge Richard Posner has offered a similar observation, noting that a judge in a stylistic minority "may have to pull his punches in order to persuade the other judges to join his opinion." Richard A. Posner, "Judges' Writing Styles [And Do They Matter?]," *University of Chicago Law Review* 62 (Fall 1995): 1431.

Volume and compromise make generalizations about the judge's opinion-writing style somewhat elusive. It is impossible to comment on the stylistic choices Chambers made in all 586 opinions he published, because he did not adopt the same approach in every opinion; rather, his form and tone seem responsive to the facts and legal issues at bar. (That sensitivity is itself one aspect of his "style.") Nor is it possible simply to dive deep into one or two opinions without missing the forest for those select trees. A detailed analysis of just a few samples is especially problematic if those samples are precedent-setting majority opinions, where the presence of particular branches or the pattern of leaves may have stemmed from another panel member's concerns rather than from Chambers' style.

So this essay describes trends that appear in many, though not all, of Chambers' opinions. The opinions provided as examples are those that seemed most distinctively Chambers to lawyers who were familiar with the jurist and most inimitable to law students who were not.¹⁹ In an effort to isolate Chambers' singular voice from the potential stylistic impact of compromise, this essay also focuses on the rhythm, language, and rhetorical devices of dissenting and concurring opinions over which Chambers had unilateral control.

HOW HE WROTE: THE STYLE, OR SOUND, OF HIS OPINIONS

Judge Chambers' writing style has been recognized and applauded by his peers. Chambers declined to delegate opinion drafting to his clerks, maintaining sole authorship of his

¹⁹Most of those opinions come from the first half of Chambers' marathon judicial career. That his earliest works would carry the strongest record of his style is not surprising. In a telephone conversation with the author on October 20, 2006, Warren Sinsheimer III, Chambers' law clerk from 1971 through 1973, stated that Chambers drafted almost all of his own opinions. Chambers continued to write a lot of his own opinions through at least 1976. Timothy Berg (law clerk to Judge Chambers, 1975–76), telephone interview with the author, November 10, 2006. However, by the latter part of his career, this practice may have become a luxury that he could not afford to maintain. See Wald, "Rhetoric of Results," 1384 ("Most judges I know let clerks write first drafts of opinions . . . Even Holmes or Hand could not likely go it alone in the current climate"). Judge Richard Posner has also discussed "the contemporary scandal (as some think it to be) of delegating opinion writing to law clerks." Posner, "Judges' Writing Styles," 1425.

published works.²⁰ The absence of rotating ghost writers—clerks completing one-year stints in his chambers—helped his opinions develop a distinctive voice and created a legacy that has been celebrated by other judges. Associate Supreme Court Justice Anthony Kennedy, who served on the Ninth Circuit with Judge Chambers from 1975 through 1988, praised Chambers' opinion-writing approach: "The prose style of [Chambers'] opinions was admirable. It was concise. It was to the point. It could disclose rapier-like wit."²¹ Another judicial evaluation of Chambers' opinions celebrated them for being "pithy and yet profound, lacking any trace of pomposity," and called them "models of what all judges should strive for in bringing clarity and precision to the law."²² Stopping here, having provided a short but telling description of opinion-writing the Chambers way—with characteristic brevity—would be appropriate. Chambers was straightforward. He was succinct. He was clever. He was clear. But it is one thing to say it is so, and quite another thing to prove it.

What Is Style?

The first question that needs to be asked is, What is "style" in the context of judicial opinions? Judge Posner has devoted pages to defining the term,²³ noting that style "is one of those words that we are entirely comfortable in using but that is a devil to define."²⁴ Posner rejected the broadest definition²⁵ in favor of "style as the range of options for encoding the paraphrasable content of a writing."²⁶ Style is, in other words, the

²⁰Judge Dorothy Nelson, "Special Session to Honor the Memory of Honorable Richard H. Chambers, Chief Judge Emeritus," March 28, 1995, 61 F.3d lxxvii, lxxxvii (citing Judge Thomas Tang); Judge Joseph D. Howe (law clerk to Judge Chambers, 1961–62), "Special Session" xcv ("When I was with him, I drafted one concurring opinion, but it never went anywhere and he wrote all his own stuff"); Charles E. Jones (law clerk to Judge Chambers, 1962–63), "Special Session" xcvi ("One of the first things Judge Chambers told me was that he did not invite his law clerks to work on formal opinions. He wrote his own opinions . . . Fully consistent with his spirit of independence, he therefore chose to do his own written work for publication").

²¹Anthony Kennedy quoted in "Special Session" lxxxiii.

²²Judge John Rhoades, "Special Session" lxxxvi.

²³Posner, "Judges' Writing Styles," 1421–26.

²⁴*Ibid.*, 1421–22.

²⁵To Posner, the broadest definition would be "the specific form in which a writer encodes an idea," which would merge style with rhetoric. *Ibid.*, 1422.

²⁶*Ibid.*, 1423.

packaging the writer provides for her substantive content; it is "ornamental (which is not to say unimportant), or at least optional, dispensable."²⁷ This is a controversial definition; Justice Benjamin Cardozo said nearly the opposite: "Form is not something added to substance as a mere protuberant adornment. The two are fused into a unity."²⁸ That seems right; even purely ornamental aspects of a passage—hints that would not survive a ruthless editor's paraphrase—carry meaning. But that meaning serves purposes outside the scope of the opinion's primary purposes of resolving a controversy and creating precedent by interpreting and applying the law to a set of facts. Thus, in the context of examining the opinion-writing style of a judge, the idea of peeling the author's packaging from the substance it contains has appeal. The process could be reduced to a mathematical equation: style equals passage minus paraphrase.

But other notions of style, like what Posner identifies as "literary" style and "signature" style, or voice,²⁹ are equally relevant. Proposing that judicial opinions are "literary" may astound—or even offend—those who have labored through the sometimes dense and uninviting text of long, technical decisions. But consider Posner's definition of literary style:

Writings count as literature when they are detachable from the specific setting in which they were created—when, in other words, they have something (no one is quite sure what) that enables them to become or to be made meaningful to an audience different from the one for which they were written.³⁰

The purpose of this essay is to make Chambers' writing meaningful fifty years after the parties received the result, when intervening statutes and cases are certain to have eroded the legal import of his opinions. This effort therefore supports the notion that Chambers' opinions are literature.

The essay also sets out to identify the voice in which Chambers wrote his opinions—the idiosyncratic textures of his writing that allow readers to recognize it as his work. This last conception of style, like the notion of style as packaging

²⁷Ibid., 1422–23.

²⁸Benjamin Cardozo, *Law and Literature and Other Essays and Addresses* (New York, 1931), 5.

²⁹Posner, "Judges' Writing Styles," 1424–25.

³⁰Ibid., 1424 (citing John M. Ellis, *The Theory of Literary Criticism: A Logical Analysis* [Berkeley, 1974], 42–53).

for content, is particularly probative. What habitual writing decisions—in terms of tone, vocabulary, sentence structure, organization, and the like—allow readers to identify a Chambers opinion from its sound?

What Was Judge Chambers' Style?

As Justice Kennedy noted, Chambers was concise. His peers remember him for his one-word opinions,³¹ and his former law clerk identified a 130-word opinion as Chambers' own favorite.³² He was devoted to being succinct, writing in a letter to a lawyer that "long opinions . . . are an anathema to me."³³ Appropriately, the few sentences and paragraphs that constituted his short opinions also had a tendency to be direct and succinct.³⁴ He privately admired judges who decided cases with shorter opinions,³⁵ and he publicly criticized judges who were undisciplined editors of their own work: "I concur in the judgment of the majority. I dissent from the number of words used to arrive at the point of reversal. Naturally, this river of words brought forth elongated dissents."³⁶ This is an extraordinary use of the word dissent. By definition, a dissenting opinion

³¹At the judge's memorial on March 28, 1995, Judge Dorothy Nelson reminisced about Judge Chambers' one-word dispositions.

³²According to a former law clerk, Chambers' favorite opinion was *Atlas Hotels, Inc. v. Nat'l Labor Relations Bd.*, 519 F.2d 1330, 1335 (9th Cir. 1975) (Chambers, J., concurring). Timothy Berg, e-mail message to author, November 25, 2006. That opinion is just 130 words long:

The National Labor Relations Act and the Labor Management Act were passed to effect the broad purposes of accomplishing industrial peace. Here we see the Labor Board fooling around with possibly a seven man unit. There were three ballots against the union on each election. For the second election, the Board cleared one employee from a challenge, and so the union won by four to three. How this serves the broad purpose of the Act is wondrous. It is bureaucracy rampaging. But if one pursues enough rabbits, privates can become corporals, corporals can become sergeants, and sergeants can become lieutenants of the hunt. Some of the lieutenants may even get to be civil servants in the grade of GS 15. While I concur, I do not have to like it.

Atlas Hotels, 519 F.2d at 1335.

³³Chambers to Prince.

³⁴Examples of the rhythm Chambers created with his punchy prose appear throughout this essay.

³⁵Chambers to Prince (discussing an "unnecessarily long" opinion and noting admiringly that "the DC Cir. could do the work with less ink").

³⁶*GTE Sylvania, Inc. v. Continental T.V., Inc.*, 537 F.2d 980, 1018 (9th Cir. 1976) (Chambers, J., concurring and dissenting).

disagrees with the majority's decision or result;³⁷ here, Chambers says he "dissents" (from the majority's style), although he actually concurs with the decision but reached the result in a different manner.

One way Chambers kept his opinions short and punchy was by keeping tight control over his description of the applicable law. He did not embrace legal principles in their original packaging by quoting his fellow jurists; rather than parroting another's prose, Chambers stripped rules to the bone, then redressed them in his own language.³⁸ At times he cited authority without describing it³⁹ and applied case law without explaining it.⁴⁰

This unexpectedly succinct approach was not always well received. But Chambers stood by his principles, refusing to conform. In a published concurrence, he defended the brevity of—and absence of authority in—one of his opinions. His expression, rhythm, and wit sent a penetrating message to the dissatisfied lawyer who petitioned for rehearing in *Pacific Rock & Gravel Co. v. United States*:

As I read the petition for a rehearing, it is clear that appellant thinks I should have given it more of an opinion . . . , and that the composition should be a little better documented with citations. Perhaps, as between appellant and the court, that is correct.

But, also, I must think of the lawyers who are made poor buying copies of the reported decisions of the United States courts of appeal. . . . They are published now almost one volume a month.

Here we have a transitory legal question on construction of a statute and of little precedent value on another day.

³⁷Bryan A. Garner, ed., *Black's Law Dictionary*, 8th ed. (St. Paul, MN, 2004), 1125.

³⁸See, e.g., *Winger v. United States*, 233 F.2d 440, 441–42 (9th Cir. 1956). In that case, Chambers described the applicable law in one sentence of his own formulation: "An accessory before the fact can work through an intermediary as well as with him who ultimately commits the principal crime." *Ibid.* (footnotes omitted). The sentence's two footnotes include citations to one statute and four cases. Chambers neither discussed nor quoted the precedents.

³⁹See, e.g., *Consol. Flower Shipments, Inc. v. Civil Aeronautics Bd.*, 213 F.2d 814, 817 (9th Cir. 1954) (stating only that "[a]n excellent analysis of what makes a cooperative 'public' in character is found in *Natural Gas Serv. Co. v. Serv-Yu Coop.*, 70 Ariz. 234, 219 P.2d 324," in process of discussing whether entity was public).

⁴⁰See, e.g., *Highway Cruisers of Cal., Inc. v. Sec. Indus., Inc.*, 374 F.2d 875, 876 (9th Cir. 1967) ("Under *Champion Spark Plug Co. v. Sanders*, 331 U.S. 125, 67 S. Ct. 1136, 91 L. Ed. 1386, we think it clear that an accounting such as *Highway Cruisers* sought is not automatic").

I do not suppose I could ever convince appellant that I read every decision cited in the briefs, and many more. If I proved that, then its counsel, as good lawyers, I venture would think I did not know how to read the cases. And, if I decorated my effort with a lot of citations, I cannot imagine there would be satisfaction with the selection of citations. Certainly, a lot of citations have never saved me from the Supreme Court's occasional four word mandate of: 'Certiorari granted. Judgment reversed.'⁴¹

Chambers' taste for brevity ran deep, extending beyond his submissions to the *Federal Reporter*. He placed a premium on the ability to express ideas concisely in other legal contexts, such as in statutes and regulations.⁴² Similarly, long briefs were of questionable value to Chambers. He could—and did—cut to the chase for the parties, replacing volume with vivid metaphor:

Many, many words are used by both sides on the issue. . . . But we sum the thing up this way. In the testimony about damage, the court saw enough of *Highway Cruisers* damage to see that an accounting would amount to putting a whole sack of coal under a pound of popcorn.⁴³

Chambers' brevity proves the adage that less is more. By writing sparsely, he enhanced the impact of each word and phrase.

As the excerpt above previewed, in addition to being succinct, Chambers' opinions are colorful, using a sack of coal and a pound of popcorn in place of more mundane phrasing. Chambers' frequent use of metaphor furthered his goal of being concise; using relatively few words, he painted vivid images that made lasting impressions. More than other qualities of his writing, his imaginative metaphors rendered his opinions uniquely his, infusing the page with his voice and personality. These inspired turns of phrase rely on ordinary language and sources from a variety of everyday contexts; thus, consistent with other aspects of his opinions, they seem to be designed for consumption by the ordinary citizen, not just the highly educated professional. His metaphors, along with other aspects of his writing style, made his writings folksy.

⁴¹297 F.2d 122, 125-26 (9th Cir. 1961) (Chambers, J., concurring).

⁴²*Eastman Kodak Co. v. Hendricks*, 262 F.2d 392, 397 n.4 (9th Cir. 1958) ("It may be doubted that the municipal ordinance here, although using more words, adds very much to the state statute").

⁴³*Highway Cruisers*, 374 F.2d at 876.

For example, anticipating the reaction to one opinion, he wrote, "It may be said that this opinion merely parts the hair on the left instead of the right."⁴⁴ And in analyzing the impact of an erroneous jury instruction, Chambers wrote that it "did not run in a long chorus line" but "came into too bright a light" to be harmless.⁴⁵ Finally, to describe how the efforts of a criminal defendant who represented himself and the public defender appointed as his "advisor" cancelled each other out, Chambers wrote that the "[defendant] and the defender worked . . . in tandem, one pedaling forward, the other back-pedaling."⁴⁶ While concrete and accessible, the vivid images created by these metaphors are also unexpected; who would anticipate thinking of the law as a hairstyle, seeing a jury instruction on a stage, or passing a defendant and his advisor on a bicycle built for two? This element of surprise helps Chambers project his imaginative message into the mind of the reader, where it lingers long after she squeezes the volume back into the library stacks.⁴⁷

Metaphors represent just one example of Chambers' careful use of words to create vivid images. Another focus for Chambers was crafting catchy opening lines, which he used to engage his audience from the first word. His opinions lack the monotony that so many judicial opinions suffer under the weight of boilerplate language: "This matter comes before the Court on appeal from the district court's award of statutory damages for copyright infringement." Would you continue reading if a professor's syllabus or paid employment did not require it? Chambers introduced the dispute this way instead: "This is a contest between two rumpled Santa Clauses,"⁴⁸ an intriguing introduction sure to grab the attention of lawyer and layman alike. The first paragraph goes on to describe the two rumpled Santa Clauses in greater detail:

⁴⁴*Eastman Kodak*, 262 F.2d at 398.

⁴⁵*Forster v. United States*, 237 F.2d 617, 621 (9th Cir. 1956).

⁴⁶*United States v. Schmitz*, 525 F.2d 793, 794 (9th Cir. 1975). For yet another example, see *Paramount Transportation Systems v. Chauffeurs, Teamsters & Helpers*, 436 F.2d 1064, 1066 (9th Cir. 1971) (Chambers, J., concurring). There, in rejecting the majority's basis for reaching its result, Chambers wrote, "Application of collateral estoppel piles test upon test. This is unnecessary. If the butcher has no meat, he need not determine if the meat is spoiled." *Ibid.*

⁴⁷See Bosmajian, *Metaphor and Reason*, 39–40, for a discussion of the power of metaphors, and 42 for a discussion of the reasons that metaphors make prose more memorable. On metaphors in the law, Bosmajian wrote, "Nonliteral language is often needed to explain the abstraction, in . . . law, that cannot be conveyed as effectively and persuasively through literal language. Through incorporation of tropes [e.g., metaphors] into legal opinions, what is abstruse and obscure becomes concrete and comprehensible." *Ibid.*, 47.

⁴⁸*Sunset House Distrib. Corp. v. Doran*, 304 F.2d 251, 252 (9th Cir. 1962).

Both begin their inanimate life as red flat plastic bags with some decoration and faces thereon. In this form, they are sold to the purchaser, who stuffs them with crumpled newspapers. The result is a fat life-sized dummy Santa Claus. Only the face on each, which is a happy one, contradicts the otherwise disheveled appearance of both.⁴⁹

From the first line, Chambers captured the aspect of the case that made it a one-of-a-kind dispute: the facts. The dramatic and suspenseful angle Chambers took added emphasis to those facts, heightening the reader's curiosity, drawing her in, and encouraging her to continue.⁵⁰

Many of Chambers' first lines recreate the feel of a work of fiction. Sometimes he communicated the mood of the setting of the dispute: "Rocky Point (Puerto Penasco), Sonora, is a little fishing village."⁵¹ Other times he described an event underlying the parties' dispute: "Some of H.L. Coon's mules were loose on a freeway . . . in the westerly suburban area of Sacramento on

⁴⁹Chambers' wording in other portions of this opinion warrant review as well. On the legal issue—whether one rumpled Santa Claus infringed the copyright of the other—Chambers wrote

Obviously, Santa Claus belongs to the whole world, and next he may be exported to outer space. He belongs to none of the parties.

No court can properly enjoin parties from the whole field of manufacturing Santa Claus. But defendants' trouble is that their Santa Claus was just a lazy copy of the [plaintiffs'] Santa Claus. There was some slight variation in design which was made by the defendants, but not much. They even copied plaintiffs' uncopyrighted instruction sheet, which shows how defendants went about the thing.

Ibid.

⁵⁰Chambers' emphasis on storytelling is a reminder of the critical role facts play in shaping and justifying a decision:

The task of interpreting and condensing the record requires that the judge frequently dip his pen into the well of rhetoric. . . . [A]ppellate judges enjoy great leeway to massage and mold the facts in their retelling of the story.

Judges decide outcomes, and then tell the story in a way that makes the outcome look like a perfectly logical and necessary consequence of the law . . . [S]kill in judicial storytelling definitely enlarges the scope of judicial discretion.

Wald, "The Rhetoric of Results," 1387–88.

⁵¹*United States v. Kandlis*, 432 F.2d 132, 136 (9th Cir. 1970) (Chambers, J., dissenting). The majority opinion, drafted by Judge Duniway, begins with a more traditional introduction: "The four appellants were each charged with violation of [statutes]. They were tried before a jury, found guilty . . . , and . . . sentenced. . . ." *Ibid.*, 133. That Puerto Penasco was a little fishing village was relevant to the probable cause analysis, a point Chambers emphasizes in his dissent: "The majority just fails to take into account the utter loneliness of the area." *Ibid.*, 136.

December 17, 1954. Shortly after six in the evening, it was already dark, Glen Earl Grigg, alone and eastbound in his new Cadillac, collided with two of the mules."⁵² And sometimes he succeeded in doing both at once: "Very early in the morning of June 21, 1953, three cars, a Cadillac, a Mercury and a Buick, assembled on the outskirts of Odessa, Texas, at the Moonlight Bar."⁵³

Where a noteworthy character played a key role in a dispute, Chambers often wrote a biographical opening passage. Like the lines about places and events, these introductions of central characters mimic the tone of a short story more than they mirror a typical appellate court opinion. For example, Chambers began a decision about a sports star by writing "William Radovich is a one time football great from the University of California."⁵⁴ And he began a decision about a dairy entrepreneur by noting how far his ambitions had taken him in life: "Hans Forster, beginning meagerly about 1929 in the State of Washington, by 1944 had become a milk king in the Seattle area."⁵⁵ Chambers identified some characters by profession⁵⁶ and others by legal dilemma.⁵⁷ And he defined some by both: "Harry, Edward and Peter Murphy know the logging business pretty well. But in their apparent quest for federal income tax savings, they have collided with the internal revenue service."⁵⁸

⁵²*Grigg v. So. Pac. Co.*, 246 F.2d 613, 614 (9th Cir. 1957). *United States v. Springer*, 478 F.2d 43, 46–47 (9th Cir. 1973) (Chambers, J., dissenting from denial of petition for rehearing en banc), highlights the contrast between Chambers' approach and the approach of his contemporaries. The panel's per curiam opinion begins with a traditional single-sentence paragraph: "The United States brought this action against Curtis Howe Springer and others for ejectment, an injunction, and damages in connection with defendants' use of their unpatented mining claims on real property owned by the United States in San Bernardino County, California." *Ibid.*, 44. Chambers' opening to his dissent from the denial of the petition for rehearing en banc is more casual and succinct: "Springer is operating some kind of a health spa on mining claims on government land." *Ibid.*, 46.

⁵³*Bennett v. United States*, 234 F.2d 675, 675 (9th Cir. 1956).

⁵⁴*Radovich v. Nat'l Football League*, 231 F.2d 620, 621 (9th Cir. 1956).

⁵⁵*Forster*, 237 F.2d at 618.

⁵⁶See *Schinkal v. United States*, 225 F.2d 882, 883 (9th Cir. 1955) ["Schinkal's business is 'juke boxes'"].

⁵⁷See *Welker v. United States*, 664 F.2d 1384, 1385 (9th Cir. 1982) (somewhat casually beginning, "Welker has had some sort of problem with some United States Customs officer or officers at the San Ysidro, California, Port of Entry . . ."); *Schmitz*, 525 F.2d at 793 ["Schmitz is an income tax objector. He shows devout dedication and seems not to be a mean fellow."]; *Prather v. Comm'r of Internal Revenue*, 322 F.2d 931, 932 (9th Cir. 1963) ["The Prathers have horrible income tax trouble"].

⁵⁸*Murphy Logging Co. v. United States*, 378 F.2d 222, 222 (9th Cir. 1967).

Each of these opening lines connects the reader to the opinion, conjuring a three-dimensional image from the cold appellate record. They tell the reader that although the opinion may address some obscure legal doctrine or unfamiliar legal problem, ultimately the decision is about real people and affects real life. Chambers produced relevant and personal opinions by making the reader intimate with the litigants. Right from the outset, Chambers brought his reader to the time and place of dispute: "Wayne Larsen, Sr., 33, and three others met their deaths in the crash of a privately owned airplane near Phillips Field, adjacent to Pocatello, Idaho, on the night of July 17-18, 1950."⁵⁹ The reader knows nothing of the legal effect of the opinion from that introduction, but she is invited—and probably enticed—to read on and find out.

Beyond his opening passages, Chambers often used words that helped him maintain a relaxed, conversational tone. He wrote of a criminal defendant's "monkey business,"⁶⁰ described limits to the court's authority using the phrase *run around*,⁶¹ and began sentences with casual transitional words like *anyway*⁶² and *so*.⁶³ Like his everyday metaphors and his engaging openings, this informality allied Chambers with his audience. Rather than intimidating his readers with the power of a government institution, Chambers used a casual tone that seemed to engage the audience in a friendly chat about the particular question that had fallen into his hands for resolution.

For example, dissenting from an opinion based on his assessment that the case was moot, Chambers closed, "We should abstain from a 'dead fall,' which I think is a wrestling term."⁶⁴ His decision to incorporate a wrestling term into his analysis demonstrates creative bridge-building between unrelated disciplines. But his decision to qualify his explanation of the term's

⁵⁹*Boise Payette Lumber Co. v. Larsen*, 214 F.2d 373, 375 (9th Cir. 1954).

⁶⁰*United States v. Scheiblaue*, 472 F.2d 297, 302 (9th Cir. 1973) (Chambers, J., concurring).

⁶¹*McKee v. Turner*, 491 F.2d 1106, 1107 (9th Cir. 1974).

⁶²*Prather*, 322 F.2d at 933.

⁶³*McKee*, 491 F.2d at 1107; *Walker v. Berkeley*, 951 F.2d 182, 186 (9th Cir. 1991) (Chambers, J., concurring).

⁶⁴*Rosenfeld v. S. Pac. Co.*, 444 F.2d 1219, 1228 (9th Cir. 1971) (Chambers, J., dissenting). He used a similar phrase, *I suppose*, to indicate his misgivings about the impact of precedent: "I suppose that *Carafas v. La Vallee* requires us to put on our habeas corpus glasses and rule on this crummy motion picture for stag parties. And, so I concur." *Pinkus v. Pitchess*, 429 F.2d 416, 417 (9th Cir. 1970) (Chambers, J., concurring) (citation omitted).

origin with "I think" is more unusual. Was he unsure of himself? Why not check to be sure before finalizing the dissent? Or did he confirm the meaning, but, knowing that others would not be familiar with the term and wanting to avoid an air of pretension, decide to qualify his explanation with a humble "I think"? Perhaps he acknowledged that his wrestling reference was unnecessary adornment, and the "I think" helped him convince readers that he was not wasting time on matters of style that did not impact the opinion's substance. Whatever his reasoning, the effect is clear: the dissent is imbued with an informality that personalizes its author.

Two other techniques helped convert Chambers' announcements into conversations: his habits of asking rhetorical questions and of hinting at, but not directly stating, his points. The rhetorical questions that Chambers wove into his opinions generate a sense of an ongoing exchange between author and audience; through his questions, Chambers reminded his audience that reading case law is not a passive endeavor. Chambers' goal seems to be to walk the reader through her own analysis instead of simply announcing his own reasoning. He asks his reader, "Is professional football business or sport more like the business of boxing or like the business of baseball?"⁶⁵ and, "[I]f the courts from the beginning had vigorously enforced the statute of frauds . . . , wouldn't we have less injustice?"⁶⁶ Chambers used questions in dissents to provoke his colleagues and other readers:

On a *de novo* review of the evidence, as we do in this sort of case, isn't there a lot of falsity in [the defendant's affidavit]? Aren't we entitled to draw some inferences from the falsity thereof? Shouldn't the district attorney be concerned about these verified statements?⁶⁷

⁶⁵*Radovich*, 231 F.2d at 622.

⁶⁶*Alaska Airlines v. Stephenson*, 217 F.2d 295, 297 (9th Cir. 1954). Chambers used questions throughout this opinion to outline his reasoning:

But what of the statute of frauds and a contract clearly not to be performed fully within one year? . . . Does New York law apply, or does the law of the Territory of Alaska apply? And what of promissory estoppel?

If people were brought up in the tradition that certain contracts inescapably had to be in writing, wouldn't those affected thereby get their contracts into writing and, on the whole, wouldn't the public be better off?

But should we use New York law on this case in the Alaska forum? . . .

Turning to the Alaska statute, what is it? Where did it come from? What history does it have behind it?

Ibid., 296-97, 298.

⁶⁷*United States v. Suarez*, 902 F.2d 1466, 1469 (9th Cir. 1990) [Chambers, J., dissenting].

And he used questions in concurrences to challenge the majority's reasoning: "So what was the judge's function?"⁶⁸ Each of these questions leads the reader through the judge's reasoning, creating the sense that reader and judge are solving the problem together.

Like inserting rhetorical questions, leaving something unsaid also encouraged active reading, giving the audience an opportunity to fill in the blank. By alluding to an expression rather than stating it, Chambers not only created the illusion of exchange, but also infused his opinion with greater poignancy than would have accompanied the axiom itself. For example, in *Ginsburg v. Ginsburg*, Chambers rejected appellees' request for fees, even though

appellant is pushing the limit he can go without such fees being assessed. Another reason for rejecting the fees is that appellees have not been particularly helpful in the present phase of the case, apparently taking the view that we should just take judicial notice that appellant is a bother.

Appellant, representing others, is undoubtedly a highly competent and tenacious lawyer. Here, in representing himself, he proves a well-known axiom.⁶⁹

That passage also displays Chambers' tendency to be polite. Merely referencing the well-known axiom—declining to call the attorney a fool explicitly—removed some of the sting of Chambers' criticism. And he balanced his censure with commendation, asserting his confidence that the imprudent attorney is skilled and resolute in other contexts.⁷⁰ This concern for the pride and reputation of attorneys whose arguments he rejected shows up elsewhere in Chambers' opinions. He was prone to recognize creative lawyering, writing that "[t]he argument is in-

⁶⁸*Walker*, 951 F.2d at 186 (Chambers, J., concurring). This sentence plays a key role in Chambers' fifty-word concurring opinion:

In this case our trial judge used a jury to review the simon-pureness of the administrative proceedings. This is a curious procedure.

So what was the judge's function? Beyond trying federal judges or criminal indictments of judges, I have never found any case where the jury can try the judge.

Ibid., 185–86.

⁶⁹352 F.2d 337, 338 (9th Cir. 1965).

⁷⁰In *Western Fire Insurance Co. v. National Union Fire Insurance Co.*, 477 F.2d 1026, 1026 (9th Cir. 1973), Chambers set off a similar critique with praise: "Counsel for both parties here are highly reputable lawyers. But there has been a bumbling that makes them all look worse than they deserve."

genious, but we cannot accept it,"⁷¹ in one opinion, and "appellant makes a very fine argument, but we reject it,"⁷² in another decision the following year.⁷³ He was sympathetic to the effects of the adversarial system on capable attorneys: "[P]ersonal censure of lawyer Davis is not intended. . . . [A]t most, in a moment of aggravation, when he believed his prime client . . . had been compromised . . . , he made a mistake."⁷⁴ And where an attorney had criticized the judge's decision, Chambers made clear "that counsel's opinion of my opinion was expressed with the utmost gentility."⁷⁵

Chambers was equally gentlemanly toward others besides attorneys. He was careful not to impugn the district court judge he reversed, explaining why the trial court understandably reached the wrong result: "Of course, our trial court, at the time of its decision, did not have the plethora of cases now available."⁷⁶ In some opinions, he flattered both trial attorneys and the district court judge.⁷⁷ Chambers also went to some length to be respectful of parties outside the litigation before the court, mentioning in one opinion that the public probably believed "that professional baseball has kept a cleaner house

⁷¹*Lynch v. Stotler*, 215 F.2d 776, 777 (9th Cir. 1954).

⁷²*Schinkal*, 225 F.2d at 884.

⁷³An extended compliment appears in *Geeter v. United States*, 401 F.2d 176, 176 (9th Cir. 1968) [Chambers, J., concurring], a short concurrence Chambers composed to comment on one lawyer's performance:

I concur.

On this appeal, the government has provided Geeter successively with four attorneys.

I want to compliment the fourth, Roland E. Brandel, for his able and persuasive efforts in behalf of Geeter. He almost convinced me.

His work is an object lesson in what a lawyer can honorably and cogently put together where others of less determination give up. Geeter could have done no better with unlimited funds to hire his own lawyer.

⁷⁴*American Cas. Co. v. Glorfield*, 216 F.2d 250, 253 (9th Cir. 1954).

⁷⁵*Pac. Rock @ Gravel Co.*, 297 F.2d at 126 [Chambers, J., concurring].

⁷⁶*McSomebodies v. Burlingame Elem. Sch. Dist.*, 897 F.2d 974, 975 (9th Cir. 1989); see also *Forster*, 237 F.2d at 621 (reversing a conviction because of one problematic jury instruction but noting that "[t]he instructions given in chief here, generally were splendid").

⁷⁷*Forster*, 237 F.2d at 618 ("The case was extremely well presented by the government. The defense was made in a fine manner. The rulings by the trial court on the evidence seem excellent. The jury was instructed by the court in words that are susceptible of very little improvement. Generally, the instructions show a technical excellence"). Chambers also mentioned an "excellent but proper summation" and "splendid" instructions. *Ibid.*

than professional boxing," then clarifying, "(No slur on many, many fine men in the boxing profession is intended)."⁷⁸

This concern for others is just one of the insights one gathers about Chambers as a person from reading his judicial opinions. Chambers reveals much about himself in his opinions; while they are primarily about the relevant law and facts, they also carry biographical information about the author. This transparency—the ability to look through the legal opinion at the writer—is common; as one appellate court judge has observed, "Judges, like other writers, never succeed altogether in hiding their own personalities behind the black robes."⁷⁹

But Chambers' judicial prose suggests that he did not try to hide his personality at all. Rather, he gave his opinions a personal touch by drawing on his own background in describing the disputes before the court. Perhaps only a rancher of the rural West would compare an exotic dancer to livestock.⁸⁰ Chambers did not just turn to the familiar for vocabulary; he also relied on his heritage for support, citing his "wise father," a lawyer and judge, as instructive authority.⁸¹ While unorthodox, Chambers did limit how far from the expected he would wander. He is known for frequently citing his trusted horse, Tom, in court memoranda and correspondence, and for including a horseshoe stamp on some; the four-legged jurist reportedly even circulated draft opinions to other members of the court.⁸² But Chambers censored this humor in his official writings, withholding all references to this highly regarded equine authority in his published opinions.

Chambers' decisions drew not only on the human and non-human characters who surrounded him in life but also from his own values and sensibilities. In sharing his perspective, he

⁷⁸*Radovich*, 231 F.2d at 622.

⁷⁹Wald, "The Rhetoric of Results," 1415.

⁸⁰*Eastman Kodak*, 262 F.2d at 393 ("One [woman] is a tall blonde with extremely large bust, approaching bovinity").

⁸¹*United States v. Castaneda*, 571 F.2d 448, 449 (9th Cir. 1977). The paragraph reads,

I offer the following preachment to both sides which my wise father, who had been a judge before I began my practice of law with him, used to give me. He used to say: "On the subject of 'notice,' don't skip notice simply because you think the statute or the rules don't require it. Test it by whether you think the other side would have liked to have known. If they would have liked to have known, give them the notice. Ex parte victories usually mean two-thirds of the time you will lose later if your opponent has been offended by lack of notice."

Ibid.

⁸²Rollins Emerson, "Memorandum to Judge Cynthia Holcomb Hall," February 3, 1993, 17, Chambers Papers.

sometimes adopted a parental tone, gently teaching a lesson to the litigants or their attorneys. For example, in his published report regarding whether disciplinary action should be initiated against two opposing lawyers, Chambers cautioned that "[b]oth sides can find a better case than this one to let blood over and in which they can resolve the issues of law they think involved here. In sum, let it not happen again."⁸³ In another matter, Chambers thoughtfully changed the case caption "because the case involves a very young school child, and we do not think his name should be bound up for posterity in buckram."⁸⁴ He did not hesitate to report his observations about the lawyering he witnessed: "As an epilogue, we note that probably counsel would have served their clients just as well without overridiculing each others' briefs. The briefs, perchance, were written for their respective clients, not us."⁸⁵

Chambers also wove his personal opinions about cases into his decisions. Sometimes these opinions were relevant to his reasoning, but at other times they were superfluous. His reported decisions reveal his low opinion of jukeboxes: "[C]ustomers come to the proprietor's place for food or drink and then somehow find life more worthwhile if they accompany it with the music or noises emitted from [plaintiff's] machines."⁸⁶ He is more blunt about his regard for an article alleged to contain libelous statements: "It seems to me that on the whole the article is a lot of piffle. Counsel . . . characterizes it as a 'think piece.' I have trouble finding much thought in it."⁸⁷ Sarcasm infuses Chambers' retelling of some of the facts underlying a dispute over the right to use the mark Hunza in the health food industry:

A small operator, Floyd Hampson, who was using the name of Hunza for some of his products, registered the name as a trademark . . . in 1957. . . . Hampson's early advertising, before the health food business generally burgeoned, is marvelous. According to his claims, the Hunzas were a healthy little tribe of agrarians in the high mountains of Asia where the soil is especially rich

⁸³*Castaneda*, 571 F.2d at 449.

⁸⁴*McSomebodies*, 897 F.2d at 975.

⁸⁵*H & J Foods, Inc. v. Reeder*, 477 F.2d 1053, 1056 (9th Cir. 1973).

⁸⁶*Schinkal*, 225 F.2d at 883. After concluding that Schinkal's product is properly classified as a service under relevant price regulations, Chambers referred to Schinkal's "so-called 'services.'" *Ibid.*

⁸⁷*Cepeda v. Cowles Magazines and Broad., Inc.*, 328 F.2d 869, 873. (9th Cir. 1964) (Chambers, J., dissenting).

and unique. Hampson had found himself a similar Eden, a farm near Cherry Creek Orchard by the little town of Duvall, Washington. There mud on the farm had the texture of hand cream. There Hunza grass was grown, but not allowed to mature. Its tender shoots were cut with a field chopper. Then it was idyllically processed by flash dehydration. One might remain lost in the puffery, except the great product, never touched by human hands, came down to reality with the postscript notation: "Does not contain alfalfa."

Maybe Hampson was before his time (or maybe he just did not live in Southern California where one's odd dreams can often be richly exploited), but he did not do well financially with his "great" product.⁸⁸

This prose is too precious for paraphrase.

Nor was Chambers shy about sharing his view of the consequence of a particular case, beginning one opinion with the sentence, "This is much to do about nothing, but we must do it."⁸⁹ He was similarly forthcoming about his concerns for the direction in which pending litigation was driving the law:

But what we feel we have to do here should be abolished by someone—Congress or the Supreme Court of the United States. . . . Historically the writ of habeas corpus has been known as the Great Writ. After we review the state courts on a few more dirty pictures and then some traffic convictions from the state side, we can call it the Silly Writ.⁹⁰

Through his honest commentary, Chambers demonstrated that he did not take himself too seriously. Voting not to take en banc what he viewed as a wrongly decided case, Chambers noted that he would have reached a different result if the Ninth Circuit were the highest court or if the Supreme Court was unlikely to consider the issue, "[b]ut about every other Monday we get proof that we are not the ultimate authority."⁹¹ He was

⁸⁸*H ∅ J Foods*, 477 F.2d at 1054–55.

⁸⁹*McKee*, 491 F.2d at 1106.

⁹⁰*Pinkus*, 429 F.2d at 417 [Chambers, J., concurring].

⁹¹*United States v. Price*, 484 F.2d 485, 487 (9th Cir. 1973) [Chambers, J., concurring]. See also *United States v. Wash. Toll Bridge Auth.*, 307 F.2d 330, 335 (9th Cir. 1962) [Chambers, J., concurring] [two-sentence opinion reading, in its entirety, "The foregoing opinion is technically excellent and probably interprets correctly the precedents since our case of [citation]. If this were a court that could decide what the law ought to be, I would dissent"].

also willing to change his mind despite the fallout of flip-flopping: "In reversing my position, there is no way I can make myself 'look good.' But my commission says I was appointed during good behavior. It says nothing about being appointed to 'look good.'"⁹²

Chambers wrote a particularly pithy and idiosyncratic description of the underlying facts in *Eastman Kodak Co. v. Hendricks*,⁹³ in which a film developing company sought guidance about whether it could return certain reels to their owner without violating obscenity laws. His characterization of the film is witty and replete with personal commentary. (Warning: reader discretion is advised.)

Each roll of film involves a wriggling young woman doing a solo "strip tease" dance. It would appear that three women take their turns in portraying various types of burlesque dances. One is a tall blonde with extremely large bust, approaching bovinity. A second is a tall, slender brunette with medium bust, and the third is a very slender brunette with small bust.

There is no testimony that the films were produced for men's smokers and one cannot say that such was the purpose. However, one would not have to be too worldly, in looking for a short description of the films, to come up with the description: "Cheap movies made for men's smokers," with the connotations such description would bear. Each reel with its dancer has some poor background music. A few pieces of mean scenery are shifted from here to there from film to film, sufficing to portray most any period, most any place.

As the music proceeds with its monotonous grind, the star of the act comes on and writhes and wriggles as she sometimes awkwardly, sometimes deftly peels off clothing item by item. Complete nudity is never achieved. Usually the shoes are retained, but the clothing left would amount to no more in size than two fifty cent pieces for the upper anterior part of the torso and a fig leaf, junior size. The dancing, about as lacking in merit as the scenery, does not achieve what might be called in the trade, "hard bumps and grinds"; just soft ones. The blonde perverting her breasts from the use for which they were intended and throwing them into,

⁹²*Burge v. United States*, 342 F.2d 408, 415 (9th Cir. 1965) (Chambers, J., concurring).

⁹³262 F.2d 392 (9th Cir. 1958).

first, clockwise and then, counterclockwise motion puts on a show most apt to be remembered. Further, as an attempt to state the facts, it seems fair to say that when the films are exhibited in sequence, the first minute or two of the product tends at least to be provocative. But as the films grind on their weary way, one is soon surfeited and eventually nausea begins to stir. What one's reaction would be if partially or wholly inebriated while viewing the films has not been researched.⁹⁴

This opinion owes its potency to a near-endless series of judgments by the authoring judge. Chambers could have described the film in a less comical and more objective manner. He could have further summarized the images the films depict without distorting the facts. He could have omitted the detail about his involuntary response to the film without jeopardizing the opinion's precedential value. But each of those decisions would have obscured some aspect of the judge's rationale for reaching his result. While Chambers adhered to mandatory authority, his decisions were also shaped by his own views and sensibilities. The humorous commentary he wove into his opinions shows his awareness of and honesty about that influence.

Chambers' transparency enhances the utility of his opinions; understanding the justifications for a decision is critical in reading and relying on authority to predict the outcome of a future, similar dispute. But even with complete transparency, predictability has its limits. Chambers touched on this in his *Eastman Kodak* decision:

[Plaintiff] cannot hope to get any decision . . . which will serve as an infallible guide [for future cases]. He who tries the cases and reviews the decision will always be a factor which cannot be wholly eliminated or fully anticipated. There are certain risks that must always be taken of someone else's view, just as there are the risks inherent in driving an automobile. If one has an accident, someone as a matter of opinion will decide close cases.⁹⁵

The facts of each case are unique; precedent permits only an educated guess as to how a judge will apply the law to an untested scenario. And in the Ninth Circuit, attorneys do not learn the

⁹⁴*Ibid.*, 393.

⁹⁵*Ibid.*, 398.

identity of the judges who will decide their client's appeal until about one week before oral argument. When they draft their briefs they do not know which judges will be their audience.

The strong sense of author's voice can also give an opinion a second life. There is little reason to revisit an outdated opinion if the delivery is dry and dull. But if an opinion does more than walk through a legal analysis, if its colorful turns of phrase offer a window into the author's ear and mind, it develops historical and literary significance.

CHAMBERS IN CONTEXT: RIDING THE RAILS WHILE WRITING REFLECTIONS ABOUT THE COURT IN "IMPURE" FASHION

Singular as his style may seem, Chambers' opinion-writing approach was not altogether unique. Rather, the core qualities of Chambers' accessible, conversational writing place him squarely in a category of like-styled members of the judiciary, a group of what Judge Posner has called "impure" judicial authors.⁹⁶ As Posner explains, this minority group breaks with the impersonal, formal legal writing norm:

Impure stylists like to pretend that what they are doing when they write a judicial opinion is explaining to a hypothetical audience of laypersons why the case is being decided in the way that it is. These judges eschew the "professionalizing" devices of the purist writer . . .

The handful of impure judicial stylists prefer the bolder approach (to critics, brazen) of trying to persuade without using stylistic devices intended to overawe, impress, and intimidate the reader. They like to be conversational, to write as if it were for the ear rather than for the eye. They like to avoid quoting previous decisions so that they can speak with their own tongue—make it new, make it fresh. . . . They like to be candid and not pretend to know more than they do or to speak with greater confidence than they feel. They eschew unnecessary details, however impressive the piling on of them might be. They like to shun clichés, to be concrete, to entertain; to seem to enjoy writing;

⁹⁶Posner, "Judges' Writing Styles," 1430.

to imitate the movement of thought—unfriendly critics call their style “stream of consciousness.”⁹⁷

Posner characterizes Holmes, Douglas, Black, Jackson, and Learned Hand as impure judicial writers.⁹⁸ Based on Posner’s criteria, Chambers, though less prominent, belongs on that list as well.

Although Judge Chambers’ style can be categorized, his opinions are distinctive nonetheless. Learned Hand, another impure judicial stylist, wrote that he “seldom find[s] another opinion which says the thing as I should have.”⁹⁹ The impure approach reflects a preference for shaping an opinion to facilitate its broad appeal and understanding, a preference Chambers shared with others. It also suggests a defining sense of independence, which Chambers also shared with his impure peers. But one quality of impure writing is that it is personal. And no other impure judicial stylist shared Chambers’ individual and family history. No other judge shared his perspective on jukeboxes, Southern California, and films for men’s smokers. No other judge shared his sense of humor or his precise vocabulary. As a result, no other judge speaks with the same voice.

Justice Kennedy asserted that Chambers reminded others “of a simple truth[.]: The law has the qualities of those who make it. Frailty and irony are among these, and humor of course, but so too are dignity and compassion and the need to search for justice.”¹⁰⁰ In that search for justice, Chambers developed strong beliefs about the court’s role as an institution and the interaction between citizens and the courts, and he seemed to have no reservations about expressing them in judicial opinions.

For instance, in one decision he explained limitations in the arguments the court will entertain, along with his personal reaction to the court’s decision: “Counsel for appellant in oral

⁹⁷Ibid. Posner further explains that a judge’s notion of audience affects the style of his opinion, and “the primary implied audience of the most boldly impure judicial stylist consists not of legal insiders but of those readers, both laypeople and lawyers, who can ‘see through’ the artifice of judicial pretension.” Ibid., 1431. Judge Farmer, of the Court of Appeal of Florida, discussed Posner’s work on judicial writing style while explaining his decision to draft an unconventional opinion. See *Funny Cide Ventures, LLC v. Miami Herald Publ’g Co.*, 955 So. 2d 1241, 1244 (Fl. Ct. App. 2007). Judge Farmer suggested alternatives to Posner’s pure and impure labels: “pious (describing the authorized style) and impious (describing the ‘reformed’ style).” Ibid. at n. 3.

⁹⁸Posner, “Judges’ Writing Styles,” 1432.

⁹⁹Gerald Gunther, *Learned Hand: The Man and the Judge* (New York, 1994), 298.

¹⁰⁰Quoted in “Naming Ceremony, Richard H. Chambers United States Court of Appeals Building,” 990 F.2d xci, cv.

argument appealed to our consciences. We are sure he meant no offense. All we can say is we find no pleasure in ruling as we do. We find it an unpleasant duty."¹⁰¹ And in an opinion in which Chambers "reluctantly" reversed a tax evasion conviction, he suggested that he shared the public's frustration regarding the result:

The nature of our system is that the law must govern. In saturating the system with safeguards for the innocent the guilty will oftentimes profit in such a way as to exasperate some of the fairest judges, the best prosecutors and even the general public as it looks at specific cases.¹⁰²

He was similarly candid about the realities of criminal justice: "[T]he jury has the inherent power to pardon one no matter how guilty. It exists, although we do not usually admit it."¹⁰³

Chambers was simultaneously careful to call attention to unfair prejudice against individuals with a criminal history. For example, in dissenting from the denial of a petition for rehearing en banc in an action for ejectment, Chambers criticized the panel's decision for mentioning the defendant's past convictions: "I thought the day was long past when we forfeited a man's legal rights because he had been previously convicted of a crime or crimes."¹⁰⁴

The judge also expressed distaste for the imposition of remedies that would result in the court's reaching into fields beyond its charter and expertise: "[A] school district surely should not be kept under injunctions of a court forever. We are already involved from time to time in teachers' tenure. Next thing we shall find ourselves grading students' papers—if we keep the schools under a court decree at all times."¹⁰⁵ In a similar manner, Chambers acknowledged the reason—and his support—for limits to judicial authority: "This Court has no desire to set itself up as a censor of literature, of art or of such alleged art as is to be found here. It is a dangerous power."¹⁰⁶

¹⁰¹*Smith*, 337 F.2d at 239.

¹⁰²*Forster*, 237 F.2d at 621.

¹⁰³*Schmitz*, 525 F.2d at 794.

¹⁰⁴*Springer*, 478 F.2d at 47.

¹⁰⁵*Spangler v. Pasadena City Bd. of Educ.*, 519 F.2d 430, 440 (9th Cir. 1975) (Chambers, J., concurring).

¹⁰⁶*Eastman Kodak*, 262 F.2d at 394.

Chambers similarly disclosed his position on judicial deference and restraint. Although he deferred to the legislature, conceding some injustice was "for the Congress to correct,"¹⁰⁷ and he believed that amending statutes was "none of [his] business."¹⁰⁸ He nevertheless offered palpable suggestions to lawmakers, such as, "I must be unhappy with the statute which I think should be changed."¹⁰⁹ He adhered to mandatory precedent, but he sometimes expressed his reluctance in doing so, alluding to his low opinion of the authority he was bound to follow.¹¹⁰

Chambers expressed stronger sentiments about the continued independence of the court as an institution and of judges as individuals. He was dismayed when the court relied on law review materials about the case at bar in the process of deciding it:

One will note that the author of the majority opinion cites the *Texas Law Review* and other law review comments . . . These are notes on this case. Law reviews used to wait until the judicial process in a case was complete before entering the fray. Now they chaperone us during the pendency of a case. This is their First Amendment right. But if this practice of citing their current comment continues, then we shall be out lining up law reviews to support our views. After that we shall be taking the step of quoting the *New York Times* and the *Chicago Tribune*. And it will be an easy jump then to include in our opinions the current comments of the *Abilene Bugle* and Bisbee's *Brewery Gulch Gazette*.¹¹¹

¹⁰⁷*United States v. Ahtanum Irrigation Dist.*, 236 F.2d 321, 342 (9th Cir. 1956) (Chambers, J., concurring) (stating more fully, "If the 1908 agreement today works a great injustice, I think that it is for the Congress to correct the unfairness if such there be . . ."; see also *Wade v. United States*, 426 F.2d 64, 86 (9th Cir. 1970) (Chambers, J., dissenting) (If rule change is called for, "let the Congress require it."); *Lynch*, 215 F.2d at 778 ("It may be said that . . . [m]aybe . . . [t]hose are legislative matters").

¹⁰⁸*Jackson v. United States*, 317 F.2d 821, 826 (9th Cir. 1963) (Chambers, J., concurring) (stating in full, "I am unhappy with the above result. But [the panel's] opinion convinces me that I must be unhappy with the statute which I think should be changed. And that, I suppose, is none of my business").

¹⁰⁹*Ibid.*

¹¹⁰*Pinkus*, 429 F.2d at 417 (Chambers, J., concurring) ("I suppose that [Supreme Court decision] requires us to put on our habeas corpus glasses and rule on this crummy motion picture for stag parties. And, so I concur"); see also *Alaska Airlines*, 217 F.2d at 297 ("But we have to take the law as we find it").

¹¹¹*GTE Sylvania*, 537 F.2d at 1018 (Chambers, J., concurring and dissenting).

Thus, Chambers thought that courts independently—without input from law professors, law students, or journalists—should decide cases and publish them for subsequent comment and discussion by the public. Nor was Chambers comfortable with members of the medical profession invading the court's province. In a creative and strongly worded dissent, he asserted his view that psychiatrists should play by the court's rules when in court:

If we were going to see a psychiatrist, I am sure he would not let us bring our own couches along. When the psychiatrists come over to see us officially and testify, there is no valid reason I can see that they should not do business on our terms. . . . But now we bend our knee to them.¹¹²

In addition to his particular history and views, Chambers was probably unique in two other respects. First, his speech impediment probably affected the sound of his writings. Chambers' opinions, along with his other writings, gave him opportunities to communicate without the pauses that slowed his spoken conversations. Those who stammer tend to "think a lot about words" and find great value in "the pleasure, the relief of being articulate on the page."¹¹³ This may be one reason that Chambers' opinions seem so personal.

Second, the place where he sat when he transferred his ideas onto paper probably also shaped his prose. The Ninth Circuit is geographically large, and Chambers liked to fulfill his travel obligations on a train. He even traveled across country by train. He said it gave him a chance to think.¹¹⁴ The train provided not only a means of transportation and protected time for contem-

¹¹²Wade, 426 F.2d at 86 (Chambers, J., dissenting); for non-opinion evidence of Chambers' commitment to judicial independence, see Judge Richard Bilby (law clerk to Chambers, 1958–59) in "Naming Ceremony" xci, civ (reporting that Chambers "thought that what counted was your independence and he would fight for that independence for everybody on the bench," and imagining that "50 years from now when some young lawyer comes into this courthouse and she asks the other lawyers, 'Who is Richard H. Chambers?' the ghost of every district and circuit judge who served in the Ninth Circuit is going to scream out, 'He protected our independence'").

¹¹³Ben Yagoda, *The Sound on the Page* (New York, 2005), 79–80 (quoting writer David Thomson).

¹¹⁴Judge John Rhoades, "Special Session," lxxvii, lxxxvi.



Judge Chambers said traveling by train gave him a chance to think.
(Courtesy of Eileen Chambers Woodworth)

plation; it also served as his writing study.¹¹⁵ This slow travel tracked his careful, deliberate drafting.¹¹⁶ Perhaps his steady progress across the expansive landscape of the western United States inspired his writing style, contributing to his ability to craft opinions that simmered with his personality.

CONCLUSION

Judge Chambers drafted prose that reflected his personality, his sense of humor, and his practical sensibilities. Chambers' writing style did not fall prey to his high professional status. Rather, Chambers remained faithful to his own personality and background, placing quirky prose in the volumes of the *Federal Reporter*. His opinions resonate with the idiosyncratic voice of a man raised in rural Arizona in the first half of the twentieth century. As Judge Wald has remarked, "We write what we are, and perhaps, more than others, judges are what they write."¹¹⁷ Chambers was a witty, casual man of the West. His opinions reveal that background and constitute an important part of his legacy.

This essay provides a peek at Chambers' opinion-writing style by piecing together a patchwork of his phrases. Reading quotations from his opinions is like overhearing bits of conversations. You can catch a few sentences, listen to the speaker's accent, and view the speaker's body language, but only for an instant. A full appreciation of Chambers' style and range requires that you join the discussion, that you read his opinions.

¹¹⁵See Judge Richard Bilby "Naming Ceremony" ciii ("He didn't like to fly in airplanes. . . . He literally circled the country in a roomette where he would write his opinions. All of you who know Judge Chambers, [you] know no law clerk wrote Judge Chambers' opinions. I can guarantee it, because nobody could write like he does. He would sit and handwrite each opinion, then every time the train would stop at a flagstop, he would put it in envelopes and give it to the conductor to mail. You could tell where he was because you'd start getting things from all the little towns around the United States. He thought that was the way you ought to work. He loved it, and he did it well"); see also Judge Dorothy Nelson, "Special Session" lxxvii, lxxxvii (citing Judge Thomas Tang) (noting that Chambers usually wrote his opinions "while he was on a train going to and from our various court locations"); Justice Charles E. Jones, "Special Session" xcvi ("He wrote his own opinions, often preparing them while riding the circuit on passenger trains that ran up and down the coast and over to Tucson").

¹¹⁶See Posner, "Judges' Writing Styles," 1430-31 ("[T]he impure judicial stylists generally take more pains over style than the pure stylists do. Unless one is a particularly gifted writer, it takes much effort to make an opinion seem effortless").

¹¹⁷Wald, "The Rhetoric of Results," 1415.

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- Brown v. U.S.*, 665 F.2d 271 (9th Cir. 1982).
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Prepared by Jackie Taylor-Elam.

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Neuschafer v. McKay, 807 F.2d 839 (9th Cir. 1987).

Hotel & Restaurant Employees and Bartenders Union, Local 703 v. Williams, 752 F.2d 1476 (9th Cir. 1985).

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Stockton Harbor Industrial Company v. Commissioner of Internal Revenue, 216 F.2d 638 (9th Cir. 1954).

BOOK REVIEWS

Ernest W. McFarland: Majority Leader of the United States Senate, Governor, and Chief Justice of the State of Arizona, by James Elton McMillan, Jr. Prescott, Arizona: Sharlot Hall Museum Press, 2004; 618 pp.; illustrations, notes, appendices, bibliography, index; \$29.95 cloth.

In this well-researched tome, James McMillan captures the life and times of a little-known but historic figure who helped shape Arizona and the nation. This definitive study is certain to bring new attention to Ernest W. McFarland, a practical and generally moderate politician, who has been eclipsed by fellow Arizonans Barry Goldwater and Morris and Stewart Udall.

The McFarland biography also is the fulfillment of a twenty-year labor of love, so it is not surprising that the author portrays the subject sympathetically. McMillan began to process McFarland's papers as a graduate student and, in the process, became an expert on the older man's life. Transitioning from archivist to author, McMillan used McFarland as his subject to write an award-winning article in the *Journal of American History* and to edit *The Ernest W. McFarland Papers: The United States Senate Years, 1940–1952*, before completing his dissertation.

McMillan then turned the dissertation into a well-organized, clearly written book. Along the way he worked with a host of experts on Arizona history and utilized a number of archival resources in Arizona and Oklahoma, as well as various presidential libraries.

McFarland, most remarkably, was the sole person ever to head all three branches of government at the state or federal level: majority leader of the U.S. Senate, governor of Arizona, and chief justice of the Arizona Supreme Court.

Born and raised in Oklahoma, McFarland earned a bachelor's degree before serving in World War I, after which he moved to Arizona, then in its seventh year as a state. The ambitious young man entered law school at Stanford in 1920 but returned to his adopted state to gain work experience, clerking for a firm whose senior partner, Republican Judge John C. Phillips, served as governor in 1928.

Elected to the U.S. Senate in 1940, McFarland was a Roosevelt Democrat. He made the national news for the first time when he defended the Hollywood film studios against

isolationists who attacked the industry for using newsreels to cover Nazi military advances and for producing films such as Charlie Chaplin's *The Great Dictator*.

McFarland also served as the father of the Servicemen's Readjustment Act of 1944 (GI Bill of Rights). More than any other measure, the GI Bill created the modern middle class by providing funds for veterans to attend college, buy a home, or start a business.

McFarland was defeated for reelection in 1952 by Barry Goldwater, a harbinger of an emerging conservative and libertarian Republican insurgence in the Southwest. Bouncing back, McFarland returned to public service as Arizona's tenth governor, winning election in 1954 and 1956. He sought to modernize a state that was moving toward its first million residents by focusing on civil rights, roads, schools, taxes, water, and welfare. The governor also updated the state's law code, rewriting it in layman's language so that it could be easily understood.

McFarland, first elected to the bench in 1922, returned to the judiciary after years in private practice as an elected member of the state supreme court in 1964. It was a time of tumult. One of his decisions—known as *Miranda v. Arizona*—was overturned by the U.S. Supreme Court and is forever associated with the debate over law and order.

President Lyndon B. Johnson, long a political ally, tapped McFarland in 1968, while he was a state supreme court justice, to serve on the National Commission on the Causes and Prevention of Violence. Despite a busy calendar and being in his seventies, McFarland regularly flew to Washington, D.C., for meetings.

For fifty years, Ernest W. McFarland engaged an ever-changing nation even as he sought to advance the interests of Arizona, helping to transform it from a geographically isolated territory to a thriving state in a dynamic and growing region.

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Navajo Nation Peacemaking: Living Traditional Justice,
edited by Marianne O. Nielsen and James W. Zion. Tucson:
University of Arizona Press, 2005; 223 pp.; notes, bibliography
index; \$35.00 paper.

Navajo Nation Peacemaking is a compilation of articles that describe the origins, nature, and advantages of a unique process for dealing with wrongful acts that, in the non-Indian society, would become the subject of adversarial criminal or civil proceedings. Under this system, disputes are referred to a tradi-

tional peacemaker who leads a consensual process for restoring harmony among the parties, their extended families, and their surroundings. As some of the articles reflect, Navajo peacemaking is both a return to tribal roots and a negative reaction to the system of justice imposed by the majority culture.

In the 1880s, the federal government established Courts of Indian Offenses to maintain order on the reservations and to "civilize" the Indians. When the tribes later took over the courts, they inherited the foreign system, complete with law-and-order codes designed in Washington, D.C. Former Navajo Chief Justice Robert Yazzie states in his introduction to this volume that, shortly after he became a tribal trial judge, he "got a nagging feeling that something was not quite right with the law [he] had learned." The "something" was the system of "vertical" justice, in which an authority figure presided over an adversarial system and assigned blame and punishment for a wrongful deed. In Navajo tradition, the wrongful deed is but a symptom of a larger problem—the loss of harmony among the victim, the offender, their extended families, and the entire universe. Thus Navajo people aptly refer to a persistent wrongdoer by saying that "he acts as if he had no relatives."

This volume promotes peacemaking as a system of "horizontal justice," in which the participants are involved as equals. Those participants are likely to include the victim, the offender, members of their extended families, and a Navajo peacemaker. The peacemaker is an acknowledged local leader, learned in Navajo traditions. He leads the group in a thorough discussion of the offense, the injury, and their effects on the harmony of the community. The peacemaker is not a neutral, but an interested party who will teach as well as listen to the participants, and who will invoke Navajo spiritual elements. The lengthy discussion is aimed at achieving a consensus and a plan for restoring harmony.

Navajo Nation Peacemaking presents a thorough exposition of the peacemaking process and its recognition by tribal court rule in 1982. The editors have done an excellent job of minimizing the organizational problems inherent in a compilation of articles written by different authors at different times. They have edited out nearly all repetition. They have unified the whole by providing not only a general introduction, but a commentary at the beginning of each of the volume's four parts: "The History of Peacemaking," "Peacemaking Concepts and Practices," "Peacemaking Analyses and Assessments," and "Conclusions."

Can peacemaking largely supplant the adversarial system? One or two articles seem to suggest this possibility, but most agree that the adversarial system must continue for many cases. One of the advantages of peacemaking is that it is

wholly consensual; that is why it works. But if an interested party balks, the matter must go back to the regular courts. One article, by Jon'a F. Meyer, analyzes peacemaking efforts in 110 juvenile cases. About 25 percent reported a "good outcome" and another 25 percent showed mixed results. The good outcomes were unquestionably better than anything the other process would have provided, for juveniles whose history suggested that they were lost causes. But about 40 percent of the cases reported "not a good outcome," largely because of the failure of the parents to participate.

The reader is likely to conclude, then, that peacemaking is a very valuable tool but may be confined to a minority of cases. Can it continue to succeed as the younger generation of Navajo moves farther from the traditional language and, perhaps, the traditional ways? Can it be adopted by other cultures that do not share the spiritual basis of the Navajo? The editors pose these unanswered questions. Navajo traditions have proved remarkably resilient, however, and it is hard to believe that Navajo peacemaking will not survive when its results are so much better than the alternatives. The editors of this volume have served us well by setting forth, in compact and comprehensible form, a description and analysis of the process.

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The Supreme Court under Earl Warren 1953–1969, by Michal R. Belknap. Columbia: University of South Carolina Press, 2005; 432 pp.; illustrations, notes, bibliography, table of cases, index; \$49.95, cloth.

With the exception of the Marshall Court era, no other period of United States Supreme Court history has attracted more scholarly attention than the Warren Court years. This is understandable for, in a relatively short time, the Warren Court reshaped American constitutional law. Studies of the Warren Court are voluminous. They are often highly partisan, with liberals hailing decisions that advanced equality and civil liberties and conservatives decrying the Court's unprecedented judicial activism. Also available are biographies of virtually every justice who served on the Warren Court. In view of this rich body of scholarship, one might question whether there is anything more of value to add to the discussion.

¹The views expressed herein are the author's and not those of his court.

Michal R. Belknap has answered that question in the affirmative with this ambitious study of the Warren Court. Relying on earlier studies and judicial biographies, along with extensive research in original sources, including the papers of key justices, Belknap has produced a comprehensive overview of the Warren Court that is an important and unique addition to the historiography. If a professor were to assign a single book as required reading for a legal history or political science course on the Warren Court era, this would be an excellent choice.

Belknap's study is noteworthy because it examines Earl Warren's tenure as chief justice on a number of different levels. First, the book gives the social and political context for the Warren Court's major decisions, a feature sometimes missing in works produced by lawyers. Belknap is a law professor, but he is also a legal historian who is adept at his craft. Second, the book includes biographical sketches of the justices who comprised the Warren Court, including the pre-appointment background of each and a discussion of the justice's jurisprudential views, to the extent that an individual justice held such opinions. This is a very valuable feature for readers unfamiliar with the personalities on the Court. Third, the book unmask the inner workings of the Supreme Court, showing how key justices tried to win over colleagues to their positions. It reveals a Court deeply divided by personal and ideological conflicts. This point is best exemplified in Felix Frankfurter's battle to stem the tide of judicial activism by trying to lure new appointees to his side and his ongoing disputes with Hugo Black and William O. Douglas over the role of the judiciary in the constitutional system.

In Belknap's view, "the true Warren Court" emerged after Frankfurter's retirement. The liberal justices who dominated the Court from 1962 to 1969 defined its role as a "constitutional court," one championing equality and individual rights. Belknap relies on statistical evidence relating to the Court's caseload to make his point. He reveals how constitutional law cases comprised the major portion of the Supreme Court docket during these pivotal years, while the percentage of cases relating to subjects such as taxation and admiralty fell from earlier levels. The Warren Court used the Constitution to promote a liberal agenda favoring social justice and equality and, as Belknap puts it, to advance the interests of "America's underdogs."

A major strength of this book is its organization. Most of the chapters address the Court's work on an issue-by-issue basis. These chapters cover constitutional law areas in which the Warren Court had its most lasting impact, including school desegregation, reapportionment, criminal procedure, church-state issues, and free speech. Each of these chapters provides

the historical background of the specific issue and gives a chronological explanation of how the justices struggled with these problems. Especially valuable is the author's examination of the judicial opinions, including concurrences and dissents, to show how the Supreme Court advanced the cause of individual rights. Belknap's use of internal court memoranda reveals the give-and-take between justices as they tried to sway others to join their opinions. Each chapter is a self-contained mini-history; any instructor of a legal history or a constitutional course would have a hard time finding a more comprehensive historical and doctrinal overview of the topics.

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Sunset Limited: The Southern Pacific Railroad and the Development of the American West 1850–1930, by Richard J. Orsi. Berkeley: University of California Press, 2005; 615 pp.; illustrations, notes, index; \$29.95 cloth.

American railroading has a cherished and romantic hold on the American psyche. Extolled in song and film, railroads were the preferred means of personal travel, bringing both the sightseer and the settler to new opportunities and challenges in the American West. In this context, railroads maintain a place in our imagination as well as in the history of the West.

Sunset Limited is a richly detailed account of the Southern Pacific Railroad's activities and approaches to the opportunities that awaited the emerging western United States. Using the period 1859–1930 as his basis for this work, Richard J. Orsi, a professor emeritus at California State University, East Bay, reviews sources and materials that flesh out the SP, its predecessor railroad—the fabled Central Pacific—and other railroads that were merged, acquired, and developed into the SP over the years.

In his preface, the author relates that the Southern Pacific Company granted him “complete, unrestricted, and unobserved access to all documents and manuscripts,” and that the research for this book was “done mostly in rarely used primary source materials.” He makes efforts to depict the Southern Pacific as “identifying its corporate interests with the public welfare and promot[ing] more organized, efficient settlement, economic development, and more enlightened resource policies in its service area.” The author does concede “some contradictions and inconsistencies of policy and action” in the railroad's implementation of its corporate interests.

These views are hardly the ones usually taken by generations of people who have read sources such as Frank Norris' muckraking novel *The Octopus* (1901), newspaper editorials critical of SP's "policy and actions," and journals depicting ordinary activities of settlers in early California and western America. To be sure, the author includes scores of these documents in this readable book but oftentimes takes a contrary view of the commonly held histories of the Southern Pacific as a monolithic, soulless corporate entity and, as indicated above, generally provides the Southern Pacific view and explanation of events as well as SP policies and practices.

The Sunset Limited, long the passenger-carrying flagship of the Southern Pacific, began its run as a through passenger train from San Francisco to New Orleans along what early SP public relations employees described as the "Sunset Route" in 1883. The Sunset Limited, as the author points out, is a poignant symbol of a great railroad as well as a harbinger of progress. Thus, the journey from the West Coast of the United States to a deep-water port on the Gulf of Mexico tied the SP and the West into the national as well as the international grid. The train, dubbed the Sunset Limited in 1894, was a decade old before SP management gave it an official title to compare with other renowned railroad routes, such as the City of Los Angeles, the Super Chief and the Twentieth Century Limited. Thus the route becomes a metaphor for the railroad.

In recounting the history of the SP, Orsi relates the events that led up to the acquisition of the railroad by its parent, the Central Pacific Railroad, and, in turn, the events and personalities that led to the merger of the CP into the SP in 1868. In detail, Orsi describes how the "Big Four" owners of California railroad fame—Collis Huntington, Leland Stanford, Charles Crocker, and Mark Hopkins—came to join Theodore D. Judah, a visionary engineer who had hopes of creating a railroad that would cross the Sierra and Rocky Mountains in order to connect the West and Sacramento with the eastern United States.

In relating this corporate odyssey, Orsi depicts the creation of the railroad interests and the machinations that led to the building of the railroad, as well as its operations, by focusing on SP practices and policies on the land that it traversed, including land grants, the SP interests in water rights and usage, the impact that the railroad had on agriculture (and vice-versa), and finally the conservation of resources that were central to the efficient management of this great railroad system. Pointing to other research, notably Alfred D. Chandler's studies of the impact of western railroads and, in particular, the SP, Orsi describes the railroad as a vanguard of economic modernization in the 1870s and 1880s. The author makes good use of

this research in weaving the often complicated history of the immense economic engine that the SP became.

Land settlement was a primary goal of the architects of this rail system from the beginning, for as the author points out several times, the railroad was in severe economic straits on many occasions and one primary source of revenue for the financially struggling railroad was the sale (or as often alleged, the withholding of "granted" properties to gain a higher price) of lands allocated as land grants. By raising funds from the sale of its allotted acreage, the company could pay off its bondholders and use the capital to finance expansion. In particular detail, Orsi depicts the SP as favoring the small landholder/farmer over allocating larger tracts to more wealthy interests.

The author points out that these policies, while mandated at the highest levels of the corporate structure, were extraordinarily well managed by a number of senior managers who were responsible for the day-to-day operations of the railroad. It is in this detail, though particular to the events as they unfold, that meaning and shape are given to the people the railroad served and impacted. As expected, when scarce economic resources are in play, the competing interests and associations (political, social, and economic) formed by these groups frequently clash, and resolution, when possible, is explored. Through explanations of the use of the land by farmers, the activities of miners, and the need for cohesive practical water policies in the usually arid West, the author discusses the controversy the railroad created, either by its policies and practices or by its advocacy of certain groups over others.

As expected in a book of this broad reach, the author notes the discrepancies he found in his research on the company and the information that appeared in the popular press and journals of the time. In this regard, the voluminous footnotes are quite helpful to the reader. Concerning conservation of natural resources, the railroad's managers sat on many commissions and boards and ruled or voted on policies that were of great economic consequence to the railroad and its extensive corporate subsidiaries. In fact, as the author points out, sometimes it was difficult to tell whether SP was fostering public interests or its own corporate interests, since the company's employee manager sat on the boards of public governing bodies such as state lands commissions.

The activities of William Mills are illustrative. An editor of the *Sacramento Record-Union*, he was a confidant of Collis Huntington and at various times land agent of the Southern Pacific, where he directed acquisitions and development and determined the use of SP properties. Since the *Record-Union* was owned by the Pacific Land Improvement Company, a wholly owned subsidiary of SP that advocated for SP interests, it was

difficult at times to determine when Mills' editorship conflicted with his "private" governmental activities. In this respect it is difficult to agree with the author when he argues that the careers of these officials "demonstrate that they were people who identified with social and economic progress in their communities and regions and who viewed railroad employment as another dimension of that larger task." Here it would have been helpful to look into potential conflicts of interest. Nonetheless, Orsi's detailed portrayals of the personalities of these important managers are useful. How they served the community as well as their corporate directors in other regards is revealing and helpful to the reader.

Land and its development are, of course, closely connected to water and agriculture. By focusing on these three important areas, the author is able to delve deeply into the economic and environmental aspects of the railroad. The SP was frequently on the verge of insolvency; that well-placed friends and interests often came to its rescue, and that public lands disbursed to the SP translated into private benefit perhaps was a small price to pay for the "economic modernization" that the SP and other railroads brought to the communities they served.

The benefits that the author describes are indeed meaningful and long-lasting; he portrays in generous detail the effects of labor relations, the community contacts, and the difficulty in bringing the profit-oriented business practices of the Southern Pacific in line with community expectations. Of special note is the author's treatment of an incident that occurred in 1880 in the Mussel Slough District, near the present city of Tulare: alleged squatters challenged the SP's interests, and several of the squatters paid dearly—with their lives. Orsi recounts the largely "peaceful efforts" of the railroad to ameliorate the tension by encouraging the squatters to purchase land at a reduced price and on liberal terms, but to no avail. Most of the squatters rejected the company's offers. In time, the SP went to court and received eviction orders, but while the railroad attempted to serve the orders, a "gun battle between the rival land claimants ensued." Five squatters died and two SP "land buyers" were mortally wounded.

The ensuing litigation and the eventual resolution of title to the contested properties are of particular interest, given the notoriety of the event and the negative light placed on the SP in the public (and private) retelling.

The incident at Mussel Slough is but one of the many interesting vignettes described in *Sunset Limited*. The financing of the SP's early operations, the formidable engineering and geographic challenges, the nascent regulations of the railroad's interests, and the widespread economic interests of its subsid-

aries reveal a history not just of the Southern Pacific, but of western America as well. Although the book focuses primarily on California, it also addresses the company's interests in Oregon, Nevada, and the New Mexico and Arizona territories, all with their own specific challenges.

Professor Orsi has contributed many years of research to this history of the Sunset Limited and many other SP accomplishments, as well as its efforts to settle the West. The general reader will not be disappointed, nor will the researcher; for both groups the footnotes (180 pages worth) will provide a valuable resource for delving more deeply into the SP. From its inception in 1860 as the Central Pacific, to the driving of the golden spike at Promontory Point, Utah, on May 10, 1869, to September 11, 1966, the last day the Southern Pacific functioned under that name, the company impacted every American "Westerner" in one way or another.

The locomotive engineer on the very last Southern Pacific freight train that pulled into the yards at San Luis Obispo sent out a parting message: "This is the last sunset for the Southern Pacific. Good night, Southern Pacific, and thanks for the memories." Indeed, this was a fitting closure to a great chapter in American railroading.

James P. Spellman
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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.

Allan, Chris. "Symbolic Acts and the Claiming of Alaska." *Alaska History* 21:1 (Spring 2006).

Anderson, Robert T. "Indian Water Rights and the Federal Trust Responsibility." *Natural Resources Journal* 46 (Spring 2006).

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Denson, Andrew. "A Few Unreasonable Proposals: Some Rejected Ideas from the Cherokee Allotment Negotiations." *Chronicles of Oklahoma* 34 (Winter 2006/2007).

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Hernández, Kelly Lytle. "The Crimes and Consequences of Illegal Immigration: A Cross-border Examination of Operation Wetback, 1943 to 1954." *Western Historical Quarterly* 37 (Winter 2006).

Hietter, Paul T. "No Better Than Murderers": The 1889 Canyon Diablo Train Robbery and the Death Penalty in Arizona Territory. *The Journal of Arizona History* 47:3 (Autumn 2006).

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