

**A Court Transformed:
The Ninth Circuit, the 1978 Judgeship Act, and the Carter Judges**

**Courtroom 3, Richard Chambers Courthouse, Pasadena, CA
Saturday, February 17, 2018**

**Conference Sponsors
California Academy of Appellate Lawyers
Appellate Courts Section, Los Angeles County Bar Association
Department of Political Science, Loyola Marymount University
Ninth Judicial Circuit Historical Society**

Program

9:00-10:30

Welcome

Panel I: "Getting Them There"

The Omnibus Judgeship Act of 1978 created ten new judgeships for the Ninth Circuit Court of Appeals, all of which were filled by President Carter, who also appointed five judges to fill other vacancies. This panel will discuss the nomination and confirmation process for the "Carter judges." It will cover the President's Executive Order establishing nominating commissions for circuit judges, the processes by which the Ninth Circuit nominees were selected, and the confirmation process in the Senate.

Participants: Judges Mary M. Schroeder, Dorothy W. Nelson, William C. Canby, Jr., and Stephen Reinhardt, all appointed by President Carter, will discuss their experiences with the nomination and confirmation processes. Judge J. Clifford Wallace, a member of the court since 1972, will discuss these processes from the court's perspective.

Moderator: Professor Thomas D. Rowe, Jr.

Break

10:45-12:15

Panel II: Dynamics of a Larger Court

Thirteen new judges joined the Ninth Circuit Court of Appeals between September 1979 and September 1980, in addition to two judges appointed in 1977 to fill vacancies. In a single year, the size of the court almost doubled. President Carter's appointments also changed the demographics of the court. This panel will consider what it was like to be part of that transition and what the changes meant for the court. The panel will also discuss procedures that the court adopted to deal with rapid growth in caseload – the impetus for the ten new judgeships.

Participants: Two of the judges appointed in 1979-80 – Judges Schroeder and Canby – will provide perspectives on the acclimatization of the new judges and the integration of the "old" and "new" judges. Judge Wallace will provide commentary from the perspective of a judge who saw the entire transition. Clerk of Court Molly Dwyer will provide information about changes in caseload and in the court's processes for deciding cases, and Judge Reinhardt will offer a judge's perspective on the procedural changes and the tradeoffs they entail.

Moderator: Professor Arthur D. Hellman.

12:15-1:15

Luncheon

1:15-2:45

Panel III: The “Limited En Banc” and the Law of the Circuit

The 1978 Act authorized any court of appeals with more than 15 active judges to perform its en banc function by fewer than all active judges. Soon after the 16th judge was confirmed, the Ninth Circuit Court of Appeals adopted the “limited en banc court” (LEBC). The panelists will discuss how the new institution was created, how it worked in its early years, and how it has changed in the intervening decades. The judges will also discuss other issues relating to en banc review and the relationship between the LEBC and the full court.

Participants: Judges Wallace, Schroeder, and Canby will describe the creation of the LEBC and its early operation. Judge Reinhardt will discuss the purposes of en banc review. Judges A. Wallace Tashima, Kim McLane Wardlaw, and Milan D. Smith, Jr., will comment on the later operation of the LEBC and related issues.

Moderator: Professor Arthur D. Hellman.

Break

3:00-4:30

Panel IV: Legacy Effects and Continuing Evolution

Ninth Circuit procedures and institutions continued to evolve after 1980. Five new judgeships were added in 1984 and one more in 2008, bringing the total number of judgeships to 29. Other important developments included a flood of immigration appeals; growth in pro se appeals that vastly outstripped the growth in cases filed by represented litigants; and the extensive use of new technology to increase transparency – for example, livestreaming oral arguments.

This panel will examine the consequences of 1978 Act, the legacy of the Carter judges, and the changes in the court in the intervening years. Have later developments fundamentally changed the Ninth Circuit Court of Appeals, or is the court of today still largely the product of the 1978 Act and the institutions and procedures established by the judges of that era? Or are all of the changes simply part of an ongoing evolution?

Participants: Judges Tashima, Wardlaw, and Smith will offer their views on the legacy of the Carter judges and the effects of changes in the intervening years. Ms. Dwyer will provide an update on caseload and case processing. Professor Henry Weinstein (former legal correspondent for the Los Angeles Times) will address issues of transparency. All participants will have the opportunity to offer concluding remarks.

Moderator: Professor Arthur D. Hellman.