

(Re)Living History

BY RICHARD SCHAUFFLER

Today, California boasts the largest court system in the world – 2,000 judicial officers located in over 450 court facilities staffed by over 20,000 hard-working court employees, serving a diverse public. But until the publication of Larry Sipes' book, *Committed to Justice: The Rise of Judicial Administration in California*, the history of the evolution of court administration had gone largely unnoticed and certainly untold. The California Administrative Office of the Courts (AOC) has done the public a great service by commissioning Sipes to make the first attempt to assemble such a history of this important aspect of the state's third branch of government.

Larry Sipes was well positioned to undertake this effort, having served as director of the Western Regional Office of the National Center for State Courts (NCSC) and subsequently as president of the NCSC. In California, Sipes distinguished himself as a special master for the Marin County Superior Court, director of the California Judicial Council's Select Committee on Trial Court Delay, and director of the California Constitution Revision Commission. In the course of his career, Sipes developed personal acquaintance with many of California's chief justices as well as all four of its state court administrators, and his vantage point as both an observer of other states as well as active participant in California's judicial branch gives him a unique and invaluable perspective.

Accounting for the entire history of the judicial branch, from its modest beginnings in 1850 through to its modern form in 2000, is no small task, and Sipes' first challenge was to define his approach. As he explained to me, "My first assumption was that the later part of the twentieth century, say 1975 to 2000, was the most important period to address in view of milestones such as trial court unification, the move to state funding of the trial courts, and significant changes in judicial branch governance." But even that simplifying assumption proved problematic: "I soon discovered that each of these achievements had deep roots, and even expanding the horizon to the last half century did not always present the entire picture. Moreover, important monuments to progress, with none more important than the creation of the Judicial Council in 1926, were sprinkled across the state's 150-year history. So, with considerable trepidation, I embarked on assessing that entire period."

In examining the full history, Sipes condenses the first hundred years into the initial chapter, tracing the evolution of California's judiciary from its

confused beginnings in Mexican law to a six-tiered court system handling over 2.4 million filings by 1950 and governed by the Judicial Council. As Sipes notes at the end of this chapter, "The most striking feature of this period was the rather modest nature and extent of changes in the judicial system."

The treatment of the first century is necessarily schematic, but Sipes does an excellent job of situating the evolution of the judicial branch within the larger political project of the creation of the State of California and its constitutional government. Sipes explained, "I found studies and books regarding the period surrounding statehood, particularly those focused on the constitution of 1849, quite engaging. I relied on them extensively as I did the material regarding the constitution of 1879 and the convention that crafted that major revision of California's governing charter."

The remaining fourteen chapters of the book deal with the modern history of the judicial branch from 1950 to 2000. The final chapter looks ahead to the next fifty years and outlines demographic, political and economic challenges facing the courts.

Hardly a stone is left unturned along the way. Sipes examines the governing institutions of the branch – the Judicial Council and the Administrative Office of the Courts – but also gives voice to the state's trial courts. He colorfully notes in Chapter Three: "If the judicial branch of government is history's stepchild, the trial courts are history's orphans." Sipes rightly laments the absence of sources regarding trial court administration, and observes that the local nature of these county courts often meant that their history went undocumented. In our correspondence, Sipes underlined this point: "Comprehensive snapshots of the administration of justice at the base of the judicial pyramid do not exist. They should."

Two of the major reforms – trial court unification and state funding of the trial courts – are each the subject of their own chapters. Sipes himself was an important player, largely behind the scenes, in both of these efforts, although he is far too modest to indicate this to the reader in his biography. This unique vantage point does allow him to discuss each of these reforms with great insight, offering commentary on the many nuances of these issues, the political and economic context surrounding these changes, and the role of key players including both individuals and the Judicial Council itself. Looking back on these efforts, Sipes told me "the greatest personal insight gained from this endeavor was documenting the

lengthy gestation period required for major improvements in the judicial branch. The process is acutely evolutionary rather than revolutionary.”

Committed to Justice additionally discusses major efforts at court improvement, including civil delay reduction, expanded judicial education, the rise of alternative dispute resolution and the courts’ efforts at improving access to justice for California’s diverse population. As Sipes noted to me, “The resulting book is admittedly a selective list of milestones that seemed most worthy of memorialization.” Sipes has chosen well, and there is much to be learned from his treatment of the issues he selected.

Yet, beyond the milestones he explicates, mysteries remain for future historians to unravel. Why did Governor Deukmejian veto the 1984 Trial Court Funding Act, delaying state funding of the trial courts for over a decade? What impact did the unseating of Chief Justice Rose Bird in 1986 have on subsequent judicial retention elections? Why did the Judicial Council and the AOC take no position on the Trial Court Delay Reduction Act of 1986, and why are they more proactive now in the legislative arena? How are we to understand the rise of problem-solving courts (also known as collaborative justice courts, therapeutic justice, etc.) for adjudicating drug cases and domestic violence cases, and what is their impact on traditional forms of adjudication?

The California courts are engaged in a large-scale transformation of their economic, political and social foundations, as well as a redefinition of their role in society. Such a change cries out for informed analysis and broader public discussion, in a continuation of the project that Sipes has begun. Judicial officers, court administrators, AOC staff, litigators and those generally interested California law, policy and history will all find much to engage them in *Committed to Justice*. For those involved in or affected by judicial administration, understanding where in the courts’ evolution they find themselves will render them more effective actors in ongoing efforts to improve access to justice. While there is little danger in this instance that those who do not know this history will be forced to repeat it, it is also true that courts change slowly, and understanding the events of 1986 is still of great relevance to understanding what is happening in judicial administration today.

Rimbaud once noted that “a poem is never finished, it is abandoned in despair.” Less dramatically, but equally impassioned, Sipes acknowledged, “The greatest disappointment [in researching this book] was the almost total absence of recorded perspectives of leaders of the judicial branch. I would hope that an effort can be made to capture the knowledge and experiences of current and former chief justices and administrative directors of the courts, and that

trained historians will be enticed to attempt a comprehensive history of this 150-year period of judicial administration.”

With the publication of *Committed to Justice*, Larry Sipes has built an excellent foundation for future historians of the California courts. He is to be commended, along with William Vickrey, the current Administrative Director of the Courts, who commissioned him to undertake this project. The question now is, who will take up Sipes’ challenge to continue this effort?

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Happy Birthday

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of the state; district two covered Los Angeles County and those counties in the southern part of the state; and district three consisted of Sacramento County and the more northern counties. One panel of three justices sat in each district. Cases moved between the Supreme Court and the District Courts of Appeal with some fluidity, since the Supreme Court had the discretion to assign any case within its original jurisdiction to be heard in any District Court of Appeal, and by the same token could pluck for its own hearing any case pending in a District Court of Appeal.

One hundred years later, our intermediate appellate courts have matured. We now have six districts, and those districts are in turn divided into nineteen divisions. The number of appellate justices has increased from nine to one hundred five. In the vast majority of Supreme Court cases, review is granted only after a Court of Appeal has heard the appeal first. And, incidentally, under Article VI, Section 3 of the California Constitution, our intermediate appellate courts are now called simply Courts of Appeal, rather than District Courts of Appeal. Old-timers, however, still affectionately refer to them as “DCAs.”

Please join me and the other members of the Society in wishing our DCAs a happy one-hundredth!