

ORAL HISTORY I
PHIL S. GIBSON

CHIEF JUSTICE OF CALIFORNIA
(1940-1964)

Oral History of
CHIEF JUSTICE PHIL S. GIBSON

INTRODUCTION

JOSEPH R. GRODIN*

When I first saw the chief justice's chambers at the California Supreme Court, someone — it may have been Chief Justice Bird — pointed to an indentation in the ceiling tile and said it was caused by the cork from a champagne bottle opened by Chief Justice Phil Gibson, then age 70, in celebration of the birth of his son Blaine. Somehow that image captured for me the spirit of a man whom I had come to admire and respect — a spirit that combined enormous dedication and *gravitas* with a perennial youthfulness and ebullience and (the consumption of alcoholic beverages inside the State Building being a bit questionable) just a touch of irreverence.

Phil Gibson was appointed to the Supreme Court by Governor Olson in 1939. I think it is fair to say that his appointment, along with that of Jesse Carter earlier in the year and of Roger Traynor the year following, marked the transformation of the California Supreme Court from mediocrity to excellence, and its emergence as one of the preeminent courts in the nation. In large part this was the product of what turned out to be Gibson's genius for judicial administration, and his extraordinary accomplishments

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TABLE OF CONTENTS

INTERVIEW HISTORY	10
FROM MISSOURI TO LOS ANGELES	12
GOVERNOR CULBERT OLSON'S ELECTION AND ADMINISTRATION	15
DIRECTOR OF THE STATE DEPARTMENT OF FINANCE, 1938–1939	17
CALIFORNIA SUPREME COURT: APPOINTMENT AND FELLOW JUSTICES	21
JUDICIAL REFORMS	26
LATER APPOINTMENTS TO THE SUPREME COURT	28
1958 ELECTION SPECULATIONS	31
OBSERVATIONS ON PAT BROWN AND OTHER GOVERNORS	33

INTERVIEW HISTORY¹

The Regional Oral History Office sought to interview the Honorable Phil S. Gibson for the Knight-Brown Era Oral History Project with some trepidation, due to a layman's hesitation about imposing on the dignity of the state Supreme Court and because we had heard that he preferred not to be disturbed in his retirement. Although he pleaded ignorance of politics due to his years on the bench, Chief Justice Gibson was cordial in inviting the interviewer to his home to discuss general observations on his years in state service (1939–1964).

Age 88 at the time of the interview (May 12, 1977), Gibson was of medium height and build, white-haired, and well-tailored. Seated in his pleasant living room overlooking the Carmel Valley, he chatted a while to test the interviewer's questions and intent and then agreed to record some of his personal recollections of California governors from Frank Merriam to Jerry Brown.

What emerges is an informal portrait of a man who was appointed to what many feel is the number two spot in state government, director of Finance, after brief and almost casual acquaintance with Governor Culbert Olson, who shortly thereafter appointed him an associate justice and then chief justice of the state Supreme Court. With remarkable objectivity, Gibson skips over highly political events, mentioning instead lasting administrative reforms he introduced, based on his business and legal experience.

During the 1950s and '60s, Gibson's insistence on improvements in procedures for judicial qualifications review, assignment of judges, and getting cases through the courts are credited by knowledgeable observers with setting standards for the nation. They may, indeed, have provided guidelines later followed by fellow Californian Earl Warren as chief justice for the U.S. Supreme Court.

¹ Editor's Note: The oral history is printed by permission of The Bancroft Library at UC Berkeley. It is presented here in its entirety, and it has been reedited for publication. The original transcript is a portion of "Governmental History Documentation Project : Goodwin Knight / Edmund Brown, Sr. Era : California Constitutional Officers : Phil S. Gibson, 'Recollections of a Chief Justice of the California Supreme Court,' an Interview Conducted by Gabrielle Morris in 1977: oral history transcript and related material, 1977–1980" and may be viewed at the Library or online at <http://www.archive.org/details/caliconstitutoff00morrrich>.

In the interview Gibson also refers briefly to the close working relationship between attorneys general and chief justices and acknowledges that upon occasion governors confer with a chief justice about judicial appointments. There must be many occasions on which those seeking to govern well would seek the benefit of the experience and wisdom of the state's highest court.

The interview concludes with useful brief summaries of governors Gibson has known. Although the fullest comments are on Culbert Olson and Pat Brown, there are also useful insights on Earl Warren and Goodwin Knight. It is hoped that at a later date Chief Justice Gibson will discuss some cases of importance that came before the Supreme Court in his day.

— GABRIELLE MORRIS, INTERVIEWER

Regional Oral History Office, July 15, 1977

The Bancroft Library

University of California, Berkeley

FROM MISSOURI TO LOS ANGELES

MORRIS: I was asking why you decided to come to California and how you got interested in government and public service.

GIBSON: Do you want a little background?

MORRIS: Yes, please.

GIBSON: I was born in Grant City, Missouri, a small town, 1,400 people in the northwestern part of the state near St. Joe. My father was a lawyer. He was born in Indiana, served in the Union army in the Civil War, came to Missouri from Indiana, had a small newspaper. He had a good education. He was educated in Indiana. He had six daughters by his first wife. She died. He married my mother while some of those girls in his first family were still in the house. My mother brought up some of them and then she had five children, three boys and two girls.

MORRIS: Was your mother also a Missouri girl born and raised?

GIBSON: Well, she was born in Missouri, but her childhood after the Civil War was spent in Mississippi. She came back to Missouri. She had little education, very little. She educated herself. My father was supposed to be a rather prominent man in that area; I think she was smarter than he was.

MORRIS: How did she go about educating herself?

GIBSON: Reading.

MORRIS: Would she help him with the newspaper at all?

GIBSON: No, he didn't have the newspaper then. I think he owned part of it, but he never had anything to do with it. He had a farm, and the law office — quite successful. His three boys all graduated from the University of Missouri, myself and my two brothers.

MORRIS: Were you the oldest?

GIBSON: No. The oldest became a lawyer and a very successful one. My younger brother, Blaine, studied journalism, became a newspaperman. He was the editor of the Pasadena paper when he died. He died quite young of Hodgkin's disease. He died in his early 30s. Our son, Blaine, now 20, who is a student at the University of Bordeaux, is named after my brother.

MORRIS: He accomplished a lot in that short time.

GIBSON: Yes, he did, a great deal. I graduated from the University of Missouri in 1914. I went to my home town and ran for prosecuting attorney, and was elected.

MORRIS: Before you'd been to law school?

GIBSON: No, just after I graduated from law school. Then the war came. I went to the first officer's training camp and was kicked out because I couldn't pass the physical examination. I enlisted in the National Guard in Kansas City, the same outfit as Harry Truman.

MORRIS: I was thinking about that driving down. It really was the same unit?

GIBSON: Yes.

MORRIS: That's marvelous.

GIBSON: Except he was in the artillery and I was in the infantry. I saw very little of him. Of course, I was soon commissioned and sent to France. I served for a time with the British, and then was returned to my old outfit.

It was the old 35th Division that Truman was in; but I didn't see much of him. Saw him a time or two. One of my schoolmates at the University of Missouri was Bennett Clark, the son of Champ Clark who had a great deal to do with Harry Truman's political career. Another one was Tuck Milligan, Jacob Milligan nicknamed Tuck, who also had a great deal to do with Truman's political career. Both of them served in France in the 35th Division; Milligan was a congressman and ran against Truman in the Democratic primary nomination for senator. Truman beat him. Clark was then a senator.

MORRIS: Yes, and early in the century hadn't he been a candidate for the Democratic presidential nomination?

GIBSON: His father had, Champ.

MORRIS: Champ was who I was thinking of.

GIBSON: Champ Clark ran against Wilson. Bryan helped Wilson at a critical point or Champ Clark would have probably been nominated. Charles Evans Hughes won the Republican nomination, but he was defeated because he didn't carry California. He didn't carry California because Hiram Johnson didn't give him the support that he should have. Wilson was elected.

PHIL GIBSON:

Conversation with Edward L. Lascher

EDITOR'S NOTE

Phil S. Gibson (1888–1984) was appointed to the California Supreme Court in 1939 by Governor Culbert Olson and served as chief justice from 1940 until his retirement in 1964. He was interviewed in 1973 by the well-known attorney and legal columnist Edward L. Lascher. The interview was intended for publication in the *California State Bar Journal*, but it did not appear. This was explained by Lascher at the time of Gibson's death in 1984:

The legal world, as well it should, mourned the passing of Chief Justice Phil Gibson last month. The encomiums regarding his matchless impact on the California judicial scene were less than adequate for such an incandescent life and person. Despite enormous respect for his achievements, however, my favorite picture is not of a judge in a robe, but of a host in an easy chair in a gracious Carmel home, plying my secretary, Hilda, and me with better champagne than our palates deserved and discoursing on how the juice of the grape was obtained during Prohibition, not to mention the merits of the various cheeses and caviars we were downing.

We had gone to do an interview for a special issue of the late, lamented *State Bar Journal*. We got a witty, candid, wide ranging commentary on four decades of California legal history and personalities, from the perspective of someone who not only had the best of all views, but also applied the “Show Me” mindset of his native state. Everything was gentle, kind, modest — and incredibly perceptive and penetrating.

The two hours were more than enough to add enormous fondness to my preexisting admiration — and to make Hilda an unabashed cheerleader for that gentleman. They also produced a priceless text which would have been the most informative, original and avidly read thing regarding courts, judges and lawyers to appear in a month of blue-mooned Sundays — because of what he had to say, obviously, not any contribution by the interviewer.

How come you never read it? As agreed in advance, I sent a draft and, a few days later, got a call. “I don’t want you to print it at all, Ed.”

Why? “Those are just the ramblings of an old man. Nobody wants to hear about that stuff nowadays. You should be writing about today, not bothering with reminiscences.” That was tantamount to Einstein’s telling an interviewer nobody would be interested in hearing about some penny ante theories. But he was adamant, and I had made a deal, so it never saw light of day, anywhere, and I was even more in awe.¹

The interview did finally see the light of day in 2006, when it appeared for the first time in the Newsletter of the California Supreme Court Historical Society.²

As prepared for publication by Lascher, the interview opens with a brief introduction, followed by questions and answers. It will be noted that the first “answer” by Gibson continues an ongoing conversation. The

¹ Edward L. Lascher, “Lascher at Large — The Untold Story: A Priceless Interview with the Chief; Jurist Phil Gibson, in Two-Hour Session, Left a Lasting Impression,” *Los Angeles Daily Journal* (June 6, 1984).

² Edward L. Lascher, “An Interview with Phil Gibson,” *California Supreme Court Historical Society Newsletter* (Autumn/Winter 2006), 1, 8-14 (by permission of Wendy C. Lascher). The year of the interview was stated there incorrectly as 1963.

interview appears to have begun with a discussion of Lascher's work in the field of appellate practice, in which he was an early specialist. The published portion of the interview then turns to Gibson's observations about appellate practice in general and to his career on the Court. The interview is reprinted here in full.

— SELMA MOIDEL SMITH

PHIL GIBSON:

Conversation with Edward L. Lascher

INTRODUCTION

EDWARD L. LASCHER

During his introduction to the second edition of his much-noted *California Courts and Judges Handbook*, lawyer-author Kenneth James Arnolds observed:

Among the giants who loom large in recent history is a remarkable man who spent a quarter of a century on the California Supreme Court — 24 years as chief justice. Judicial reform was his personal crusade. He was the driving force of the court reorganization program. He fathered pre-trial procedure and non-publication of judicial opinions. He regenerated the Judicial Council and improved the administration of justice in countless ways. His long and fervent advocacy of penal reform is hopefully nearing fruition. Judged by his accomplishments, he must be 208 years old; judged by his vigor, Phil S. Gibson may outlive us all.³

³ Kenneth James Arnolds, *California Courts and Judges Handbook* (San Francisco: Law Book Service Co., 2nd ed., 1973), xxxiv.

True words, indeed, about the man who personified the title: “The Chief.” In view of current interest in judicial reform, particularly at the level where Chief Justice Gibson’s impact was most immediately felt, the *State Bar Journal* sought his views on some aspects of the contemporary appellate scene.

The Chief’s response to our request for an interview was negative, for a characteristic reason: “Nobody wants to hear what I’ve got to say; talk to those who are on the scene.” Perhaps the *Journal* never convinced him, but we did wear down his resistance, and our interviewer spent as delightful a mid-day as one is likely to encounter, chatting with The Chief and the vivacious Mrs. Gibson (herself a lawyer) in their lovely Carmel home. It provided a heady brew of good company, good conversation, pointed insight, vintage anecdote and fine Champagne — all of it too much for the recollective and reportorial capacities of an awed lawyer. The *Journal* must, therefore, apologize for the shortcomings of its recounting of the provocative and evocative conversation.

CONVERSATION

GIBSON: Well, it certainly is an important subject you’re working on, something I’m glad to see people thinking about. It takes real talent and effort to do a good job of handling an appeal.

LASCHER: I think there are a lot of us who think that if you’re a good trial lawyer, you’re automatically going to be a good appellate lawyer.

GIBSON: No, that’s not true. You take Jerry Giesler, for example. He was one of the best trial lawyers I ever knew, specialized in criminal practice and studied the whole law, but he wasn’t an outstanding appellate lawyer. He didn’t present his points on appeal nearly as well as he did in trial practice.

One of the best appellate lawyers in my experience, in the criminal field, was a deputy attorney general in Los Angeles some years ago. He was particularly good in oral argument. He never tried to kid the court; he laid it right on the line. If the case was against him, he said so; if he thought it could be distinguished, he tried to distinguish it, and if he didn’t do that, he said it should be overruled because it was wrong — and he told us why.

REMEMBERING CHIEF JUSTICE GIBSON

ELLIS HORVITZ*

It is nearly 60 years since I was a law clerk for Chief Justice Gibson, but my memories of the Chief remain as strong as if it had been yesterday. In this brief note, I would like to recall some memories of the Chief as teacher and friend.

I still remember our first working conference. I was quite unprepared for the Chief's robust critique. As I left the meeting with Vicki Glennon, the senior staff attorney who mentored my first effort (later Mrs. Gibson), she said cheerfully, "That was a wonderful meeting. He likes you." I don't recall if I said it or only thought it, but I wondered what it would have been like if he hadn't liked me. I soon learned this was the Chief's teaching style. It was my good fortune to experience it.

From the first day, he set the bar high. Praise was measured. There was no room for complacency. In short, he provided a master class in judicial analysis and clear writing. I didn't know it then, but the relatively short time I worked for the Chief, less than two years, would determine the course of my career as an appellate lawyer.

* The author was one of Chief Justice Gibson's law clerks from 1951 to 1953. This article is an expanded version of his "A Personal Note," *California Law Review* 72:4 (1984), 503-505.