Introduction to the Oral History of DONALD R. WRIGHT

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Donald R. Wright served as chief justice of California from 1970 to 1977. As successor to Chief Justices Roger Traynor and Phil Gibson, he was the third chief justice leading and maintaining the California Supreme Court as the preeminent state supreme court in the nation for more than a half century. Such a heritage should not be cherished, but it should be analyzed to determine how such leadership came about.

At the outset, we must acknowledge that in Donald Wright we did not have a jurist with the unparalleled judicial craftsmanship or literary skills of Benjamin Cardozo, Learned Hand, or our own Roger Traynor. Among

* Remarks presented at the The Chief Justice Donald R. Wright Memorial Symposium on the California Judiciary at the University of Southern California, November 21, 1985, sponsored by the Judicial Committee of the California State Senate, et al. Published in Proceedings and Papers, Timothy A Hodson, ed. (Sacramento: Senate Office of Research), 15–25 (abridged); Appendix (complete). The late Julian Levi was introduced by the moderator, UCLA Professor of Law Daniel Lowenstein, as follows: "Professor Levi has had so many very distinguished careers that it would be quite tedious to recount them in any detail, but he was a successful lawyer for many years in Chicago, was a professor of urban studies at the University of Chicago for a couple of decades or so, and since 1978, has been a professor of law at the Hastings College of the Law in San Francisco."

Judge Wright's opinions we do not find a *Meinhard v. Salmon*.[1] What we do find is a chief justice who in fact was chief by force of character, intellect and personality, and who at the same time would be referred to repeatedly by his colleagues as a "warm, compassionate, and caring human being."

Donald Wright came to the office of chief justice with superb credentials.

Following an undergraduate education at Stanford University culminating in a *cum laude* degree, he earned his law degree at Harvard and then at the University of Southern California, both with distinction.

For a decade he engaged in the general practice of law as a private practitioner in Pasadena, and then, in World War II, entering the armed services, he rose to the rank of lieutenant colonel, squadron commander, and chief of intelligence of the 11th Air Force Service Command. After World War II, he returned to the practice of law in Pasadena.

Then in 1953, he accepted appointment to the Pasadena Municipal Court and served until 1960 when he was elected to the Superior Court of Los Angeles; and in 1967 he became the presiding judge of that court.

Governor Reagan appointed him to the state court of appeal in 1968, and then in 1970 appointed him chief justice of California.

Hence, Chief Justice Wright came to the chief justiceship after twenty years of experience as a private practitioner of the law, after fourteen years of experience as a trial judge in a busy metropolitan court of general jurisdiction, and two years of full experience as an appellate judge. His opinions demonstrate that he understood the difficulties and the frustrations of private practice; that he knew at first hand the responsibilities and problems of the trial judge made evident by his own practice of laboriously reading trial court records time after time; that he understood both the limitations and opportunities of appellate and Supreme Court service.

More significantly, bench and bar as well as the general public understood that here was a chief justice who had earned that title. As one of his colleagues remarked from the very beginning of his term, "the Chief fit in well."

Chief Justice Wright, in accordance with the Constitution and statutes of California, had major responsibilities in the administration of the judicial system of the state. His skill as an administrator was a bright point of his tenure. The Chief has been described as a politically moderate justice

[1] 164 N.E. 545 (N.Y. 1928),

with high intellectual abilities, but even greater administrative skills. He was a judge's judge. Professional, quiet and undramatic in demeanor, he seemed to exude dignity, open-mindedness, fairness and compassion.

The Chief understood that he administered best by persuasion, rather than by force of will or the powers of his office. He was an experienced and tactful administrator who maintained the traditions established by Chief Justices Phil Gibson and Roger Traynor. Retired Associate Supreme Court Justice Raymond Sullivan has described Wright's administration of the judicial branch as "masterful." According to Justice Sullivan, the Chief's leadership was uniquely effective because of his warmth in dealing with his colleagues and with those outside the judiciary. Of course, the fact of years of prior skill and experience and service was all important. In most cases, the Chief was working with judges whom he knew in prior years, and who themselves knew that the "Chief had been there himself and understood their problems."

During Judge Wright's tenure, the courts of appeal were in trouble as their workload had increased repeatedly. The traditional means of dealing with a growing backlog is to add judges. With the appointment of more appellate judges, however, it is difficult to maintain the quality of appointments and uniformity among decisions. To avoid appointing numerous appellate judges, Judge Wright instituted several important administrative reforms. For example, he created a central staff which could relieve the justices of some routine work. Judge Wright introduced the use of memorandum dispositions for routine cases. The criteria for publication of opinions of courts of appeal were also changed so that less opinions would qualify for publication. The success of these reforms is demonstrated by the increased productivity of the justices and the consequent elimination of the need to add authorized positions to the courts of appeal for ten years. While the number of dispositions per judge in the courts of appeal increased by approximately three percent during Judge Wright's tenure, the percentage of published opinions dropped steadily: 39 percent were published for the 1969–70 term, and only 16 percent were published for each of the last two terms during Judge Wright's tenure. Judge Wright instituted this structural reform by quiet persuasion and coaxing his fellow judges into acceptance.

During the tenures of Chief Justices Gibson, Traynor, and Wright, the power to select judges for the appellate department of the superior court, for all practical purposes, had been transferred from the chief justice to the presiding judge of the superior court in the larger counties. Justice Wright reformed the existing process of assignment to the appellate department by meeting periodically with the presiding judges and suggesting to them that assignments to the appellate department be rotated with a new judge added each year who would serve for a total of three years and then return to other assignments.

Removing Associate Justice Marshall McComb was one of Justice Wright's most sensitive administrative accomplishments. In light of the fact that Justice McComb was conservative and the Court at the time was liberal, Justice Wright did not want his removal to appear to be politically inspired. Therefore, he helped engineer a constitutional amendment through the Legislature that provided an avenue whereby Justice McComb's removal would not appear political. The amendment provided that, if a justice of the Supreme Court was involved, the recommendations of the Commission on Judicial Performance would be referred to seven randomly selected court of appeal judges. As a result of the creation of this special tribunal, Justice McComb's removal did not appear to be politically inspired.

Justice Wright is remembered for being accessible and thoughtful. He returned phone calls from other judges and from the press. He put out a press release on every case in order to establish a public information office. He made special efforts to ensure that research attorneys were treated fairly. He made their pay comparable to civil service lawyers of equal seniority. As it has become evident, his administrative reforms were acceptable because he instituted them after consultation and in a way that was acceptable to the majority of judges and his colleagues.

With the petition for hearing system, the California Supreme Court under Chief Justice Wright retained control over its docket. From 1970 to 1977, the total number of filings increased by less than two percent. The percentage of petitions for hearing granted of cases previously decided by the courts of appeal steadily decreased during that time: 9.3 percent of the petitions for hearing filed were granted during the 1970–71 term, while only 7.9 percent of the petitions for hearing filed were granted during the 1976–77 term.

The quality and depth of opinions written by justices of the California Supreme Court are especially remarkable in the number of cases per justice on the merits. For example, during the terms of 1974–75 and 1975–76, each justice of the California Supreme Court wrote 27 opinions for cases decided on the merits. This ratio becomes more meaningful when contrasted to the fact that, during those terms, each United States Supreme Court justice wrote only 17 opinions for cases decided on the merits.

During his eight years of service, Chief Justice Wright wrote the opinion for the majority of the Court in 196 cases. These opinions throughout are remarkably consistent. There is always the meticulous and even methodical exposition of fact so carefully done that while policies or statements of law might be questioned in dissent, the accuracy of fact summaries were largely unchallenged. There is always the careful exposition of law and prior case authority plainly and clearly stated. Throughout there is the insistence on judicial duty and function expressed by the chief justice himself in his landmark opinion in *People v. Anderson*,[2] dealing with the constitutionality of the death penalty under the California Constitution:

> (5) Our duty to confront and resolve constitutional questions, regardless of their difficulty or magnitude, is at the very core of our judicial responsibility. It is a mandate of the most imperative nature. Called upon to decide whether the death penalty constitutes cruel or unusual punishment under the Constitution of this state, we face not merely a crucial and vexing issue but an awesome problem involving the lives of 104 persons under sentence of death in California, some for as long as 8 years. There can be no final disposition of the judicial proceedings in these cases unless and until this court has decided the state constitutional question, a question which cannot be avoided by deferring to any other court or to any other branch of government.[3]

I suspect the subsequent comment by then Governor Ronald Reagan, who had appointed the chief justice, that this was his "worst appointment" came as no surprise to the Chief. Whether a particular decision would be a

[2] 6 Cal. 3d 628 (1972).

[3] *Id*. at 640.

popular decision or not was irrelevant when measured against the core of judicial responsibility.

Analysis of those decisions of Chief Justice Wright most widely cited reinforce these observations.

In *Vesely v. Sager*,[4] Chief Justice Wright, speaking for a unanimous Court, permitted third persons to sue vendors of alcoholic beverages for serving alcohol to an obviously intoxicated customer who, as a result of intoxication, injured the third person. That ruling overturned prior California judicial precedents based upon concepts of proximate cause. The defendant in *Vesely* argued that in light of these precedents, changes in judicial doctrine should be left to the Legislature. The Chief responded that the precedents were judicially created and were patently unsound and totally inconsistent with the principles of proximate cause established in other areas of negligence law. *Vesely* was controversial and was eventually overturned by the California Legislature after a wave of public protest.

Similar is the opinion in *People v. Beagle*[5] where Chief Justice Wright, again speaking for a unanimous Court, imposed severe restrictions on the ability of prosecutors to discredit a defendant by referring to prior felony convictions. Before *Beagle*, the majority view in California was that a trial judge had no discretion under the California Evidence Code to exclude evidence of a prior felony conviction offered for purposes of impeachment where the lawfulness of the conviction was established or uncontested. In a methodically written opinion, the Chief rejected the majority view and held that by reading several sections of the California Evidence Code together, the trial judge had discretion to exclude evidence of prior felony convictions where the probative value of the evidence is outweighed by risk of undue influence. This year *Beagle* was overturned by the California Supreme Court in a decision holding the 1982 Victim's Bill of Rights had introduced an easier rule for the admission of such evidence.

In 1973, in *Legislature v. Reinecke*,[6] the chief justice led a unanimous Court in laying down a blueprint for reapportionment after then Governor Ronald Reagan and the Legislature could not agree on a single plan. The Court appointed several special masters to devise and recommend

4 5 Cal. 3d 153 (1971).

5 6 Cal. 3d 441 (1972).

6 19 Cal. 3d 396.

a reapportionment plan, which recommendations were adopted by the Court. These recommendations avoided preserving the status quo and gave non-incumbent candidates a fair chance at election.

Finally, the chief justice in *Birkenfeld v. City of Berkeley*[7] wrote the opinion again for a unanimous Court upholding the legality of residential rent controls.

During his eight years of service, the chief justice wrote the opinion for the majority of the Court in 196 cases. Of these 196 opinions, dissents were filed in only 54 cases. In these 54 cases, 16 of the dissents were filed by lone dissenters. Thus, in only 38 cases out of 196 was there significant disagreement among the justices.

On this data alone, it is thus clear that here was a chief justice who led his Court.

Closer examination reinforces this conclusion. Of Wright's 196 opinions, 126 were criminal cases and 70 were in other areas of the law. The latter figure may be subject to some adjustment in that some matters such as juvenile criminal issues or habeas corpus proceedings are classified as non-criminal. Of the 54 dissents, 46 were in criminal cases and only 8 were in civil cases.

During Wright's tenure as chief justice, eight justices served with him. The dissenting activity among these justices can be broken down into categories.

Justices Clark, McComb and Peters dissented along lines of ideology and broad policy.

Justices Mosk, Richardson, Sullivan and Burke, when they disagreed, did so on specific factual determinations or on narrow technical grounds.

Most remarkably, Justice Tobriner, who served throughout Wright's tenure, never wrote a dissent to an opinion authored by his chief justice. This record from a justice of Tobriner's competence and deeply felt convictions is a strong indication of how the chief justice time after time found a basis upon which he could unify the Court.

During these years Justice Clark was unique in the vehemence of the language of his dissents. Clark evidently believed that the California Supreme Court was too liberal and too favorable to defendants. He believed

[7] 17 Cal. 3d 129 (1976).

that the California Supreme Court not only was not following the United States Supreme Court precedents as to defendants' rights, but on occasion intentionally attempted to avoid review by shifting the ground of its decision to provisions of the California state constitution rather than the federal Bill of Rights.

Justice Clark, during his years on the Wright Court (1975 to 1977), wrote 16 dissents to the 75 opinions of Chief Justice Wright on behalf of the majority of the Court. In these dissents, Justice Clark charged his colleagues with incompetence, being "altogether unreasonable," their rulings "completely unrealistic," their conclusions "inexplicable" and "[un]supported by reason or authority." On one occasion, he charged that the judiciary is "developing a messianic image of itself."

In contrast to Justice Clark, Justice Peters was more liberal than the Wright Court. He wrote six dissenting opinions; one of these dissents opposed extension of the felony-murder rule; two dissents concerned procedural rules of the Court regarding acceptance of guilty pleas; the other three dissents turned on search and seizure issues.

Justice Richardson wrote dissents in four cases. Two of the cases reflect disagreements on narrow, technical points of law. In the other two cases, he felt the majority was limiting unnecessarily the discretion of the trial court. In all four dissents, Justice Richardson was joined by Justices Clark and McComb. Additionally, Richardson concurred without opinion in the dissents in four other cases.

Justice Sullivan wrote only four dissenting opinions, all involving criminal law issues. Two of the cases concerned his disagreement with the majority's application of the exception to the hearsay rule in cases of co-conspirators charged with premeditated murders of spouses; in the third case, Justice Sullivan was outraged by police conduct which he saw as an attempt to circumvent rules of criminal procedure requiring the presence of defendant's attorney at a lineup; in the fourth case, Justice Sullivan felt the majority had unnecessarily addressed a constitutional issue. Additionally, Justice Sullivan concurred without opinion in dissents in six other cases.

With the exception of the opinions of Justice Clark, the dissents throughout were characterized by civility and respect among the justices. These justices were strong men with deeply held convictions, but their

Chief held them together in mutual respect for one another and the institution of the law which they served.

In the final analysis, the chief justice's colleague, Justice Stanley Mosk best summarized:

> Perhaps his most noteworthy characteristic was a fierce independence. Don Wright bowed before no master: not the bench, the bar, the Governor, the press, or public opinion. He marched to the beat of no drummer, only to an ethical and compassionate conscience.[8]

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[8] Stanley Mosk, "Chief Justice Donald R. Wright," 65 Cal. L. Rev. 224, 225 (1977).