NINTH JUDICIAL CIRCUIT HISTORICAL SOCIETY

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ORAL HISTORY

William E. Davis

An Interview Conducted by

Terry Nafisi
1994

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ORIGINAL

OFFICE OF THE CIRCUIT EXECUTIVE

UNITED STATES COURTS FOR THE NINTH CIRCUIT

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Interview of:

WILLIAM E. DAVIS

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San Francisco, California
Wednesday, September 21, 1994

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SAN FRANCISCO, CALIFORNIA, WEDNESDAY, SEPTEMBER 21, 1994

MS. NAFISI: Anyway, we should probably turn our attention to the past, the past, the distant past, and I don't know, for the record or whatever here, I am Terry Nafisi and I am here with William E. Davis, former Circuit Executive, and I think today is what, be Wednesday, September 21st.

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

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

MS. NAFISI: Hmm.

MR. DAVIS: She advised me that the Ninth Circuit was looking -- I'm not sure if this was the exact timing, but somewhere in that time frame was looking at -- was in

the process of recruiting a circuit executive.

I then arranged to make a trip here, and I probably have the dates a little off, but I think it was in the month of May, about six to eight weeks later. So, I came to San Francisco for a week and interviewed for a full week with --

MS. NAFISI: Was the interview with what, Judge Browning?

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

I also interviewed -- oh, I'm drawing a blank -- one or two other judges and I cannot recall who they were. I saw Judge Browning numerous times during the course of that week, and I actually saw Richard Dean, who was the Clerk of the Court at the time; I did not know but had been the primary applicant for the position, so I was unaware of background.

So, I believe I was here for about four days, at least four days.

And I left and went back to Kentucky where

previously I'd been the State Court administrator before going to Israel, '75 to '79, saw the chief justice. And I also had a job interview with the Public Utilities Commission and I was offered the job as executive director of the Public Utilities Commission in Kentucky; and then the chief justice said he would like for me to come back.

So, this was an interesting experience, because I left San Francisco saying -- well, first off, there was no expression; I did not know what the wishes or thoughts of the court were.

And we had a home in Kentucky; our belongings were stored in a warehouse in Kentucky, --

MS. NAFISI: Yes.

MR. DAVIS: -- and so when I left Kentucky and got on the plane to fly back to Israel to see my family, it was pretty clear in my mind, the simplest thing to do was just go back to Kentucky. I mean, you got off the plane, put stuff back in the house and you're in business.

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

MS. NAFISI: (Laughter.)

MR. DAVIS: -- at that point, and we had a --

MS. NAFISI: The four years that you were court

administrator there were her first experiences with living in Kentucky?

MR. DAVIS: No. I finished law school there --

MS. NAFISI: Oh.

MR. DAVIS: -- when we came back from Chile in the early seventies. So, she wasn't anxious to return to Kentucky would be an understatement.

So, in any event, I got back to Israel and it seemed to me -- and in fact, I'd made a preliminary commitment to the chief justice that we would come back. She was quite distressed.

About four days later, or maybe a week later, I can't be for sure, Judge Browning called me and said that the court had voted to offer me the job as the circuit executive. And I said, well, you know, I had not heard and I did not know, and I had in the interim given the Chief Justice of Kentucky my acceptance to come back, and it had already been announced publicly.

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

MS. NAFISI: You, of course, being in Israel.

MR. DAVIS: Yes, of course. And I had no idea what time it was here because it was obviously -- I think it

was late afternoon in Israel.

In any event, we talked at length about why it would be a wise thing to come here and not return to where I'd been before, the sum and substance of it was; that was his position, and in the course of that, he made a number of observations about why working with the Federal Courts was a unique opportunity and why the Ninth Circuit was the place to do that.

Obviously he was persuasive because I accepted and I had to find a way to graciously get out of all the other commitments. So, we arrived here in July 1981, and I think it was -- well, I've forgotten the date, but somewhere towards the middle of July.

MS. NAFISI: Um-hmm.

MR. DAVIS: And I remember walking in the door, going up to his office in that spectacular conference room in front of the fireplace, --

MS. NAFISI: Right.

MR. DAVIS: -- seated in one of these enormously thick, heavy leather-bound chairs and having him look to me and saying to me, I want it to be clear, if this circuit splits, it's your fault.

MS. NAFISI: (Laughter.) Oh.

MR. DAVIS: And I thought -- I didn't even know --

MS. NAFISI: And otherwise, welcome to the Ninth

Circuit.

MR. DAVIS: Well, he has this inimitable way --

MS. NAFISI: Yes.

MR. DAVIS: -- of communicating real clearly what he wants.

MS. NAFISI: Yeah.

MR. DAVIS: And I didn't even know what he was talking about. I hadn't a clue.

MS. NAFISI: Yeah.

MR. DAVIS: It didn't mean anything to me.

MS. NAFISI: Yeah, I know.

MR. DAVIS: And I thought, well, what is it? What am I to -- what does this mean? What am I suppose to do?

Well, I always appreciate the clarity and candor that I think our relationship enjoyed, and that was the beginning of what I would consider a very fruitful five-plus years of working with the Ninth Circuit.

MS. NAFISI: How did you actually get started with a career in court administration? I mean, when you got started, it wasn't even really called a career, was it? It was just --

MR. DAVIS: It was an accident. I finished law school. After having worked with the Peace Corps about five years, five or six years, we moved west. I tried being a lawyer in a tiny town. I wanted to be a benevolent dictator

in a small town; and I went crazy after six months of doing divorces and probates and minor crimes, and I said, I couldn't -- if my life was -- if this was the rest of my life, I will die. I can't stand this.

So, we literally got in our car and drove to California, and I came to San Francisco and my immediate boss in Chile had been a lawyer here.

MS. NAFISI: Hmm.

MR. DAVIS: And he introduced me to then the director of the Administrative Office of the Courts of the State of California Ralph Kleps, and I had an interview, and dates are a little foggy now but it was in the spring of '72 or '73, and he offered me a job to do two projects which were funded by what was called the LEAA.

And I, of course, I hadn't taken the California bar, so I -- a job was a job.

MS. NAFISI: Right.

MR. DAVIS: I had a family and children, so this was something that I took up, and I found in working there that it was -- provided a nice marriage of two areas of interest, the law and administration, --

MS. NAFISI: Um-hmm.

MR. DAVIS: -- that I didn't really find in practicing law, and it gave me a chance to, I think, bring some of the things that I -- I guess I consider that are most

enjoyable to me, is to look at systems rather than just one case at a time.

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

MS. NAFISI: They're still --

MR. DAVIS: And those issues --

MS. NAFISI: -- undergoing those same studies over there.

MR. DAVIS: Well, those issues are enormously complex, they're difficult, and -- but it was a rich experience. I enjoyed it.

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

Well, this is an opportunity of once in a lifetime; these things don't come but once, so with some significant persuasion, I convinced my wife and children to go

back to Kentucky, which we did in 1975.

And then from '75 to '79, we had -- well, it was the most demanding period of work in my entire life. It was unbelievable. It was politically tense, highly demanding. We eliminated 900 judges' jobs and about 3,000 clerks, and literally cleaned the slate and started all over and built a brand-new system.

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

MS. NAFISI: But like it seems like most people that may, say, be roughly of our generation, we just sort of, by mistake, wandered into the judicial administration field almost.

MR. DAVIS: Well, I think two things coincided.

MS. NAFISI: Coincidence.

MR. DAVIS: One is simultaneously, and here you have to recognize Chief Justice Burger's vision and leadership.

MS. NAFISI: Um-hmm.

MR. DAVIS: He really altered the discussion in the United States with respect to the organization and structure of courts. It was his leadership and his insistence that there needed to be created corollary administrative functions that supported the judicial function, and his whole effort at creating the Office of Circuit Executives, creating the Institute for Court Management --

MS. NAFISI: Um-hmm.

MR. DAVIS: -- coincided with this recognition that justice is an incredibly complex enterprise. It requires all manner of disciplines, not just the law, and the organization and structure of courts perhaps is one of the most complex enterprises in any society, and to do it well, requires lots of different -- more diversity than necessarily is bought by the lawyer and the judge.

And so it was a serendipity, is the only way I could look at it, it was just -- I just happened to be here in the early seventies when these things began to effloresce.

MS. NAFISI: Um-hmm. And, of course, the LEAA funding created so many jobs that for many of us was the first entre into --

MR. DAVIS: I think --

MS. NAFISI: Made it possible.

MR. DAVIS: I think what LEAA funding did is it

corroborated Justice Burger's assertions and it forced judicial systems to discover more about themselves than they were previously aware of, --

MS. NAFISI: Um-hmm.

MR. DAVIS: -- and in so doing, they began to recognize that this function warranted a greater attention, and so we began what I consider the last 20 years or so of the real debate about independence.

I mean, we've gotten one thing, the debate of independence of the judiciary started with the notion of noninterference in decision-making about cases and it has now evolved to the point where independence is really a discussion about noninterference is subsumed in it, is that as a branch of government, a co-equal branch, do you operate yourself in a way sufficient to draw attention to your confidence in your ability to manage your affairs, and independence has been -- has become more broadly defined than it once was and I think the advent of professional people who work in that area has contributed to that.

MS. NAFISI: Now, when you joined the Ninth Circuit, I think there were still probably a majority, I think it would be fair to say, of the clerks and circuit executives, and especially perhaps the Court of Appeals, a lot of clerks were more traditionalists. They weren't people of the more modern -- they weren't graduates, let's

put it this way, of the State Court systems that much.

You were sort of one of the first tidal wave of people just coming in, we were starting to see some changes there and really started to see more recognition on the part of the judges of professionalization of the field of court administration. And almost concurrent with that recognition, sort of an uneasiness perhaps even on the part of the judges with regard to the role that professional court administrators are to play. I think it probably harkens back to the old policy administration dichotomy that so dots political science literature, but in the judiciary, it sort of takes on a special, special twist.

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

MR. DAVIS: Well, I would say the mature leader has nothing to be anxious about but welcomes the participation of those who are informed and knowledgeable about how things work.

Those who are less certain about themselves and their understandings have a tendency to be more resistant

and are more anxious to put people in -- and define their positions in much more limited ways.

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

And so the role that evolved in my profession, my early life was as much policy as it was administrative, and I never got lost in the dichotomy of the discussion until it came to the Ninth Circuit where there were a number of members of the court who were perhaps unfamiliar with people with my background and/or who were jealously guarding what they perceived to be their prerogatives.

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

And this is something for which I've always been

grateful from him, for working with him is that he was always open to that kind of dialogue; that was never an issue of discussion with him and my interfering in the policy-making process. Because actually, policy making occurs because people are challenging thoughts and understandings based on their experience --

MS. NAFISI: Um-hmm.

MR. DAVIS: -- and it is weakened when those individuals who have something to contribute are excluded from the process and it may in fact lead to erroneous conclusions if the information isn't provided that's adequate or is necessary to provide a strong policy position.

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

I don't think that's healthy. I think it's like a cycle. It will go through its cycle. It will -- and as I said before, I think the mature leadership will recognize that that's not a healthy way to do business and that ultimately it will come back and they will welcome -- they being the judges, will welcome the participation of people who

have got some things to say.

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

So, I think the court administration business is going through what I would -- sort of redefining itself at this point. We also see --

MS. NAFISI: Growing pains perhaps.

MR. DAVIS: Well, perhaps, and then actually, I think you see it even more so, because in many cases, I find judges actually enjoy the court administration part more than they do the judging part, and so you see this whole motion now of not what was originally postulated, that was that administrative people would assume these roles, now you see proposals like the chancellor for the Federal Courts --

MS. NAFISI: Um-hmm. Right.

MR. DAVIS: -- and other somewhat similar positions where judges would be the -- would assume these roles. And I think that's -- well, I don't have an opinion. If the people have the skill, it makes no difference to me, you know, what their background is.

Being a judge doesn't necessarily qualify, but Federal Courts are peculiar, you either -- in this sense, I think this is where the State Courts are much more

egalitarian, the Federal Courts are much more status conscious and hierarchy conscious; you're either an Article 3, or if you're not, you're something less than and therefore access to the upper stratosphere is limited.

MS. NAFISI: Well, you mentioned the difference between the State Courts and the Federal Courts. I know myself, I felt quite a culture shock moving from the State Courts to the Federal Courts and perhaps maybe doubly so for you coming from Kentucky where you had been directing a major renovation, reinvention virtually of the entire Kentucky court system.

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

MR. DAVIS: Well, I think the dominant one was the omnipresence of the Administrative Office of the Courts in every little detail of activity to the point that it created, perhaps not by design but certainly by de facto, a complete state of dependency on the AOC for every aspect of day-to-day management virtually, not recognizing that there were competent people who perhaps even had better and more appropriate experience than many of the people in Washington, or not recognizing that these judges who were

constitutional officers with a vast array of experiences were perfectly capable of managing some of these things themselves.

The judicial conference and the AOC had wrapped themselves in an elaborate set of policy and procedures based on the presumption that you couldn't trust anybody outside the Potomac River, --

MS. NAFISI: Um-hmm.

MR. DAVIS: -- and it was unbelievable, it was astonishing.

It was incredulous to someone who had actually come from a jurisdiction where we eliminated judges because of corruption because we couldn't figure out how to clean them up, and the Federal Courts have never had that reputation, that you come to a system organized and constructed on the basis that not a soul outside Washington could be trusted with a single cent, this was phenomenal to me.

Secondly, an elaborate statutory construct had been developed, i.e., under the label of judicial councils and US Judicial Conference, and this whole structure was premised on the notion that people could participate in development of policy and direction. But -- well, I'll have to say this, the principle was abided -- was adhered to in written form but not in substance. It was really a structure that was bent on control of the agenda by a very narrow

group of people who intended to control the information available to the committees and who intended to control, therefore, the resulting policy development.

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

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

What had occurred is that, I guess, because the councils -- I know, because the councils had been weak, ineffective institutions -- I don't mean the Ninth Circuit only, I mean all of them, they were replaced by an elaborate committee structure that supported the Judicial Conference and the councils were set on the periphery and were not even

conceptualized as being integral to the day-to-day administration.

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

We represented 25 percent of the country and it was our view -- I'm saying our because I think this was the view shared by Judge Browning, was that the strength of the system was dependent largely on the degree to which the smallest unit, i.e., a Bankruptcy Court or the next unit up, the District Court and/or the Circuit or the Ninth Circuit, took initiatives to make things better. It wasn't dependent upon some meeting that occurred twice a year called the Judicial Conference where they took votes on things, it was what you did every day and how you initiated change and responded to the needs of justice at the local level.

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

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

MR. DAVIS: Well, I think you could characterize work as what you could characterize it. It was a lot of work.

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

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

MS. NAFISI: I think you met every day, did you not?

MR. DAVIS: Every day. Absolutely every day between 9:00 and 9:30 as a norm, and because the list of things we'd got to do, or he wanted done began to grow, we could never quite get a system that we would be completely satisfied with of following up. So, the only way we could

do it is, he began to assign to his chief law clerk the task of sitting in in the meeting and keeping the ongoing list. Because the time it would take me to inform him of all the things I had done that we had talked about the day before would take a couple of hours to write, and who had the time to do that, so the law clerk filled that role.

I don't remember, in all honesty when I left here, what the -- the list probably had 80 items on it at a minimum, and they ranged from phenomenally significant to mundane, but I think the list was simply symptomatic of the range of concerns that he had, a very great detailed concern about the power of a light bulb to the concern about how do you influence policy with respect to the Criminal Justice Act. So, our discussions would range from that.

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

(Laughter.)

MR. DAVIS: I remember with great clarity the timing meters and the search for the perfect timing meter. There --

MS. NAFISI: I think they finally found them.

MR. DAVIS: Well, I'm elated that they found them, but that was not -- that one never got on my front burner. I tried to get it on Franco Mancini's front burner.

This was one of these things, you're

simultaneously -- I remember, you know, we're trying to keep GSA on schedule with this infernal project in Pasadena, which is beset with the number of opinions is relevant to the number of participants, and policy is decided by who spoke last, and the decisions of committees that are changed by the chair who didn't like them or whatever, and those issues of trying to find the money and keep that project going, and/or the project in Seattle, and/or -- and then the timing meters, you can see -- my heavens to Betsy.

(Laughter.)

MS. NAFISI: All things great and small.

MR. DAVIS: Everything had its place.

Yeah, it was a delight. It was always fun to go to the Judicial Conference with Judge Browning. He was always the best prepared judge at the meeting. There was just simply nobody in his league.

And part of that was because of the process that we devised here. We asked all of the Ninth Circuit committee members who served on Judicial Conference committees to give us information. We, asked -- we, of course, had formed a parallel structure, largely, of Ninth Circuit committees so as to have the ability to articulate views from the Ninth Circuit perspective on similar questions, and he had a briefing book of equal size to what the Judicial Conference book was, which was usually about eight inches thick.

So as he would sit in the meetings, he could call up and say, well, in Idaho, it means this or in Oregon it means that, and no one, no one at the table would have a command of information like he did, and consequently, his influence at the judicial conference was disproportionate to one person's vote of equals --

MS. NAFISI: Um-hmm.

MR. DAVIS: -- because he was better informed and usually we had already talked through what the position should be. So -- and often when there were, let's say, more knotty or complicated issues, we would go a few days in advance and do some lobbying with the AOC staff and/or the committee chair so as to set the stage for whatever the position would be.

And we always visited Ninth Circuit senators. Was a normal process of just stopping by and saying, hello, how are you? We're doing fine, how about you? And this was all a part of the grand political strategy of keeping friends and not creating enemies so as to not divide the circuit.

So, we had -- well you went to Washington, you know -- you didn't -- the only time you rested was between 10:00 at night and 7:00 in the morning. It was a full agenda. It was always rich and interesting and I think, therefore, we were always a little more effective than some of our other counterparts.

MS. NAFISI: You mentioned the Ninth Circuit committee system; that was part of, really, the overall governance structure that Judge Browning and yourself set up as part of the modernization, I guess, of the Ninth Circuit Judicial Council.

MR. DAVIS: Um-hmm.

MS. NAFISI: You know, what really did you and Judge Browning hope to accomplish by that, and do you feel it really met, that structure met its purposes?

MR. DAVIS: Well, there were some very clear goals.

First off, it's recognized in professional organizations, professional people respect and adhere to policy development when they participate in it.

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

And thirdly, the idea behind the Judicial Council was that this was a body who took its role seriously as to make Federal Courts work better in its geographical area.

And so the concept, I remember writing the memo in 1982 suggesting that we build a parallel committee structure, where appropriate, and that we engage as many possible people in the process of governance so as to have in all the

courts someone who could say, well, I was at the committee meeting or I was on the committee that did this work, so they would be the spokespersons at the local level on what was being discussed and developed.

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

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

So, we set about doing it, and then we complemented that with really strengthening the role of the annual -- by creating and encouraging the annual meeting of the different associations, whether it was the magistrates or the bankruptcy judges, or the district clerks or the bankruptcy clerks, or the federal -- the chief judges of both, all with the idea that if these folks had a role, not a social role necessarily but a role in governance, then we had to encourage them to take leadership and initiate change

and identify issues of concern, and then on that basis, identify things that the Council ought to do in the Ninth Circuit or propose for the national level.

MS. NAFISI: Now, during that time, the role of the Court of Appeals in the governance of the Council and in its relationship to the Circuit, and certainly to the circuit executive underwent some significant changes.

MR. DAVIS: Oh.

MS. NAFISI: What are your recollections about those changes and have they evolved in the way that you would have liked to have seen them evolve?

MR. DAVIS: Well, I remember one of them was a judge who I shall not mention, wanted to spend $13,000 or $14,000 on a desk, a Court of Appeals Judge in Los Angeles, and this matter went to the Council. I remember this judge in the court meeting going through a meltdown, raising his voice and asserting that this was an infringement and that the Council shouldn't be involved in these things because heretofore, those things had been dealt with but the -- the Circuit and the Council were the same.

MS. NAFISI: You mean the Court of Appeals and the Judicial Council.

MR. DAVIS: Court of Appeals were the same institution until they split --

MS. NAFISI: Um-hmm.

MR. DAVIS: -- by a statute. And the Ninth Circuit, again under its leadership with Judge Browning, decided to create a council with equal membership of district judges and circuit judges and remove this administrative role from the Circuit.

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

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

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

I don't know that I -- I think -- I don't know that I think that -- I can't articulate whether it's gone as

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

MS. NAFISI: You mentioned that when you first visited with Judge Browning upon your arrival from Israel, --

MR. DAVIS: Um-hmm.

MS. NAFISI: -- his opening word were, if the Ninth Circuit splits, it's your fault. Well, clearly the Ninth Circuit didn't split on your watch. Do you consider that then your greatest accomplishment? What things do you really feel good about with regard to your legacy with the Ninth Circuit?

MR. DAVIS: Well, I think the most important thing was that I think we succeeded in getting a lot of people involved in trying to make the Federal Courts the kind of institution that they wanted to work in, --

MS. NAFISI: Um-hmm.

MR. DAVIS: -- and I think in that sense, the participation of lots of people in this process was a significant contribution. And I don't take credit for it, I just think we recognized that need and found a way to give

an expression to it.

I think in that context, the other thing that we did was, we proposed this decentralization of the budget process, and I remember the meeting at the Hotel Del Coronado of the Judicial Council meeting, and then-budget director Ed Garabedian was present, --

MS. NAFISI: Right.

MR. DAVIS: -- and this was debated. And I thought he was going to have a heart attack, he was so distressed over it.

The Council voted to proceed with making the recommendation that every effort be made to find a way to delegate greater responsibility to District Courts and give greater discretion to the Circuit and District Courts to see -- oversee their expenditure of funds, and that appropriate mechanisms be put into place to recognize those that had been effective in managing their funds, that they would be rewarded appropriately by giving some discretion over expenses.

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

MS. NAFISI: That was sort of a conflict. It

wasn't -- I mean, inasmuch as, really, Justice Burger himself was almost the Roscoe Pound of his era in terms of bringing about a new era in court administration and yet with some other things, he was very traditional in his view about court governance.

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

I remember -- well, anyway, I remember several conversations, once in Judge Browning's office when Chief Justice Burger called. Actually, I remember one day -- this probably shouldn't go on the tape, but he called irate over we had approached a member of the Ninth Circuit who was on a Judicial Conference Committee for a draft of a report, and this person, I guess for whatever reason, had let it -- had called the chair of the committee to see whether he could release it.

MS. NAFISI: Um-hmm.

MR. DAVIS: Now, this strikes me as a very strange process. For this is, we're all in the same U.S. Government, we're not fighting each other.

These are all constitutionally-confirmed officers, all of whom have the interest of the system at heart, and yet the system is designed so that you can't tell each other what you're talking about, what you're thinking about that might affect your own lives. This was amazing.

Well, anyway, he, I remember, expressed his views very strongly about what was the Ninth Circuit doing and whatever, who did we think we were, trying to influence these things.

So, I guess -- I mean, I think it's a natural tendency when you're the head of the system, you want try to control the outcome of things and manage things, and then you see a maverick like us, or perceive us as a maverick where we think we have something valuable to contribute and we're going to try to do our best to add our salt and pepper to the mix.

But, well anyway, long story short, as you know, the funding business has now radically changed after a pilot study and I think --

MS. NAFISI: You're talking about budget decentralization.

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

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

MR. DAVIS: Well, I think, you know, the Federal Courts don't live in a vacuum. The rest of the world has learned that you have to learn to draw -- you need to learn to define policy at the national level and take great strategic decisions, but ultimately it's wiser to leave some of the tactical decision-making to the people closer to the ground --

MS. NAFISI: Sure.

MR. DAVIS: -- and that this is really a reflection of that process.

MS. NAFISI: Do you feel then that, you know, setting up this system by which people could participate, that that then really was your greatest accomplishment there while you were with the Ninth Circuit? And conversely, if that is or is not the case, what was really the greatest challenge that you faced?

MR. DAVIS: Oh, gee. I don't know that I'm the best person to evaluate what I did, so I probably -- I know that is the area where -- well, let me come back and answer that two ways.

In my professional development, I see three patterns. I see one pattern which was my years in Kentucky which I really thought once you had -- you had to have a certain kind of organizational structure, and once that was in place, the systems tended to sort of right themselves and work reasonably well.

Then I came to the Ninth Circuit and I thought, well, no, phooey, it's not the system, it's really the process. You've got to have processes that are in place that are consultative in nature and facilitate exchange and then processes that motivate people and things of that nature.

And third, I have sort of moved from that to now where I see the real issue is the people, and so really the effort has to be fine.

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

foster what I would consider the necessary self-critical attitude which you need in any institution.

And so the strategy should be to find out who's who, because the no people will be the loudest, they always are. They've always got a reason why something can't be done. I mean, if you've heard it once, you've heard it 800,000 times, if it ain't broke, don't fix it and --

MS. NAFISI: Absolutely.

MR. DAVIS: -- my rejoinder to that is, you haven't looked close enough, because there isn't any human activity that it works so well that it can't be improved upon. So, the challenge then is to create the capacity to say, well, let's reevaluate, let's look at it.

That's something that Judge Browning and I shared, and I think because of that, we had this mutually-beneficial working relationship.

So, I would say, if you can foster those -- in some way have helped or fostered the participation of people in the governance of the system so they took ownership, they didn't feel like they were dependent on someone else for their decision-making and that they felt like this was the system that was really contingent upon their effort to make it better, and if I had some small way in that, then that was -- it was worthwhile.

MS. NAFISI: You mentioned working for Mr. Kleps

in California State Court System. I think for many people, many Californians for sure, he was sort of their hero with regard to how courts should be administered, at least a modern court administrator. Who would you say are the heros today in court administration? Was he a big role model for you and, if not, who else was?

MR. DAVIS: Well, that's a tough question.

He was a role model in the sense that he was the first. I admired his long and distinguished public career. He had numerous distinguished posts before he became the administrative director.

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

He was an astute, a political, a small "p," a political person. He was effective in the legislature. He

had his troubles, as I think every administrative director does with judges, and particularly trial judges, and most notably Los Angeles trial judges, but we -- and then when I became the Director of Courts in Kentucky, we talked on occasion and I sought his advice, and then he had the change of chief justices. Chief Justice Bird came and he was asked to leave; that was very traumatic for him.

Who are my heros? Hmm. I haven't thought of that. I never thought I had a hero. I never reflected on -- one of my heros was the Chief Justice in Kentucky, John Palmor. I enjoyed working for him as much as anybody I've ever worked with.

He was a unique person. He was sent to Harvard during World War II after being a young lawyer, he was in the quartermaster corps, so he went to business school. They sent him to business school to run supplies during the war. He had the most unique sense of balance between very strong leadership and partnership with a person like me.

And he, again like Judge Browning, would seek counsel and then once the decisions were made, we would do it, and we'd get in the car and drive anyplace.

I remember when we had a court reporters' strike in Louisville and I remember he said, go down and meet with them and tell them, you know, if they don't go to work tomorrow, we'll replace them all with tape recorders. And I

did that, and everybody but one came back the next day, and sure enough, we put a tape recorder in her place. And now there are no court reporters in Kentucky, they're all video reported.

But he was a delightful chap, a real gentleman, a Southern gentleman, and so in a sense, I always admired his, what I would call the Southern gentleman's dimension.

I also admired his forthrightness. We had some much more difficult issues in the Ninth Circuit because the political nature had changed in the state. When you change local judges, the politics of that is unimaginable. The Federal Courts don't even come close to those issues.

MS. NAFISI: Um-hmm.

MR. DAVIS: And everybody and their brother is touched, because I always -- I've said it over and over now, I continue to believe that nothing brings fear to a small town like an impartial judge. It scares people to death. And we actually saw that principle manifested in the Ninth Circuit. When we would send a judge, assign a judge in Los Angeles to the Eastern District of Washington, watch the cases settle. People would settle cases hand over fist.

MS. NAFISI: That's right.

MR. DAVIS: So, it's the same principle. So, when you do it with a small town -- well, anyway, Judge Palmor and I were an interesting duo together.

I think my heros today are the Italian judges that are taking on the mafia. I think the true heros of the day are those that are out in front confronting the great issues in their society and trying to build justice systems.

I have some other heros that are more international in nature.

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

MR. DAVIS: Well, I'll go back to Kentucky.

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

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

Oh, I said, well, that's not a mistake, I'm an independent. He said, no, you're not. No one can be the

head of a state agency in Kentucky and not be a Democrat. I said, well, you just met the first one.

So, having principles helped me deal with what soon became a series of very difficult confrontations over the role politics has in the judicial system and/or with individuals who work in public service.

But for that, I would have been -- I don't think I would have had the -- I'm not sure I would have had the wherewithal but I'm not sure what I would have stood for, so the principles have helped me define myself and what I believe in.

I've always believed very strongly that, you know, you're in a place for a reason, you give what you have, whatever it is, if it's adequate, if it's inadequate, and do the best you can. And I don't know, I don't think I've ever really been consumed with personal ambition, but maybe I have and I should reflect on that, but my sense has always been the principle -- and this is Ralph Kleps' license, you know, make a difference, make a contribution. That's been consistent with me from my time of joining the Peace Corps when I graduated from college till today.

MS. NAFISI: Um-hmm.

MR. DAVIS: And try not to be possessive about things. Let, you know, let others have their say. That's not easy to do, my wife will tell me that.

MS. NAFISI: You know, we're having this conversation because of the Ninth Circuit Historical Society's interest in preserving the -- sort of the oral record or whatever of people who participated in the Federal Courts, and is there anything that we haven't talked about that, you know, you'd like to just add for the record or make a closing statement, counselor?

MR. DAVIS: Hmm. Well, I think, as Judge Browning often said, this great experiment, the Ninth Circuit. I always felt it was a privilege to be here at this time, or at the time that I was in the early eighties to the mid-eighties. It was a dynamic time and I got to associate with some really remarkable people. The relationships were, as I think -- our work relationships were demanding but the experience has been enormously valuable to me and the friendships I still count are things I cherish.

I think it's best to let others judge what contribution one made.

MS. NAFISI: It's interesting, when talking with Judge Browning before talking with you, I asked him, you know, to perhaps single out anything that he felt that you particularly contributed to the Ninth Circuit and that question really puzzled him, because, you know, he said, gosh, he says, you know, Bill and I talked every day, and just as you described it, he said we had this very open and

very engaging dialogue about how to solve the problems and I don't remember even keeping track whether or not I suggested it or he suggested it. If one of us suggested it and we decided it was a good idea, we went forward. I mean, he was, you know, in many respects an architect of a lot of the things that we agreed to do and, you know, he said, it's really hard for me to pin, you know, if somebody has to differentiate. He said, we were like the Siamese twins --

MR. DAVIS: Right.

MS. NAFISI: -- in working with the Ninth Circuit.

But I think the main thing he said that he felt made it possible for the two of you to have such a good relationship and to, in the end, make such a contribution to the Ninth Circuit was that, just as you have repeated this morning, you know, you have brought a can-do attitude. There was nothing that couldn't be done or a problem that couldn't bear examination perhaps from a different aspect.

MR. DAVIS: Um-hmm.

MS. NAFISI: And you brought a lot of creativity and energy equal to his own and he could have worn out a lesser person very easily. God knows, he probably wore you out as well.

But he felt that those, you know, that that combination of characteristics or whatever really made it possible for you, the two of you to accomplish --

MR. DAVIS: Um-hmm.

MS. NAFISI: -- what was accomplished in the Ninth Circuit.

MR. DAVIS: Um-hmm. Well, as I think I've tried to articulate, it was a real partnership. There was a -- it was a -- it was a wonderful symbiosis of collaboration. He never took the posture that I'm the boss and you're the servant. His posture was, let's figure this out. And as I said earlier, that is the characteristic of a wise and mature leader, and it's a characteristic that anybody in that environment would welcome that kind of work relationship with anyone.

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

MS. NAFISI: Okay. Well, I thank you very much.

MR. DAVIS: My pleasure. Thank you.

(Whereupon, the interview was concluded.)

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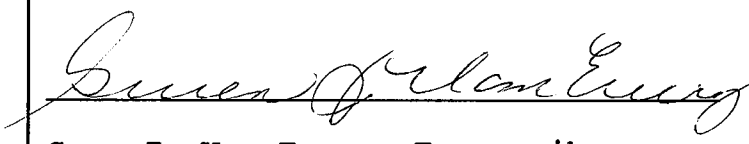
CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



October 22, 1994

Gwen J. Van Every, Transcriber