PANEL DISCUSSION: THOUGHTS ON FIFTY YEARS OF CHANGES IN THE CENTRAL DISTRICT*

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I. INTRODUCTION

MARC SELTZER: I have the distinct privilege of introducing our first distinguished panelists who will be providing their observations about the changes the Central District of California has undergone over its first fifty years. Our first panelist is the Honorable Manuel Real, Chief Judge Emeritus of the Court. Following his service as the U.S Attorney for what was then the Southern District of California, Judge Real was nominated to the Court by President Lyndon Johnson on September 26, 1966 and received his commission on November 3, 1966. That kind of quick action by the Senate is both a testament to Judge Real, and perhaps a reminder of a different time in our country's history.

Judge Real, in addition to his service on the National and Ninth Circuit Judicial Councils and Conferences, served as Chief Judge of the Central District for ten years. He will soon complete fifty years of service as an active judge of the Court, which means his tenure almost perfectly overlaps with the entire history of the Court since it came into existence. Later this year, the Court will be holding a special ceremony to mark that truly amazing milestone.

Our second panelist is Professor William Deverell, who is Professor and Chair of the Department of History at USC, Judge Real's alma mater. He is also the Director of the Huntington-USC Institute on California & the West. Professor Deverell is a historian with a fo-

* The following is an annotated and edited transcript of live remarks made during the panel, "Thoughts on Fifty Years of Changes in the Central District." This panel was held on March 18, 2016 during the Southwestern Journal of International Law's symposium, "The U.S. District Court for the Central District of California, 1966-2016: International Context."

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cus on the nineteenth and the twentieth century American West. He is a graduate of the Stanford and Princeton Universities, and has offered many important works on the history of California and Los Angeles, among other places. Of course, the Central District has seen truly remarkable changes since it was first established by an Act of Congress, enacted on this very day, fifty years ago.

I would first like to turn to Judge Real to begin the discussion with his observations about those changes from his very unique ringside seat. There is no one who has seen it like Judge Real has. Judge Real.

II. PANEL DISCUSSION

JUDGE REAL: Good morning, and for those of you who don't know—I doubt there are very few in this gathering—I am Manuel Real, a proud Federal District Judge who has served the United States District Court for the Central District of California. On behalf of the District Judges, the Magistrate Judges, the Bankruptcy Judges, and the Central District staff (all of whom are an important part of our court), I would like to thank Professor Jonathan Miller and Dean Susan Prager for the great program we have today to present to you.

I have been asked briefly to speak about my thoughts on fifty years of changes in the Central District. I guess I am the most qualified to do this since the Central District and I share the exact anniversary year of my time on the bench. Today, the Central District of California serves seven counties: Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura. With more than 19 million people, our population is by far the largest of any judicial district in the country.

With our enormous growth, we have had some pretty significant changes during those fifty years. Fifty years ago, California only had two judicial districts: the Northern District of California and the Southern District of California. In order to truly understand how large our district is today, it is good to note that in the year 1886, there was only one District Judge for the top half of California, and one for the bottom half. Los Angeles, at that time, was part of the Southern District, and by 1924—the year that I was born—there were only three District Court Judges assigned to the Southern District of California.

Of course, in the 1920s, Los Angeles County only had a population of less than one million, but by 1960, the number grew to over six million. In 1966, Congress, in its infinite wisdom (if we can call it that), created the Central and Eastern Districts of California. Los Angeles

was absorbed by the Central District, and the ten Southern District Judges were transferred to the new Central District. They were: Judges William Matthew, Thurmond Clarke, Albert Lee Stevens Jr., Charles Carr, Jesse Curtis, Avery Crary, Francis Whelan, Irving Hill, Andrew Hauk, and William Gray. Congress also appointed three more judges to the Central District: Judge Warren Ferguson, Judge Harry Pregerson, and myself.

This need for further division, and more judges, was largely due to the growing population, but many of these changes came as the result of the evolution of the Federal Bar, and the greater number of federal cases heard in this District. Most of my colleagues might not remember this, but in the years leading up to 1968, federal judges enjoyed the help of U.S Commissioners. The U.S. Commissioners were appointed by the District Courts and had the authority to try and sentence individuals for petty offenses. In 1968, however, the Federal Magistrates Act[1] abolished the Office for the U.S. Commissioner and replaced it with the Office of U.S. Magistrates, who carry much more jurisdiction than the Commissioners.

Similarly, prior to bankruptcy judges, we had bankruptcy referees who were appointed by the District Court. But after 1978, the Bankruptcy Reform Act[2] abolished the Office of Bankruptcy Referee, and established the now bankruptcy judgeships, which in 1978, were appointed by the Court of Appeals. This is strange because they have no relationship to our Bankruptcy Court, which we appointed in the first place. By 1990, the Central District of California served over fifteen million people, and was met with more cases of federal jurisdiction. Magistrate and bankruptcy judges have been important to the efficiency of our federal court system and play an ever-increasing role in the cases that come through the Central District by assisting with the jurisdiction and reports of bankruptcy judges.

Another change that I have seen over the decades involves the passing of the Sentencing Reform Act of 1984.[3] Prior to this, between 1970 and 1984, I had a program in my courtroom called "the 120-day program" for non-violent criminal defendants, through which I was able to sentence them to probation instead of prison time. To make sure that these defendants were keeping out of trouble, I ordered that

1. Fed. Magistrates Act of 1968, Pub. L. No. 90-578, 82 Stat. 1107 (1968) (codified as amended in 28 U.S.C. §§ 631-639 (2012)).

2. Bankr. Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (1978) (codified as amended in 11 U.S.C. §§ 101-112 (2012)).

3. Sentencing Reform Act of 1984, Pub. L. No. 98-473, 98 Stat. 1987 (1984) (codified as amended in scattered sections of 18 U.S.C. and 28 U.S.C. (2012)).

they report to me personally every 120 days. I have been told that that program was a success, and of course, none of it would have been possible without the dedication of great probation officers. I personally saw the rehabilitation of hundreds of people in my courtroom. After the Sentencing Reform Act passed in 1984, I had to apply guidelines, which often provided for prison rather than probation, and were out of the hands of the judges of the court. I am pleased to say that some remnants of the 120-day program still exist today.

A couple of years ago, I received a letter from a man that I had sentenced in a fraud case. As part of his sentence, I ordered him to complete two years of volunteer work at the UCLA blood donation center. In his letter, he told me that after serving his court order, he continued to volunteer there for another sixteen years. I hope that we can find a way, once again, to connect with criminal defendants, and to assist them in the best we can in their path to rehabilitation.

Perhaps the most significant change I have experienced is the accessibility of legal documents on the computer. The shift from hardcover reporters to Westlaw and LexisNexis online has been incredible. Of course, I don't know how to use it, but my law clerks certainly tell me it's great, and I assume it is because I get many great reports from them that I have to deal with in my day-to-day. In 1966, my first year as a District Judge, not only did we not have the Internet, but we did not have computers. Instead, we had big, bulky typewriters, and everything we did was orally dictated and transcribed by secretaries; who are now called Judicial Assistants.

Today I am told you can just "Google it" (whatever that is), and that Google does it for us, I guess. As a result of these technological innovations, our district now uses the Internet for electronic filings. Many of you who are acquainted with me know that I highly value environmental cases. I have always discouraged lawyers from wasting thousands of pages of paper for frivolous filings or redundant declarations. A ton of paper is 17 green trees, and our district's shift to electronic filing has done tremendous work in reducing our district's environmental footprint. One unexpected consequence of electronics is a problem that pro se litigants now face—those with infrequent access to computers often fall behind and lose their cases at no fault of their own. Often, when you solve one issue, another presents itself. So I implore you all as lawyers, especially the young ones, to never stop searching for ways to improve our judicial system.

One change very dear to me during my fifty years on the bench has been the diversification of our federal judges. In 1969, three years

after I was appointed, the Central District added the first African American Federal Judge, west of the Mississippi, and that was Judge David Williams. Judge Williams actually had a fireplace put into his Spring Street chambers that, I am told, is still there today. Nine years after that, our first female judge, Judge Mariana Pfaelzer was appointed. We lost Judge Pfaelzer just last year after serving forty years on the bench. Today, many new and very bright women are now judges in the Central District. I have had the honor with working with some amazing people over the last fifty years, both judges and lawyers. It has been my privilege to serve the Central District of California, and I am confident that our judges, along with all of you, will lead this great district for the next fifty years. Thank you all.

MARC SELTZER: Thank you very much, Judge Real. There is no one who has your perspective, or your ability to see what has happened over the last fifty years. Now, I would like to ask Professor Deverell to add his comments to the discussion.

WILLIAM DEVERELL: Thank you. It is a real privilege to be here, just as it was to be involved ten years ago with the fortieth. Many thanks to Jonathan Miller and all the colleagues at Southwestern. It's a privilege to share the panel with Judge Real and Judge King. Note the astonishing changes in the fifty years, and in some respects, that is maybe the biggest takeaway—the demographic changes, and the social and cultural challenges. As historians, we try to provide a deeper context. So I thought what I would do with my remarks is to take a couple of leaps backward in fifty-year chunks, from 1966 back to the Progressive Era, and from that era back to the Civil War era to show the context of change in that long span of a century, perhaps a century and a half.

If we were to turn back a century before the founding of the court (the Civil War era), California became a state in 1850, and that regime change was fraught by the recent hostilities by the United States and the Republic of Mexico. It ended in 1848, and California moved into statehood with remarkable velocity, largely because of demographic changes provoked by the Gold Rush, as well as the gold itself. The 1850s and the 1860s, California is far removed from the theaters of war in the Civil War, but is remarkably affected by it.

Particularly here in the southern part of the state, northern and southern sympathizers were not at all friendly to one another, and the south makes a border attempt to punch across the Santa Fe Trail, and to come here in the 1850s during the war (largely in search of gold

coming out of the Sierras). In the 1850s, just prior to the outbreak of the Civil War, Los Angeles's violence (social, ethnic, and racial violence) was essentially a hangover from the Mexican War. The levels of violence in Los Angeles during this period were absolutely remarkable. I recommend to you all a new book by a colleague of mine who is a senior historian at Yale named John Faragher, called *Eternity Street: Violence and Justice in Frontier Los Angeles.*[4] It marks not only the unrelenting violence in Southern California at the moment of statehood, but the parallel tracks to establish judicial systems by brave individuals who tried to institute the infrastructure for adjudication of crimes, particularly of violence. Some landmark issues at stake there, in terms of establishment of judicial systems and oversight, revolve around the constant fight against vigilante movements. In many respects, the vigilantes of the 1870s and 1880s, who had been formed in a cauldron of violence, became the leaders of their day. Their roots in the vigilante movement were a part of their rise through the social networks.

If we move fifty years after that, Southern California during the Progressive Era was marked with individual acts of particularly brave, courageous, talented folks like Clara Foltz and the establishment of the first public defenders' office in the nation, the attempts to level the judicial playing fields, the establishment of urban democracies in the face of what they feared was the loss of the frontier, and the loss of that regeneration of democracy.

In Southern California, the Progressive Era (up to about 1920, or the rise of the Great Depression) was also marked with the establishment of infrastructural systems, largely for the delivery of power and water, and development of sophisticated transportation systems. The most marked developments in this era include: the paving of the Los Angeles River (for good or ill), the establishment of the Metropolitan Water District to tap the Colorado River; and the Los Angeles Aqueduct to tap the Owens River.

These are all fairly coincident acts. The Los Angeles River's paving, which sends the water out to sea, of course, is coincident with going to get the Owens River to replace it. It's a peculiar way to do business in a lot of ways, but Los Angeles was really good at that. That infrastructural system was established, in some respects, by the political and other leadership cadre's vision of the basin's growth, not quite to serve nineteen million people at the time, but to build the founda-

4. JOHN MACK FARAGHER, ETERNITY STREET: VIOLENCE AND JUSTICE IN FRONTIER LOS ANGELES (2016).

tion for what they self-consciously referred to as "the next century." So in this period, right up to today, much of the infrastructural systems that were laid into place, were built on a vision that the basin would in fact fill up, and they didn't even see the Second World War coming.

They recognized the attractions of Southern California, and they built the infrastructural landscape to absorb that kind of change. The Second World War of course does come. For all intents and purposes, the belief that Southern California is unplanned is wrong. Southern California is indeed planned. It's planned in suburban fealty to a smaller urban core, met by transportation linkages of largely the trolley system (Mr. Huntington's Pacific Electric and Los Angeles' Railway systems), but what happens in the Second World War and the aftermath is it fills in the emptiness between the suburbs and the urban core. It had the look of contiguous, unplanned chaos, but in fact, the separate suburban districts (and this building is classic for that) were planned as discreet, and the landscape filled in.

If we move towards the establishment of the District Court, and into the period of the 1950s and the 1960s, the Second World War is phenomenally important. Many historians teaching classes on California, or Southern California, will demarcate pre- and post-war as the absolute critical political-economic-demographic-munitions-manufacturing rupture. It makes a lot of sense. I am probably one of those who think that the Cold War is more important. The Cold War and the rise of the aerospace industry in Southern California is remarkable. Much that underlays the demographic growth of the post-war, or the 1950s and the 1960s, is employment in the aerospace and Cold War industries. For instance, in Burbank in the 1950s, Lockheed had ninety-six thousand employees working three eight-hour shifts by day—rising out of the Second World War, but continuing well into the Cold War—so that landscape is phenomenal.

At the establishment of the Court, in the mid-1960s, a period that is still, in many instants, in its infancy. For instance, housing covenants, miscegenation laws had only recently fallen away and school desegregation cases were just slowly picking up from *Brown v. Board*.[5] We had the LAUSD *Crawford* cases,[6] in Southern California, and the Pasadena cases[7] as well, but much tied to an earlier vision, or an ear-

5. Brown v. Bd. of Educ., 349 U.S. 294 (1955).

6. Crawford v. Bd. of Educ., 458 U.S. 527 (1982).

7. Spangler v. Pasadena City Bd. of Educ., 311 F. Supp. 501 (C.D. Cal. 1970); Jackson v. Pasadena City Sch. Dist., 382 P.2d 878 (Cal. 1963).

lier moment. The kind of infancy of that era is, in the legal system, trying to get its arms around an incredibly roiling and challenging demography. The mid-60s is, of course, marked by the Voting Rights Act,[8] the Civil Rights Act,[9] and immigration reform. The Immigration Reform Act[10] of the mid-1960s, underneath the great umbrella of society, is part and parcel to this breathtaking demographic and diversity change across the district, across Southern California, and all the way onto the Mexican border. That social and cultural demographic change is akin, in many respects, to what California had done in the 1840s and 1850s, which was to put itself on the map.

Northern California is the fastest growing metropolis in the history of the world. In Southern California, the growth is more countywide or multiple-countywide, and that growth in the post-Second World War period, the likes of which the country had never seen before, in many respects, is still continuing. The diversity of languages, and the diversity of social, cultural, ethnic, and national backgrounds have long been part of Southern California's history. In fact, it goes back to the incredible diversity of the indigenous peoples here, prior to contact. That diversity is only exponentially added to in the post-World War and post-Cold War period by virtue of the aerospace ingestion of brain-workers and others, as well as the continuing importance in Southern California of the oil industry (through the fairly recent past), and of course, Hollywood.

By the coming of the Great Depression, two of the five biggest industries that contributed to the United States GNP were the oil and film industries. Those were essentially brand new. Certainly, Hollywood was brand new, but oil had a little bit of a Pennsylvania background before it was found here. These industries rocketed the political economy here in the 1920s, but Los Angeles even before the 1920s was still an upstart place. It is entirely correct to visit the pre-war period as deeply agricultural. The San Fernando Valley was deeply agricultural well into the post-World War II period, but Hollywood and oil was beginning to draw an enormous workforce and created the cultural milieu for celebrity, fame, youth culture, et cetera. Aerospace, in some respects, was the next addition due to jet engine development at the tail end of the Second World War.

8. Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (1965) (codified as amended in scattered sections of 52 U.S.C. (2012)).

9. Civil Rights Act of 1964, Pub. L. No 88-352, 78 Stat. 241 (1964) (codified as amended in scattered sections of 42 U.S.C. (2012)).

10. Immigration Reform Act of 1965, Pub. L. No. 89-236, 79 Stat. 911 (1965) (codified as amended in 8 U.S.C. § 1151 (2012)).

The aerospace diversification of the economy was profound. Aerospace created all kinds of globalization, surveillance, and secrecy issues that were oftentimes adjudicated in federal courts. We still have that. The aerospace industry is still here. It has migrated largely up to Palmdale and Lancaster, but now we have SpaceX and the other important private aerospace industries. That kind of generation of deep and profound change, accompanied by millions and millions of people of diverse backgrounds, led to the establishment of judicial systems that, in some respects, lagged behind a lot of the infrastructural growth that marked the 1920s.

The preparation for the delivery of services, and the legal community and legal frameworks will follow, in many respects. The fifty years of the distinction of the Court clearly shows us that many of those issues, collisions and conflicts, will find a place to be adjudicated in the Federal Court system. It is just a phenomenally interesting place. It is ever-dynamic, and trying to pigeonhole it in moments of rupture, or periodization, is almost always proven false. Thank you.