

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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PHIL S. GIBSON,
CHIEF JUSTICE OF CALIFORNIA, 1940-1964.

Courtesy California Judicial Center Library

in that arena, from structural reform to procedures for judicial accountability, are understandably the primary focus of the oral history that follows.

Such attention as is typically paid to Gibson's contributions as a judicial administrator, however, tends to obscure his contributions to the substance of legal development as a legal scholar, and that tendency is enhanced by the shadow of legal giants like Roger Traynor, Mathew Tobriner and Stanley Mosk who came to serve with him on the Court, and to whom, through the assignment of cases, he often deferred. And so it is that in the oral history which follows, the opinions that Gibson wrote are relegated to a single footnote, whereas in fact, the opinions of the Gibson court — in the forefront of judicial response to changing conditions in the nation and in the world — are of at least equal significance to judicial reform in the Court's emerging preeminence. Gibson's own contributions to those developments, especially in the area of civil rights, deserve greater recognition than they have received.

In his oral history, Gibson is quoted as saying that he considered an opinion holding that unions could not discriminate against blacks to be the most important case he wrote. The case, *James v. Marinship Corp.*,¹ was brought by black boilermakers against their union and their employer, a shipbuilding company in Marin County. World War II was underway, and, skilled workers being scarce, the black boilermakers, imported from the South, were badly needed. Their presence, however, created a problem for the boilermakers' union. The union had a closed shop agreement with Marinship, requiring that all workers be union members, but at the same time it was the union's policy not to admit blacks as members. And yet the union did not want to be seen as obstructing the war effort, nor was it anxious to forego additional dues revenue. The union solved this dilemma by establishing an "auxiliary" union that blacks could (and were forced to) join, and pay dues, but without any voice in policy formulation or selection of officers who, as a matter of federal law, were supposed to represent all the members of the boilermakers' bargaining unit.

The response of the black boilermakers, represented by the NAACP and its lead counsel, Thurgood Marshall, along with local lawyers, was to sue both the union and Marinship. For the Court it must have seemed a

¹ 25 Cal.2d 721 (1944).

politically sensitive case, since labor unions had been among the strongest supporters of the Olson administration, but as Justice Stanley Mosk put it in his memorial tribute at the Supreme Court, for Gibson there were no “sacred cows.”² In terms of his own values, and the emerging values of society, the answer must have been clear. But what about the law? This was 1944. The federal Civil Rights Act was still twenty years away. The union’s duty of fair representation under federal law had yet to be firmly established. Neither the federal nor state constitutions applied to conduct by private actors. And, as the union argued vehemently in its brief, labor unions were private associations, free to establish their own qualifications for membership without judicial interference.

The easy answer, the course of least resistance, would have been for the Court to deny relief, invoking principles of judicial constraint. Any other answer would require judicial activism, would it not?

Gibson’s answer — one that went beyond the theories advanced in the briefs — was solidly grounded in the common law. A union, he observed, is like a public utility, exercising a sort of monopoly, *de facto* if not *de jure*, in the representation of workers. In that respect it was like the keeper of a remote inn, or the provider of a scarce service, who at common law had the duty to serve all without arbitrary discrimination. A union might maintain a closed shop, requiring union membership as a condition of employment, and it might maintain a closed union, excluding those whom it did not care to admit to membership, but to maintain a closed shop and an arbitrarily closed union at the same time violated the union’s common law obligations.

The idea that a union may not exclude persons on the basis of race, or relegate them to a separate (and decidedly unequal) membership status, no longer strikes us as remarkable, but at the time it represented a huge advance in legal doctrine. As applied to unions, Gibson’s reasoning came soon to be accepted as part of federal labor law, but the implications of the reasoning were broader, and reverberated throughout the common law. What is now known as the doctrine of “common law due process” — the doctrine that an organization or entity that controls access to a business or occupation must exercise that control through fair procedures

² Stanley Mosk, *Phil Gibson — A Remembrance*, 72 CAL. L. REV. 506, 508 (1984).

and non-arbitrary standards — has been applied not only to unions but to professional societies and insurance companies as well.³ Gibson's pride in *Marinship* is understandable, and justified.

Equally significant was Gibson's opposition to California's sad history of discrimination against persons of Japanese descent, reflected in laws prohibiting the issuance of commercial fishing licenses, and the ownership of property, by aliens ineligible for citizenship under federal law. These laws came to be challenged before the California Supreme Court in the years following the end of World War II. In *Takahashi v. California Fish & Game Commission*,⁴ a majority of the Court, in an opinion by Justice Edmonds (who was Governor Olson's fourth appointee) upheld the fishing prohibition against equal protection challenge. Gibson joined Carter and Traynor in a strong dissent, and their position was vindicated when the U.S. Supreme Court reversed.⁵

When the alien land law came before the California Court a few years later, in *Sei Fujii v. State of California*,⁶ Edmonds switched to join the prior dissenters in an opinion by Gibson holding the law unconstitutional. The plaintiff was about to lose ownership of land which he had purchased after World War II, pursuant to the decision of the trial court based on the provisions of the Alien Land Law which provided for escheat to the state. But Gibson's court reversed. The opinion began by rejecting plaintiff's argument that the Alien Land Law offended the United Nations Charter, reasoning that while the Charter was a treaty, its terms were not self-executing, and so the opinion went on to consider plaintiff's argument that the law violated the Equal Protection Clause of the Fourteenth Amendment. Gibson had no difficulty concluding that the Alien Land Law, by incorporating the federal standards for citizenship eligibility, had both the purpose and effect of discriminating on the basis of race, but there was a problem: the U.S. Supreme Court which had sustained similar land ownership restrictions against equal protection challenge on the basis that such restrictions were "reasonable" in light of a state interest in confining land ownership to

³ See Matthew [sic] O. Tobriner and Joseph R. Grodin, *The Individual and the Public Service Enterprise in the New Industrial State*, 55 CAL. L. REV. 1247 (1967).

⁴ 30 Cal.2d 719 (1947).

⁵ *Takahashi v. California Fish & Game Commission*, 334 U.S. 416 (1948).

⁶ 38 Cal.2d 718 (1952).

persons who had a stake in the national polity. Gibson and his liberal colleagues found the law unconstitutional notwithstanding those opinions, on the ground that the principles on which those cases were decided had been undercut by subsequent decisions, including *Takahashi*. The three dissenters attacked the majority's reasoning on the familiar ground that it represented personal preference rather than the law, but the U.S. Supreme Court denied *certiorari*, implying under the circumstances, that Gibson and his colleagues were right, as indeed they were.

It is worth recalling, in light of the currently fashionable emphasis on prior judicial experience as a qualification for appointment, that Phil Gibson had never served as a judge when Governor Olson put him on the high court. He had served as director of Finance in the Olson government, and before that as a successful corporate lawyer representing entities in the movie industry. Underlying those experiences were a creative intellect, a keen appreciation of human nature, a personality which projected warmth and integrity, and an unwavering commitment to social justice. Governors looking for criteria to guide judicial appointments could do a lot worse.

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Oral History of
CHIEF JUSTICE PHIL S. GIBSON

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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/caliconstitutoff00morrich>.

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.

You were asking me about how I got to California. After the war I went to school in England. I hadn't been discharged. I went to the Inns of Court, which is a great law school; I was still in uniform. When I was discharged I came back to this country. I was physically not able to practice law so I got a homestead in Wyoming. I lived for two years on the Wyoming homestead.

MORRIS: That must have been pretty rugged.

GIBSON: Well, not too much so. There were lots of us, mostly soldiers with tuberculosis. It wasn't rugged, no. Not too much so.

MORRIS: Had you picked up tuberculosis serving overseas?

GIBSON: Probably. When I was sufficiently recovered to work again, my brother who was editor of a paper in Los Angeles County, my younger brother, urged me to come to Los Angeles and that's how I got to California. I was admitted to practice in California and started practicing in February 1923, as I remember it.

MORRIS: How complicated was it to be admitted to the bar in California?

GIBSON: Not then. Not with my background.

MORRIS: I would think that was pretty distinguished.

GIBSON: With the army service and everything, we got a break, of formal examination. It didn't amount to much. I passed a sort . . .

MORRIS: Was there a set time of year at which everybody who wanted to be admitted took the exam?

GIBSON: I don't think so for a person who had been admitted to practice in another state. I started practicing in Los Angeles. Those were boom days in Los Angeles.

MORRIS: Was there a shortage of lawyers?

GIBSON: Well, Los Angeles was booming. I don't know if there was a shortage of lawyers, but the city was growing very fast, the moving pictures were in their prime, and very soon I was representing people in the moving picture business.

MORRIS: That must have been interesting.

GIBSON: I lived in Beverly Hills and knew many of those interesting people. My wife and I didn't go out socially. She wasn't real well and I didn't

want too many social contacts. Of course, it doesn't always help to know all your business contacts socially.

MORRIS: It does not help?

GIBSON: Sometimes it's better not to. I did not represent many of the actors. I represented the companies.

MORRIS: In corporate law?

GIBSON: Yes, mostly.

MORRIS: The business end of things.

GIBSON: Yes.

GOVERNOR CULBERT OLSON'S ELECTION AND ADMINISTRATION

GIBSON: I met Olson in the early '30s and I liked him. I found him a very fine person to work with, a very able man. I liked his record in the Senate, the state Senate.

When he decided to run for governor, for the nomination, there were several very important men seeking the nomination: O'Connor, who afterwards became a federal judge, a great friend of Roosevelt's, wanted the nomination, and two or three other prominent men. I thought Olson was the best candidate. At that time I was not a registered Democrat. I think at that time I probably was registered declined to state. I had run on the Republican ticket when I was elected prosecuting attorney in Missouri, but I hadn't taken any active part in politics in California.

I made a contribution to Olson's campaign. He found out about my contribution and he called me and asked me to meet with some people in his office. I told him, "They promised me that I wouldn't be bothered if I made this contribution," and he said, "Well, just this once." So I went over. The question was whether he should address a group in Pasadena that was pretty far to the left. I said, "Hell, they're your friends, aren't they?" He said, "Yes." I said, "Well, stay with them." Some of the people there were advising against it.

But anyhow he asked me if he could walk back to the office with me. He said, "I'm looking for a headquarters, and I know you represent several of the buildings downtown. Would you find me a place for a headquarters?"

I said, "It will cost you too much money. You can't afford the rents downtown." I went back up to my office and I thought about the basement of the Loew's State Building. It had been occupied by a cafeteria, a very successful one. These were pretty hard times and it had gone broke and the place was empty. A lovely place at the corner of Seventh and Broadway. I called Loew's real estate man in New York.

He said, "Hell, yes. Rent it to him. Louis Mayer will have fits." Louis Mayer was then president of Metro-Goldwyn-Mayer and a great Republican and very active in support of the Republican candidates.

MORRIS: Did you work out a rental that the Olson campaign could afford to pay?

GIBSON: Sure, sure. The cafeteria room had been empty for quite some time. Olson's headquarters attracted a lot of people there and that was business for the building.

MORRIS: So did you continue to sit in on these discussions?

GIBSON: No. I had very little connection with the campaign after that. Then after Olson was nominated, I attended a couple of meetings with just a few people from the moving picture industry that were supporting Olson.

MORRIS: Who would that have been?

GIBSON: Well, Joe Schenck was one of his leading supporters.

MORRIS: On your recommendation?

GIBSON: No, I think Joe always acted on his own; a pretty able fellow, you know.

MORRIS: Yes, to start a motion picture business and keep it going.

GIBSON: Joe's brother, Nicholas M. Schenck, was one of the most powerful men in the moving picture business.

MORRIS: Did you and Mr. Olson talk about his ideas about government at all?

GIBSON: No. I didn't discuss those things with him. He had ideas of his own and frankly I wasn't in politics. He asked me to dinner at his house just a few days after he was elected. He asked me if I would go to Sacramento with him to help him with his budget. In those days, and it's still

to a certain extent true, a governor has to find out something about what he's going to do when he gets into office as far as his first year's budget is concerned.

MORRIS: Because the budget is presented right after he's sworn in?

GIBSON: That's right. So I went to Sacramento with him. Went with him and helped him with his budget. When that was done, I went back to my office in Los Angeles. Nothing was said about any political appointment at all. I wasn't looking for one.

DIRECTOR OF THE STATE DEPARTMENT OF FINANCE, 1938–1939

GIBSON: A few days after I got back, he called me and asked me if I would like to be director of Finance. I said, "I don't know that I'm qualified. I don't know anything about state politics." At that time I thought he was going to appoint Dewey Anderson. Did you ever hear of Dewey?

MORRIS: Read his book?

GIBSON: Burke's book. I haven't read Anderson's book, but a man named Burke has written a book called "Olson's New Deal in California" — doctoral thesis. It was a . . .

MORRIS: He mentions that Dewey Anderson was the person that was expected to be director of Finance. Dewey Anderson also wrote a book? I have . . .

GIBSON: Oh, yes. He died just a short time ago.

MORRIS: Just a year or so ago, yes.

GIBSON: Dewey had a lot of ability but he did not always have good judgment in political matters.

MORRIS: I understand that he did help Governor Olson develop position papers on social issues and that kind of stuff.

GIBSON: Oh, I'm sure of that, yes. He wanted to be director of Finance. Olson may have let him think he'd get it. So when I was appointed, Dewey was very upset. The governor gave Dewey the job of handling all of the relief set-up in the state; what did they call it then?

MORRIS: They called it the State Relief Administration.

GIBSON: SRA?

MORRIS: Right.

GIBSON: While working at that Dewey got in trouble with the communists, who were trying to run the Olson administration and were not succeeding.

MORRIS: Was it that communists got to Mr. Anderson or that there were just some who got hired?

GIBSON: There were some that were hired in that relief set-up that caused Anderson and the governor a lot of trouble. I don't know exactly the basis of the Anderson-Olson split. I don't know what was at the bottom of their differences. I got along with Dewey very well when I was director of Finance, even though he thought he should have had the job instead of me. I expect he was right.

MORRIS: The Relief Administration was a knottier problem than the Department of Finance at that time, am I right?

GIBSON: From a public standpoint. Of course, at that time the director of Finance next to the governor was the most powerful position in the state. At that time it had responsibilities that are now encompassed in a half a dozen departments. It was a very powerful position.

MORRIS: Were those things that later became separate departments already too unwieldy?

GIBSON: Oh, I think some of them were.

MORRIS: So what you're saying is that your appointment as director of Finance was announced before Dewey Anderson's job as head of the SRA? You were the first appointment announced?

GIBSON: I expect that I was. I don't remember, but I think that my appointment was announced before Dewey's. I know Dewey thought he was going to get it. He was rather upset about it, but I told him that I wasn't going to be around there very long and that he would probably step into my shoes when I left. I had told the governor I could not stay in the job more than six months.

MORRIS: I see. How come?

GIBSON: I wanted to get back to my law practice. I didn't like being away from my wife, who stayed in Beverly Hills, and I didn't really want the job.

MORRIS: Then why did you say yes?

GIBSON: Well, I was weak, I guess. Olson had a way of convincing his friends. I thought I might learn something, too. Some people said that I took the job because I wanted a judicial appointment. That's not true. Dewey Anderson has that in his book. I was not looking for a judicial appointment. If there hadn't been a couple of deaths on the Supreme Court right at that time, I probably never would have gotten one.

MORRIS: What kinds of things did you think as a practicing attorney that you might learn in running the Department of Finance?

GIBSON: Business experience on a large scale.

MORRIS: How much is there that the director has to know of actual financial things ?

GIBSON: Of course, I'd had quite a bit of experience with the business side of law practice. After all, I couldn't work with the people high in the motion picture business at that time without knowing something about business. I quit trial work entirely in my last years of practice. I refused to take any trial cases. Business law occupied all my time.

MORRIS: How much of the actual detail work of the Department of Finance was handled by the career civil servants?

GIBSON: We had splendid people there. I could not have done the job without their help. They were able and loyal.

The director of Finance handled certain investments, and when I first went in as director of Finance, half the people outside waiting to see me were bond salesmen. I called up the University of California and I asked for the man in charge of their investments, if I could get a man to take over this work. They gave me the name of a fellow, and so, working with the Personnel Board, the governor, and the Legislature, I set up the job.

MORRIS: A separate person to handle the investments?

GIBSON: Yes.

MORRIS: That's interesting. And you got him from the university?

GIBSON: I've forgotten his name. He was recommended by the people handling the investments for the university and we got that job out of politics entirely.

MORRIS: That sounds like you'd need a real professional in that job.

GIBSON: Yes, I wasn't qualified to do it and probably none of my predecessors were qualified to do it.

MORRIS: The business of investment of state funds, this is always a tricky one, isn't it?

GIBSON: Well, you have to know something about the business. I didn't and I didn't want to be bothered with the horde of people pressing all the time. There were millions of dollars there to be invested. Those were pretty lean years. They were all hungry for business.

MORRIS: When you were working with Mr. Olson on that first budget after he was elected governor, was it a surprise that there was more of a deficit than was expected?

GIBSON: Oh, I don't know. I really don't remember much about it.

MORRIS: I was thinking of your comment about "Those were lean years."

GIBSON: Yes, they were.

MORRIS: You were saying, "Those were lean years" in the economy when you and Olson went to Sacramento.

GIBSON: Sure. You had the Great Depression in the '30s. In the last years of the '30s and early '40s things were pretty tough. The war came in the early '40s and it changed the whole picture.

MORRIS: One of the things that Mr. Olson had the most trouble with was getting the Legislature to approve money for that State Relief Administration, wasn't it?

GIBSON: Yes, he had trouble with the legislature on nearly everything because they didn't like Olson and the things that Olson was proposing in California. All of them have since become part of our government, but Olson was far ahead of his time, way ahead of his time.

MORRIS: But they had liked him when he was a state senator, hadn't they?

GIBSON: Not all of them. [Chuckles.] Just one group liked him; the liberals liked him. I don't think the big oil companies or big business liked Olson much. For that matter, they didn't like Warren towards the end of his administration.

About a month before he left, Governor Warren told me that he was sick of them. He said they interfered with almost everything that he was trying to do for the people. Warren was getting more liberal; he was changing before he left as governor.

MORRIS: Do you think that being governor has that effect on a person?

GIBSON: I think most governors want to do a good job for the people. Warren gradually became more liberal during his administration, very much so in the last two years of his administration. Of course, he carried it on as chief justice. Eisenhower told me once that the biggest mistake he ever made was his appointment of Warren as chief justice, and I understand he told other people that same thing. I think Warren was a good governor. He made very good judicial appointments. He did a good job in administration. But I thought you wanted to talk to me about Goody Knight.

MORRIS: We do, but since we don't often get a chance to talk to somebody who's worked with so many governors, we thought we would pick up on the earlier ones, too.

GIBSON: I worked very closely with Olson and with Warren. I never worked so closely with Knight, although I knew Knight very well. We never were very close after he became governor.

MORRIS: Why would you think that is?

GIBSON: I don't know why.

CALIFORNIA SUPREME COURT: APPOINTMENT AND FELLOW JUSTICES

MORRIS: Would you say that you generally were considered liberal in your outlook on life and the tone of your decisions?

GIBSON: Oh, I think so, yes. I suppose so. I became an associate justice on the court in '39. I became chief justice in '40. Roger Traynor took my place as the associate justice. Three of us at that time were Olson's appointments:

Carter, Traynor, and Gibson. Carter had been a state senator and was an exceptionally able lawyer, one of the best trial lawyers in the state. He had had no judicial experience. Neither had Traynor, nor I. When I went on the Court, Waste was chief justice. I succeeded him within a year, seven months I think I had been on the Court. Justice John Shenk was the senior associate justice. He was conservative but he thought he was a liberal.

MORRIS: He thought he was a liberal?

GIBSON: In his own mind, and I expect he was at one time a liberal Republican. [Jesse] Carter, who had been a superior court judge and on the court of appeals [sic], came from a very conservative area. He was a very fine looking man; he looked like a judge. [Fred] Houser was one of the ablest lawyers I think that ever sat on our court. Nobody gives him much credit, but he was an exceptionally able man. He suffered terribly from migraine headaches. It was a big handicap. I could sympathize with him because that was my first wife's big problem. [Douglas] Edmonds was very ambitious, but very intelligent. Sometimes he went with Carter, Traynor, and Gibson in labor cases. It was a good court. Warren only had one appointment on the Supreme Court, Justice Homer Spence. Olson had four, let's see, Gibson, Traynor, Carter, and Schauer. He had four appointments on the Supreme Court and he was governor for only four years. Warren was governor over eight years and only had one appointment and that was Spence.

MORRIS: Schauer was appointed by Olson before he finished his term?

GIBSON: Yes.

MORRIS: That's interesting. Goodwin Knight had only one appointment, too, I believe: Marshall McComb.

GIBSON: Yes. Goody had promised that place to Tom White. Afterwards he gave the appointment to McComb. He called me — my wife had died and I had left Piedmont and was living in San Francisco when Knight called me. He said, "You're a friend of Marshall McComb's, aren't you?" I said, "Yes, I've known Marshall since 1926 or '27."

He said, "I would like to appoint him justice of the Supreme Court." And I said, "Well, Goody, you told me you promised it to Tom White." He

said, "Well, Tom will wait." Goody was *very* political, McComb, of course, as you know from recent publicity, is very rich.

MORRIS: I knew there was a debate about who was going to control his assets. I thought that probably meant they were sizable.

GIBSON: Well, Marshall McComb is a wealthy man. He and Schauer went on the superior court at the same time in Los Angeles. At the same time [1927] Spence was put on the superior court in Oakland, Alameda County, by Governor Young. At the same time he appointed a judge who afterwards became quite famous, [Leon R.] Yankwich.

Yankwich served on the United States District Court in Los Angeles. I knew all these people. We were all about of the same age and all, except Spence, all of us Los Angeles people. They were appointed by Governor Young; he was one of the best governors this state ever had. He never gets much credit, but he was a fine governor.

MORRIS : He was from Berkeley, wasn't he?

GIBSON: Yes.

MORRIS: A high school teacher. He taught civics and government; I've always thought he sounded like a very interesting man.

GIBSON: He was a good governor, excellent.

MORRIS: You think he was ahead of his time?

GIBSON: Yes, but he lacked the ability to communicate, to tell his story to people. But he did a fine job as governor.

MORRIS: Young seems to have had some fairly advanced ideas on administration and efficiency and accounting.

GIBSON: He did, he did. Any man in the office of director of Finance who looks back over prior administrations can immediately see the fine job that was done when Young was governor.

MORRIS: Was Fred Links already in that office when you were?

GIBSON: Is he still in there?

MORRIS: No, I'm sorry to say he died a couple years ago. But I talked to him a year or so before that.

GIBSON: He certainly helped me. I'm sorry to hear he has died. I hadn't got a Christmas card from him for a couple of years and I wondered about Fred. He was a great help to me when I was director of Finance. He was my right-hand man. He was one of the ablest men who ever served in the civil service in this state, one of the most knowledgeable. We were very close, remained very close for a number of years. Then I sort of lost track of him. I wondered because I hadn't heard from him.

I asked Paul Peek about him not long ago, and he said, "I think he died." He wasn't very strong physically towards the end.

MORRIS: He seemed to continue to enjoy life tremendously. In working with Governor Olson on setting up the budget, would you also have given him a hand finding other people to take appointments in the other departments?

GIBSON: No. I never had much to do with the governor's selection of people in the administration outside the judiciary. Olson conferred with me on almost all his judicial appointments. He didn't always follow my suggestions, but he always conferred with me.

MORRIS: You said you were surprised that two people died on the Supreme Court so soon after Olson became governor?

GIBSON: Yes, that was unusual.

MORRIS: When did you get an idea that Governor Olson was considering appointing you?

GIBSON: To the Court?

MORRIS: To the Court, yes.

GIBSON: Well, I also ran the finances of the exposition on Treasure Island, representing the state. I was there on one occasion with Governor Olson and I rode back to San Francisco with him. In the car, he turned to me and said, "I'm going to put you on the Supreme Court."

MORRIS: And what was your reaction?

GIBSON: I was very much surprised. I knew there was a vacancy, of course. He had talked to me when he appointed Carter just a few months before, a short time six weeks before, following the death of another member of the Supreme Court. But this came as a complete surprise to me. A lot of people

think it was all set. It wasn't at all. I told him just about ten days before that that I had to get back to my office in Los Angeles. He was looking around for somebody to succeed me as director of Finance. I had recommended George Killion. You know George.

MORRIS: Yes, I do know George.

GIBSON: He didn't appoint George first. He appointed him afterwards. George was not my immediate successor . . . a fellow from Pasadena whose name I've forgotten.

MORRIS: There was a man named [John R.] Richards in there for a while.

GIBSON: Yes, Richards, from Pasadena. I didn't know Richards. I was surprised that he was appointed. That was how Olson broke the news to me when he appointed me.

GIBSON: Then when Waste died, the Court was in Los Angeles holding a session. I can't be certain about dates, but I think we got word of his death on Thursday while the Court was sitting in Los Angeles. Waste was, we knew, quite sick and did not attend the session in Los Angeles. He was in his home in Berkeley. We adjourned the session when he died. All of the judges immediately went back to San Francisco. The funeral, as I remember it, was set for Saturday. My wife was with me in Los Angeles. She wasn't very well, so I stayed with her.

We were living at the old Biltmore Hotel downtown in Los Angeles. On Friday the governor was in Petaluma. He had gone up there to make a speech. He called me at the hotel. I was paged by a little fellow who had worked at the old Biltmore for years. He found me at the bar. I was having a drink. He told me the governor wanted to speak to me.

The governor said, "I'm going to appoint you chief justice." He said, "There's a crowd of newspapermen here and they are going to press me to tell them who the new chief justice will be." He said, "I am going to announce it."

I said, "Oh, please don't, Governor, not until after the funeral. The funeral will be on Saturday." He said, "All right."

MORRIS: Did he like to make a big splashy announcement?

GIBSON: No, he liked to get things behind him, make appointments quick.

MORRIS: Get things done.

GIBSON: No, he was not flashy. Olson was anything but flashy. Not nearly as flashy as Warren or Knight or Brown. Not at all as flashy. When I got on the Lark that night, Friday night, to come back to San Francisco for the funeral, which was to be held in Oakland, I was sitting in the club car of the old Lark.

MORRIS: Yes, the only way to travel.

GIBSON: That was great in those days. They had a radio on in the corner of the car. A blast came over the radio, governor's announcement that he'd appointed Gibson chief justice. An elderly-looking gentleman sitting in the corner of the car reading his newspaper wrinkled it up and threw it on the floor in absolute disgust. The fellow sitting next to me said — I didn't know that he had recognized me; I didn't recognize him — he said, "That fellow didn't like it, did he? Mr. Chief Justice, I'm going to buy you a drink." It was a little embarrassing.

MORRIS: Had you ever thought about possibly becoming a judge?

GIBSON: Oh, yes, I'd thought about it. I don't think that I would have been interested in becoming at that time a trial judge. I was doing very well in the law practice right at that time.

MORRIS: And you liked the business law?

GIBSON: And I liked it, yes. I was doing very well. But almost any lawyer would like to be on the state Supreme Court. There are very few lawyers that wouldn't like that. And to be chief justice is, of course, a very powerful position; more powerful than it is now; it was a very powerful position.

JUDICIAL REFORMS

GIBSON: The chief justice at that time appointed all the members of the Judicial Council. Now the chief justice appoints only the judicial members. I was partly responsible for that. I began to work to broaden the base of the Judicial Council to include members of the State Bar and members of the Legislature, because the Judicial Council should be the advocate of judicial reform.

While I was chief justice we reorganized courts in the state, which is probably the most important reform in that field that had ever been

accomplished. We also created the Commission on Judicial Qualifications, which is now called the Commission on Judicial Performance. I made my first speech advocating that in Los Angeles.

Then the same year or the next year I talked to the State Bar here in Monterey, the State Bar and the Conference of California Judges. The proposal was well received by the State Bar, but not by some of the judges. We'd had some tragic situations in the state. Judges that were not doing their job, because of illness, incapacity, and some because of laziness.

It proved to be a very important reform. People don't know much about it. Until this McComb case, they didn't know hardly anything about it. Most of its effect is never known by the public; a judge gets in trouble and he is notified of the complaint.

MORRIS: Something's done about it before there's an issue?

GIBSON: Yes, before any action is taken.

MORRIS: If there is a commission that's looking into the qualifications of judges, what does that do to the governor's role in making appointments?

GIBSON: Well, there isn't any commission looking into the qualifications of superior or municipal judges before appointment. The Commission on Judicial Performance looks into the conduct of a judge, complaints that are made against judges. I'll give you an example that occurred before this commission was created, just one of a hundred examples that I could tell you about.

A very able young superior court judge in the northern part of the state was mixed up and he would go off on sprees and we wouldn't know where he was for a couple of weeks. There was a murder committed in the county and he could not be found. I assigned a judge from an adjoining county to take over. (This was during the Warren administration, the last years, as I remember, of his administration.) I asked the judge to meet me in Sacramento. We went in to see Governor Warren, and following the meeting he resigned. He died a few years after he resigned.

We had many such situations where judges, by reason of illness, could not perform their duties. We got better retirement laws. Part of this happened in the Warren administration, some of it in the Knight administration, and some of the best of it in Brown's administration. That's the thing that the Judicial Council should do, under the leadership of the chief

justice. I think the present chief justice, Rose Bird, is going to do an outstanding job in that field because she has the administrative ability.

LATER APPOINTMENTS TO THE SUPREME COURT

MORRIS: In that case, there were people commenting about her qualifications before she was appointed. Is the commission just for the Supreme Court?

GIBSON: No. The commission also passes on all appointments by the governor to the courts of appeal. The commission consists of the chief justice, the attorney general, and, if the appointment is to the Supreme Court, then the senior justice of the court of appeals [sic]. If the appointment is to the district court of appeals [sic], the third member is the senior justice from the district. In Bird's case, it was the attorney general and the senior court of appeals justice, Parker Wood. I testified for her.

MORRIS: I noticed that. What was it particularly about that appointment that made you decide to speak up?

GIBSON: Well, I thought she had the ability, a fine record in school, a fine record as the deputy in defending people charged with criminal offenses. She'd had a fine record and she is very intelligent. The fact that she'd had no judicial experience I didn't think disqualified her. After all, I had had none when I went on the Court. Carter had none; Traynor, who I think one of the ablest men that ever sat on the Court, had none.

MORRIS: That question is raised quite frequently. They said the same thing about Earl Warren when he was appointed to the U.S. Supreme Court.

GIBSON: This was also true of others, including Douglas and Frankfurter.

MORRIS: Was there anything in your testimony for Bird . . . were you concerned that there should be more women on the court?

GIBSON: No. I was testifying as to her qualifications. I had assigned Annette Adams to sit on the Supreme Court and later I assigned Mildred Lillie to sit on the Supreme Court.

MORRIS: Because you thought it was a good thing for more women to have judicial experience?

GIBSON: Well, no, because I thought they were qualified. They were judges on the courts of appeal and we needed help on the Supreme Court. I thought they were well qualified to do the job. I didn't want to discriminate against them because they were women. I think my wife is qualified to sit on any court in the state.

MORRIS: Your present wife is an attorney?

GIBSON: And a damn smart one.

MORRIS: Good. That's very advanced thinking.

GIBSON: Oh, I don't think so. I think my mother was smarter than my father and she'd never gone to college, never gone to high school.

MORRIS: While raising all those children.

GIBSON: Yes, one family and part of another.

MORRIS: How about your own appointment . . . did you feel there'd be a controversy over whether or not you should be appointed?

GIBSON: I never thought of it. I don't think there was any opposition to my appointment.

MORRIS: Aside from the guy at the other end of the club car?

GIBSON: [Laughter.] He didn't like it. He may have thought that the appointment should have gone to Justice Shenk. I had recommended to the governor that he appoint Shenk chief justice.

MORRIS: When you knew Mr. Waste was dying?

GIBSON: Well, we knew for two months that he'd never come back to the court. At that time the retirement laws were not nearly as good as they are today. Waste had heavy financial responsibilities and he'd been sick a long time. We knew that he wouldn't last too long. Shenk was the senior member of the Court. He was able. He was popular among the lawyers and judges. He and the governor had attended the University of Michigan and they were good friends. I thought the governor would appoint Shenk chief justice. He may have thought Shenk was too old.

MORRIS: So he was thinking that people on the Court should stay there a long time when he appointed them?

GIBSON: Well, he hoped they would, I suppose.

MORRIS: Do governors generally look for somebody who shares their philosophies?

GIBSON: Yes, I think so. But they make some mistakes.

MORRIS: That's in the nature of human events, isn't it?

GIBSON: I suppose. That's what Eisenhower claims he did. He said the biggest mistake he ever made was to appoint Warren.

MORRIS: Do governors in general consult with the present members of the Supreme Court when they're considering an appointment?

GIBSON: Well, I don't think that our present governor [Edmund G. (Jerry) Brown, Jr.] consulted with anybody on the Court except probably one member. He probably consulted with Justice [Mathew] Tobriner. The governor was Tobriner's research assistant. Tobriner is one of the ablest men ever to sit on a Court. I thought he should appoint Tobriner and, when he retired, appoint [Stanley] Mosk.

Mosk has the experience. After all, he had four years in Governor Olson's office, served with distinction as a superior court judge, sitting frequently by assignment on the court of appeals [sic], and was elected attorney general by the largest majority any man had ever received for that office. Mosk is doing an outstanding job on the Supreme Court. He was a natural. Mosk is a top administrator as well as a good lawyer. Tobriner, of course, has written some of the finest opinions on the Court. He was very close to young Brown, since the governor had worked for him as a research attorney.

MORRIS: When he was just out of law school?

GIBSON: Yes.

MORRIS: I had forgotten that.

GIBSON: So that's what I expected. I didn't know Rose Bird. I think she's going to make a great chief justice.

MORRIS: Were you asked to go and speak for her at her confirmation hearings?

GIBSON: Yes.

1958 ELECTION SPECULATIONS

MORRIS: I'm interested in Mosk and the other people like Goodwin Knight who leave the bench to run for office.

GIBSON: Well, I don't remember whether Knight ran for lieutenant governor while he was still a superior court judge. He may have finished his term as superior court judge when he ran for lieutenant governor. Mosk was still a judge when he ran for attorney general. But he took a leave of absence as I remember it.

MORRIS: I understand that Mr. Knight liked being on the bench. Normally a judge is pretty sure of being confirmed for another term.

GIBSON: Knight was very ambitious politically, I think one of the most ambitious men I've ever known politically. There's nothing wrong with that. But you know he wanted to run against Warren for the Republican nomination, for Warren's third term.

MORRIS: In 1950?

GIBSON: He tried to get support.

MORRIS: By 1950 there was a fair amount of opposition building up to Governor Warren.

GIBSON: Yes, there was.

MORRIS: But not enough to deny him the nomination?

GIBSON: Oh, no. Knight would have been elected governor easily if he had run for governor again. It is possible that Pat Brown wouldn't have run against him. You know what happened then?

MORRIS: That's the 1958 race when Knight ran for the Senate and Knowland ran for governor?

GIBSON: You know what happened.

MORRIS: I always wondered *why* it happened.

GIBSON: Oh, you live around Berkeley and Alameda County. You must know the picture.

MORRIS: Well, one of the theories is that Mr. Knowland wanted to run for president eventually.

GIBSON: That's not a theory; it's *fact*.

MORRIS: And why would it be easier to run for president as a governor than as a senator?

GIBSON: Well, he had been a senator, very successful. He felt if he could be governor of California he would have recognition as a chief executive of a large state and that would help him to get the Republican nomination for president. Many important Democrats didn't think Brown should run against Knight for governor.

MORRIS: Because Knight had such control?

GIBSON: Knight was popular. You might ask Pat. He is still around.

MORRIS: We plan to ask him. But what we wanted to ask you was if he'd asked your advice on the merits of this campaign.

GIBSON: No. He was attorney general then. I was chief justice. It wouldn't be likely that he'd ask me. I had breakfast with Knight, I think either the day after or two days after he'd gotten the word that he wouldn't get the financial support to run for governor. Knight was brokenhearted. He didn't want to run for the Senate. It was rumored that three newspapers, the *Chronicle*, *Los Angeles Times*, and the *Oakland Tribune*, wanted Knowland. I had breakfast with Knight either the next morning or two mornings after they told him that they wouldn't give him the finances. You know Ed Pauley?

MORRIS: He's on our list of people we hope to interview.

GIBSON: He could tell you the whole story if he would.

MORRIS: Well, if he won't tell us maybe he'll write a memoir.

GIBSON: I doubt if you could get Ed to write anything. He might tell you. I haven't talked to him for a long time. We're old friends, but I don't know whether Ed would talk. I haven't seen him for several years.

MORRIS: Yes, he was right in the middle of things at that point. Do you think Mr. Pauley would tell us about the 1958 election?

GIBSON: He might; I think Pat Brown would tell you. Pat's a pretty frank fellow, but he would not want to say anything that would hurt his son.

MORRIS: That's almost unique, isn't it, to have a father and a son be in the same kind of a job at the political level?

GIBSON: Well, I think I've told you about everything I know to tell you.

OBSERVATIONS ON PAT BROWN AND OTHER GOVERNORS

MORRIS: Let me take a quick look at my list. Yes, I have another question. Pat Brown feels that you were a great help to him in advice and example.

GIBSON: Pat's always given me a hell of a lot more credit than I'm entitled to.

MORRIS: Why?

GIBSON: I don't know why.

MORRIS: You don't like being a mentor for the next generation and sharing your advice and experience?

GIBSON: Oh, no. I wrote several opinions that he liked very much,² but that was just the law as I saw it. Pat advised with me on judicial appointments, on most judicial appointments he made. He didn't always agree

² [The following note appears in the original transcript.] In a phone conversation on 5 October 1977, Chief Justice Gibson recalled a few of the cases on which he wrote opinions that Pat Brown liked.

One concerned Japanese-American land ownership, an uncomfortable issue during and after World War II. At the time, ownership of land by aliens was prohibited under the California Constitution. Gibson wrote the opinion saying that this position was unconstitutional. The United States Supreme Court declined to take the case on two occasions, and the state Constitution was later changed to comply with his decision. Several cases concerning discrimination against Japanese-American fishermen also came to the Gibson court. Traynor, Carter, and Gibson wrote the dissenting opinion that discrimination was being practiced against the fishermen; their minority opinion was supported by the U.S. Supreme Court.

Asked about the Chessman case, one of the more controversial during the Pat Brown administration, Gibson commented that the state Supreme Court passed on it three times. He joined with the majority in holding Chessman guilty as charged. When the governor sought to commute Chessman's sentence from execution to life imprisonment, Gibson was among the minority voting to uphold the governor. Citing a recent

with me. He didn't always accept my recommendations, but he always asked me about the people he was appointing. I talked to him quite frankly and honestly. Of course, I'd worked with Pat when he was attorney general. I was chief justice when he was attorney general. We sat together on the Commission on Judicial Appointments.

The chief justice has a lot to do with the work of an attorney general. Or I did. You see, this is one thing I think I said in my testimony for Rose Bird: our Constitution states specifically that the attorney general is the attorney for the people of California. He has all the civil and criminal cases on appeal and many of the civil cases in the trial courts.

Say there is a case involving the people of California in a trial court and it is difficult to get an early hearing because the calendar is congested. It's important to get that case finally decided so the government can function. When I was chief justice, I assigned judges to assist courts in which those cases were pending so they could be heard promptly. The chief justice can do that. He can assign judges from one court to another all over the state. One of the principal powers of the chief justice is the assignment of judges. He assigns them from the municipal court to the superior court or to some other municipal court. California is one of the few states in the country where the courts are in session the year round. The Supreme Court of California takes no extended leave like the Supreme Court of the United States. There are four men there all the time. And if they need help the chief justice, or acting chief justice, can assign judges to help them.

I worked very closely with Pat Brown when he was attorney general and when he was governor in legislation affecting the courts and in judicial

opinion by Justice Stanley Mosk, Gibson noted that under present law Chessman would not be guilty of a first degree crime and thus not subject to execution.

The most important case he wrote, he feels, held that unions could not discriminate against black people. During World War II, shipbuilding companies needing more help recruited black people, but the AFL union in the case in question would not give these new workers full membership. The case received national publicity at the time and Justice Gibson's opinion holding the union discriminatory was a first in the country. He indicated that the issues involved had similarities to those in the 1977 Bakke case concerning "reverse discrimination."

Other civil rights cases of interest were those from the University of California concerning faculty fired from their positions for non-signing of a loyalty oath required in 1949. Gibson wrote the opinions holding this oath unconstitutional.

appointments. So I know he says very complimentary things. His son called me not long ago and said, "My father says you were the strong man in his administration."

And I said, "Well, your father had many strong men in his administration. He just likes me personally." He has always said nice things about me. I know they come back to me; but I don't know that I was any more important in state government during his administration than I was during the administrations of Olson, Warren, and Knight, although I got along better with Olson, Warren, and Brown than I did with Knight.

MORRIS: That's interesting. Why do you suppose?

GIBSON: We were good, personal friends. But Knight didn't consult with me as much as Olson and Warren and Brown. He opposed me several times in judicial reforms because he thought he was on the popular side. Knight was a very ambitious man politically.

MORRIS: In terms of staying in office in California, or did he have any thought of going on?

GIBSON: Oh, he wanted to be president. You know that if you followed his career.

MORRIS: No, I didn't know that.

GIBSON: Oh, yes.

MORRIS: He wanted to be president, too.

GIBSON: Yes. If he had been re-elected governor, he would have had a chance. They pushed him off to run for the Senate so Bill Knowland could run for governor, and then Knowland came out for the right-to-work law. That's one of the things that defeated him.

MORRIS: Did the right-to-work law ever go to your Court?

GIBSON: No, because it was not the law in this state. It is in a number of states.

MORRIS: That's interesting. The right-to-work bill was defeated and so was Knowland who was plugging it.

GIBSON: Sponsoring it, yes.

MORRIS: How could you explain that?

GIBSON: Of course, the unions fought it very strenuously, you know.

MORRIS: To defeat both of them?

GIBSON: Oh, yes. They fought Knowland and they fought, of course, his advocacy of right-to-work. There may be a growing spirit in the country now in favor of right-to-work laws. I think part of it comes from the fact that unions have become somewhat unpopular because of strikes of public service employees: police, firemen, and teachers.

MORRIS: Would the fact that there are large numbers of people out of work have an effect, too? If people really need a job, they aren't so concerned about whether or not there's a union shop?

GIBSON: Oh, sure. Olson always said (and, of course, he'd done a lot for the unions) that unions would not support social legislation if it affected their union organization. For instance, when I was director of Finance we were building the Cow Palace in San Francisco.

MORRIS: That was built by the state?

GIBSON: Yes. In part for agriculture exhibits.

MORRIS: I have a dim recollection that the reason it's called the Cow Palace is that it was built for agricultural stock shows and the like.

GIBSON: There were a lot of people out of work. I met with the union leaders in the governor's office, asking them to let us hire a lot of people out of work for ordinary labor to help us finish the Cow Palace. They said they would not work if we had non-union labor in there.

MORRIS: The unions?

GIBSON: The unions. We went ahead and did it anyhow, That was one of the things the unions had against Olson.

MORRIS: So he had his troubles with unions, too.

GIBSON: Oh, plenty. He was always fighting for social reforms. Sometimes the unions didn't agree with him. The leadership at that time was very conservative.

MORRIS: Of the unions?

GIBSON: Yes. And some opposed him in his election when he ran against Merriam. AFL didn't oppose him, but the Teamsters did.

MORRIS: In '38?

GIBSON: Yes.

MORRIS: It's curious about California politics. Why did it take twenty years between Democratic governors when registration has been heavily Democratic all the way through?

GIBSON: It took them more than half the century before Olson's election. It was more than fifty years, wasn't it?

MORRIS: It was like 1879 or something like that. Was it the same Democratic party in the 1800s as it was in 1938?

GIBSON: You mean were their philosophy and ideals the same? I don't know. I never had much to do with partisan politics. I ran for prosecuting attorney in my home county the year I was admitted to the bar, the year I graduated from college, on the Republican ticket in a Democratic county, and was elected. I had nothing whatever to do with politics after that — partisan politics or public office — until the governor asked me to become director of Finance. I took no part in any political activities in the Los Angeles area or in the state. I knew Governor Young pretty well. He was a friend of my brother, who was editor of the paper in Pasadena. I had a very high opinion of Young. I never knew Merriam very well. He offered me appointment to the bench and I turned it down.

MORRIS: Why?

GIBSON: I had a very successful law business and I wasn't interested in becoming a municipal court judge.

MORRIS: With all the fascinating things going on in the motion picture industry, did you ever regret leaving all that to go on the state Supreme Court?

GIBSON: No. I was very pleased with my position on the Court and very proud of it and still am.

MORRIS: Do you feel that the greatest successes were in the administrative kinds of things that you've been talking about?

GIBSON: I don't think they were more important than our opinions. But we did things that had never been done before, in any state in the country. This was the first state to establish a Commission on Judicial Qualifications,

which is now called the Commission on Judicial Performance. I think it is the single most important judicial reform that has occurred in the last fifty years. Some people said the reorganization of the courts in the state was the greatest reform that had taken place. Although it has received much more publicity and is more easy to visualize, I don't think it was more important than the creation of the Commission on Judicial Qualifications.

MORRIS: Thank you for sharing your experiences on the Court with us and for your insights into the governors you've worked with.

GIBSON: Brown probably accomplished more for the state than Warren or Knight. It must be remembered, however, that Warren was governor during the trying years of the World War. Knight was a good governor but he was more politically ambitious. ★

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.

He never tried to fool the court by presenting a tricky argument and the court appreciated it. Time after time, I remember the members of the court leaving the bench after an argument and complimenting that man.

LASCHER: That reminds me of one of the things I wanted to ask you about. There's been a lot of talk and writing lately about whether we should even have oral argument on appeals. I wanted to ask you about it — the usefulness of argument.

GIBSON: I think it's important; with some judges it's very important. Of course, it may not be quite as much so as it was at one time because the judges are better prepared at the time of oral argument now than they used to be. The fellow that I think is entitled to as much credit for that as any other man in California is Ray Peters. When he went on the District Court of Appeal, about the same time I went on the Supreme Court, he had two older men for associates, who were both good judges, but after all they had been on the court for some time while Peters had hardly any trial experience at all — he had been working for the Supreme Court as a research attorney. He was well known among lawyers, of course, as being able, but he was completely new to the District Court of Appeal.

Still, he immediately set up what he called a “conference system” which was something entirely new. It required the judges to hold a conference among themselves before oral argument. Before then, sometimes judges went out on the bench without knowing a damn thing about what was in the briefs.

In fact, when I went on the Supreme Court, the situation was much the same on that court. I was shocked at how little some of the members of the court knew about cases before they heard oral argument. So I set up a policy that's still practiced on the Supreme Court. Immediately on acquiring a case, we'd set up a conference and when we were in the conference I would assign the case to a member of the court to prepare what we called the Conference Memorandum on every case that came before our court on petition. So, when we were passing out petitions, we'd have this memorandum prepared by a judge and his staff setting up both sides of the argument in the petition for hearing.

Then, if it was decided at the conference to take the case over, I would assign the case to a judge. They follow a practice on the Supreme Court

now which is much better in the long run, of assigning it in rotation, but I assigned it going around the table for a man to prepare the memorandum who had voted to hear the case. Anyway, the judge who was assigned would prepare it and have a memorandum which had to be circulated two weeks before our calendar. That way, every judge, when he went on the bench for oral argument, would have had an opportunity to study this calendar memorandum setting forth the arguments on both sides and sometimes with some original research of his own, or by his staff — quite frequently so, in fact.

When we went on the bench we knew pretty much what the case was about or at least most of us did. Some judges are just more industrious than others, as you know. But, we were pretty well informed, so we could ask questions of attorneys. By and large, we all thought oral arguments were very important. I know I did. I do like for attorneys to disclose all the facts, so I think I had a reputation of making it a little tough at times and, as I look back on it now, I think I was too tough on lawyers — probably scared some of them. If I had it to do over again — and I've told some members of the court this — I think I'd be a little more considerate of the fellow out in front.

At any rate, after the argument we'd go into conference and sometimes the oral arguments would have changed our views, some of us, at least. I don't think it did that very often, but it helped us, some members of the court. I always thought oral argument was useful — valuable — but only when it was well presented.

LASCHER: There is a view we hear a lot about nowadays, to the effect that the court should only hear oral argument on certain, selected cases. What do you think of that idea?

GIBSON: Well, the problem is that you never know; you never know. I would say that lawyers would be surprised at the number of times judges change their views on the merits of the case before argument, and after for that matter. I've certainly changed my view on important cases, at least sometimes.

I remember times that I had a majority of the court with me — only one or two members raising any questions about the decision — then, the more I started working on the case, the more I became concerned and

worried about it. So I'd circulate the memorandum to the members of the court, saying I was doubtful about my position. Then, I remember at least one rather important case where that happened and I got a unanimous opinion exactly opposite from what I started on.

So it happens, and I would say there is no reason why they shouldn't have oral argument. How are you going to tell? You can't tell whether — what case is it going to be useful in? It may not affect many cases, but you can't always tell beforehand what your views are going to be or what's going to happen to them.

LASCHER: Of course, from a lawyer's standpoint, I think most of us feel shortchanged if we don't have oral argument.

GIBSON: Well, I think your clients do, too.

LASCHER: They certainly do.

GIBSON: So I think that's important, too. One thing I always argued with our court was that the public had to be taken into consideration — what their rights were and what they thought about the court. It's important that the people you're deciding cases for feel that they've had the proper amount of attention and work. That's all got to be taken into consideration. The record is for the people and they are entitled to a shot. I think it's rather important in the administration of justice, for everyone to at least feel he had a fair hearing.

LASCHER: You mentioned lawyers fudging on the facts and misrepresenting them . . .

GIBSON: Well, not so much misrepresenting them as this: the facts have been determined already when they get to the appellate court, as you well know, but instead of accepting the facts found by the trial court — rightly or wrongly — we're bound by them unless they are just shocking — lawyers (and young lawyers, particularly) want to reargue the facts. One experience I regret was jumping all over a young lawyer who was trying to argue the facts to us. I should have been a little more considerate with him and explained the thing that some inexperienced lawyers don't realize — and that disturbs the court — that the lawyer can't reargue the facts. Unless, of course, he has a case where he says that you have no evidence at all to support the findings or the findings of the court are shocking in view of

the evidence. There's nothing wrong with saying that, if it's really there in the case.

LASCHER: What did you find — as opposed to ignoring the facts or trying to relitigate them — what did you find about the level of preparation of lawyers for oral argument? Was it satisfactory?

GIBSON: Oh, there's some difference. Some of them come in well prepared, are helpful, and impress the court. Time after time, I've heard judges say, as we've left the bench, "That was an argument; that was a job well done." Well now, that judge is influenced by that good argument; he's going to think some more. He may have been a little on the other side of the fence, but after a good argument he may want to have some second thought he didn't have before.

You know, most judges in all my experience on our court — and I've served with a lot of them (every judge that held a seat on that court when I became a member was dead when I left, so there was a turnover) — while they differed, all of them I served with tried to do a good job, tried to be objective.

You take a fellow like Jesse Carter, who was an excellent lawyer. Carter had his mind made up on so many damn things, it was awfully hard for him to change, but Carter certainly just wanted to be objective — he just was such a man of beliefs. I once told a meeting of chief justices from all over the country who were there in San Francisco that I sat with Jesse Carter, who was probably one of the most distinguished advocates on any bench anywhere in the United States. He was an advocate all the time he was on the bench, but he was able. You know, a lot of the things he advocated then are the law today, including things he wrote in his dissenting opinions. We were good friends; we went on the court at the same time.

He used to say that he was the only member of the court who had been judicially determined to be qualified. Once before that they had an argument over a very able lawyer from Marysville, a state senator, who almost got an appointment to the court, but then somebody raised the question whether he was qualified because he couldn't hold another elective office — while he was a senator, he couldn't be a justice of the Supreme Court since that was an elected position. The old gentleman, Chief Justice Waste, didn't think he could, so that man didn't get the appointment. And they

raised the same question with Carter, because he was a state senator, but the court held he was qualified for appointment. So he used to say he had a judgment saying he was fit for the court and the rest of us didn't.

LASCHER: That brings up another area of considerable concern or controversy around the appellate world, I guess: the selection or, in particular, the confirmation of judges of the Supreme Court and the courts of appeal.

GIBSON: Well, I guess I happen to know more about that than any other man in California. A lot of the information that's going around isn't authentic. They say that Radin was the only man ever turned down for a court appointment; it isn't true. The others they just never knew about. Governors withdrew appointments, or learned in advance that the appointment might not be confirmed, so they never even made the appointment.

For example, I remember one judge who was appointed to the superior court in Los Angeles County and did fine, but when there was talk about raising him to the District Court of Appeal, the attorney general and another member of the commission came to see me and they said that they didn't want to hurt the young man, but he had been connected with somebody who was in danger of winding up making license plates in the penitentiary, so it looked like there might be two votes against him if the appointment were made. So the governor withdrew the name and somebody else was appointed at the time. The judge went on to a long, fine career where he was.

There were two or three other occasions when men were proposed but not actually presented to the commission and the commission was doubtful, and there were a number of challenges and votes against appointments after they were made public. I know of one man who got a vote against him for the District Court of Appeal and he later went on the Supreme Court and had an outstanding record. Then there were several bad appointments, too. There's a lot of talk now about the qualifications commission, the part of the old commission they named the Commission on Judicial Appointments.

There's talk about enlarging that commission. Well, very soon after I became chief justice, I talked to members of the Board of Governors of the State Bar about getting the State Bar into the Constitution, getting it statutory status. I thought it should be in the Constitution and I appeared

in a meeting in San Francisco and urged them to get behind that, but they were afraid that if the State Bar presented that issue to the people and got turned down, the bar would lose prestige. I didn't think so, but they waited and eventually it was tied in with other constitutional provisions and got passed without any problems.

But what I proposed was a broadening of the membership of the qualifications commission. One fellow I talked to was O. D. Hamlin, who was president of the State Bar. You know Hamlin?

LASCHER: The judge of the 9th Circuit now?

GIBSON: Yes, Hamlin was then bar president. He was from Oakland and I arranged a lunch with Homer Spence, who was very close to him, and urged his help in broadening of the base of the Commission on Judicial Appointments. I think I talked about it to him and other bar governors and people in state government for 10 to 12 years, urging that idea until finally we divided the old commission into two: the one on judicial appointments and a Commission on Judicial Qualifications. The one on judicial qualifications had the broadened bases that I recommended and they're doing some fine things now.

They should do a lot the same with the Commission on Judicial Appointments and it should be divided into regional bases. That is, not all of the appointments should come before the same commission with all the same members. If the court of appeal appointments are for the Los Angeles district, you should have a different commission than for a court of appeal appointment for San Francisco, for example. After all, they've got the interest and the information. I think the same fellow should be at the top all the time, the chief justice, and maybe certain other members should be on all the commissions.

We made that kind of proposal to the Legislature so long ago I've forgotten and they turned us down. One problem was we never got a hell of a lot of support out of the State Bar. Two fellows who always supported it were Herman Selvin and the other was, he was president of the State Bar when Selvin was on the board, Joe Ball from Long Beach. They were for it. I made a speech here in Monterey during the meeting of California bar executives and they were both present and really helped a lot on it, but still nothing came out of it.

I suppose some of the problem goes back to around the time when we got the State Bar into the Constitution. There was a lot of opposition then, probably because, you see, when I became chief justice, the chief justice absolutely ran the Judicial Council. He appointed all the members and he was it. And I didn't like that. I thought there should be changes. Of course, I thought the council should have more authority; I wanted to make rules. As you know, the courts had lost the rule-making power before that — had given it back to the legislature — and I wanted to get back into the rule-making business. As a matter of fact, that was the first speech I made after I became chief justice.

Broadening the base of the Judicial Council and getting members of the legislature and lawyers into it was one of the healthiest things that we ever had, and it was important to making the Judicial Council into what it's become. It couldn't do the things it does without the membership. The same thing should happen when it comes to judicial appointments. You could stop all of the agitation that's going on now — that happened over some of these appointments — if you had a broader base and more representation on the Commission on Judicial Appointments, give it the power to get some things done, too.

You shouldn't have to depend on pleasant surprises — although I've had a lot of them in my lifetime — with appointments. Maybe I gave a few surprises, too. I remember one time, just after I was appointed as an associate justice, two fellows in San Francisco took me out to dinner because my family was still packing up in Beverly Hills and I was living in a hotel. Two San Francisco judges that I had tried cases before wanted to make me feel a little comfortable in the city and they took me out to dinner in a place called John's Rendezvous. John had been in my outfit in France; he was a cook when I was a second lieutenant, both of us at the front, and by this time he had a good restaurant there in San Francisco. He put on quite a dinner for us. I guess he was proud that one of his old comrades had made good, or something of the sort, and so he really treated us. Anyway, after that we walked into the Bohemian Club and in the lobby we ran into a lawyer who had a great reputation around San Francisco, quite a guy. He said to one of the judges I was with: "I see where the governor has just appointed a damn communist onto the Supreme Court." And Dick Allen said: "Yes, I'll introduce you to him; here he is." That's OK, the lawyer and

I got to be pretty good friends later on; he was an Irishman and he found out I was a little Irish. Anyway, people get surprised on appointments that aren't always so popular.

LASCHER: I don't know that I'd want this printed, but I think there were some lawyers who were a little uneasy about the present chief justice, but they all think he's turning out to be a great surprise.

GIBSON: Wright? Well, he was popular with me! When he was on the municipal court in Pasadena I assigned him to the superior court because of the recommendation of some of the judges in the area. I put him in a spot that he didn't like very much, too; not in Pasadena, but he had to travel clear across the county to San Fernando. He did a good job. And I know what kind of a job he did on the superior court, later. He wasn't the kind that always was popular with all of his fellows, but he was a good man who got things done, and after people got to know him he had plenty of friends among his associates, from what I hear. He's a good chief justice, doing a good job, an excellent job.

LASCHER: He's become a great favorite among the lawyers of the state in very short order.

GIBSON: Well he's doing a good job. I thought he would when he was appointed, and I was very happy — I've been enthusiastic about him. Now, the fellow I was concerned about was probably my closest associate, Roger Traynor, because Traynor didn't like that kind of work. He was bored to death with a lot of the jobs the chief justice has to do which are not very much fun, not very exciting, and there's hours and hours of labor that don't get you anywhere much. Traynor would rather spend that time writing opinions — and there's never been anybody better than Traynor at that. What an able man! There certainly were able men on the court when I sat on it.

All the difference is, is that they're different jobs. In the first place, a chief justice has to run his court; he's got to have them happy. He's got to sit down around a conference table and be able to discuss the case objectively. The chief justice is the fellow who's got to walk up and down the hall and get the fellows to work together. You take this: There never were two men farther apart on any court in their personalities and attitudes than Traynor and Carter. They were just as far apart as night from day, and yet

I had to get them to work together. The funny thing is, they were both so-called “liberals”, and they were both real friends of mine, but they worked so differently. That’s the kind of thing the chief has to work on. Of course, it helps to have men like those two and the others; they really gave me 100 percent support. Even when they’re individualists.

I think it’s become real clear to a lot of people, even the chief justice of the United States — very clear — there’s so much else you have to do. The chief justice may not be as able as some of the other members of the court, but that doesn’t really make any difference. He’s got to give leadership and be able to get the most out of his court — whether he is all that able himself or not. That’s absolutely essential. And it’s a lot different job.

LASCHER: To change the subject a bit, something just reminded me. What do you think about publishing opinions?

GIBSON: Well, I think they should be cutting down on the length on the opinions. A lot of the opinions are way too long, but I think the Supreme Court should publish an opinion in each case. A cut-down on all that length would be helpful, but that’s a personal thing for the judge.

LASCHER: You know, they’re still writing opinions at the Court of Appeal level on every case, but they’re only publishing 30 percent of them.

GIBSON: Well, they shouldn’t have to publish them. Thirty percent of them published is all right, but five percent would be better. Actually, they shouldn’t have to write so many opinions.

LASCHER: Would you like to see them go to memorandum opinions?

GIBSON: Yes, in some cases. You know, there’s an awful lot of those criminal cases, particularly, where it isn’t necessary; there’s nothing to them. A lawyer appeals them because he feels he has to go as far as he can for his client, but a memorandum of opinion should take care of it. Of course, I think we all approve of having opinions, in publishing them, when they are true law.

LASCHER: Coming back to the subject of selection and so on, and some of the things you said a few years ago about the merit plan that was around then. You remember that stir?

GIBSON: Yes, they got pretty upset with me when I said I thought they should stay with the California system.

LASCHER: There's some talk about it right now — talk about just adopting it for the court of appeal.

GIBSON: Oh, I think they should go all up and down the line, but using the California system. I've advocated it for years, at least 35 or 40 years. The selection of judges under the California system is much better than the one proposed by the State Bar, which I didn't think would work. I thought that proposal of the State Bar was taking the responsibility away from the governor and putting it nowhere. Under the traditional system in this country, there should be an executive appointment with a check on it and the check should be the Commission on Judicial Appointments — broadened and properly prepared. I argued that for years.

When they had that proposal to change the system a few years ago, I was advocating a broader base on the Commission and the fellow who was the president of the State Bar — who was it?

LASCHER: John Finger?

GIBSON: Yes. He thought I had changed my mind and was kind of unhappy with me. I just told them off the cuff, but really it was what I always advocated, and that is: Let's stay with the California system and make it work.

LASCHER: To put a blunt question, do you think it works with the commission the way it is now?

GIBSON: Well, it works fairly well, but not nearly as well as it should, without broadening the basis of the qualifications commission.

LASCHER: What do you think of the idea of Senate confirmation as an alternative?

GIBSON: I'm absolutely opposed to it. I've had too much experience with it, and it is not good. Senate confirmation is throwing it right into the political heap. That's just not good. The best thing to do would be to stay with the California system, but improve it, broaden the base of the commission, give it a chance to do the job. That's the best thing they can do on judicial selection in California. That's been my opinion for over 40 years now — and it still is.

LASCHER: Well, that's a pretty solid answer.

GIBSON: What you've got to do, besides changing the membership of the commission and having different commissions for appointments in the different areas, is give the commission a budget and a staff. The way it's been done, with some phone calls and private talks, doesn't work — and it isn't right, it isn't what the public is entitled to. There should be a staff that works, something like the staff of the Commission on Judicial Qualifications which deals with complaints against judges. The staff should get information on people who might be up for confirmation, or the chief justice or the commission should be able to ask them to go out and gather information. The State Bar helps a lot when it's asked, but it doesn't really have the skill or time or ability to do that, or to keep consistent records or all the things you need if you're going to investigate something decently and make a sensible decision. You need, first, a commission with more people on it and the legislature and the lawyers represented, and, second, a place that can get its information and somebody it can send out to gather information. Then you get an intelligent decision on confirmation.

LASCHER: May I switch to a different subject? I mentioned to you on the phone that I wanted to ask you for your view on the proposal to restructure the appellate levels — like the Court of Review.

GIBSON: You mean putting something in between the Supreme Court and the court of appeal? Like that national court they're talking about in Washington? Well, Professor Freund's a good friend of mine; a good personal friend, and a great lawyer, has been for a great many years, one of the ablest fellows in the country. But I think he's all wrong. I don't think you need it.

No, what you need — we've got part of it — what you need is a good intermediate appellate court, good courts of appeal. Work more on confirming their appointments, get rid of having to write an opinion for publication on every case (like we said) just to take a lot of room on the shelf, and that kind of thing. Give them the help they need, and we've got the courts we need to get the job done.

LASCHER: One idea along that line I wanted to ask about was this: Many people are talking about the idea of eliminating divisions in the California Court of Appeal — go more to the federal system of one court with a lot of judges and rotating panels.

GIBSON: Well, that idea's got a lot to recommend it — if you have a good presiding justice! Everything depends on that. Just like one of the big superior courts, Los Angeles, San Francisco, those; everything depends on a good presiding justice.

I remember one of the bitterest personal attacks I ever had on me was over the proposal that the presiding judges of the superior court should be appointed by the chief justice. Any man that sat in that job as chief justice knows that the only way a superior court can operate efficiently is with a good administrator as presiding judge. And the chief justice, because of his assignment powers — and his assignment responsibilities — knows how a court operates, how every court in the state operates. He knows that, when there's a good man in the position of presiding judge, he can make his court operate, function more efficiently and more justly, too.

Take for example Burke, when he was on the superior court, presiding judge in Los Angeles; he did an outstanding job, because he knew how to run a court. A lot of fellows thought he was stepping on toes, but there wasn't a court run like that one at the time. Where you have bad examples in the superior court is where the judges elect a presiding judge on a popularity basis or, worse, where they make the senior one presiding judge in turn, the way they do it in so many counties. It just doesn't work. You need someone who's good at that kind of thing, has a knack for it, and that's got nothing to do with how good a judge he is — it's just something different.

So if you have a Court of Appeal with all of the judges lumped together, you'd have to have a fellow at the head who is not just presiding justice by seniority or that kind of thing, but by his administrative ability. What happens otherwise is that the court can get so far behind that it's just not justice. There was one time that one of the divisions of one of the courts was three and a half years behind and another division of that court only one year behind. If a lawyer won a case in superior court and it went up to the District Court of Appeal, as it was then called, if he hit one division he could have the case over within a year, but if he hit another one he'd be stuck for three years before he had his judgment, and he had no choice about it — and no chance. And the difference was largely because of the men who happened to be presiding in those two divisions. Of course, we moved in on the picture with superior court judges pro tem and cleaned it up within about two years or less. We even transferred cases from one

district to another. They'd have to consent to it on both sides, but if lawyers wanted to get their cases over with, that was the only way they could get it done.

There was one time, after we'd gotten so far behind, I wound up with six or seven judges on each three-judge division, and we were knocking the backlog down fast — had them up to date in less than two years. So when you talk about throwing the court of appeal judges all together, instead of in a division, it would be a good idea if you let the chief justice designate the presiding justice of that whole court. He'd do it on the basis of which one could be the best administrator.

LASCHER: The one thing we've heard against the whole idea — and I understand it's actually something that this Judicial Council has hinted it might be in favor of — is the idea that the presiding justice, by hand-picking the panel, could pretty well predetermine the outcome of the case.

GIBSON: Oh, I suppose it's possible that you might get a bad chief justice someday, and that he'd put in a bad presiding justice, but I just don't think that's a real danger. The chief has a staff of his own and they know what's going on, and they all want to make their courts work. I think very few of them would play any kind of personal politics, none that I've ever known. I never did, and Traynor never did, and I can't imagine Wright ever doing that.

The crucial thing is picking the presiding justice, but I don't think stacking a panel to decide a case is very likely; I don't think it would work. My father, who was a lawyer, told me you could never be sure who a woman would marry or what a judge would decide — and now, I guess there's something to that. Even just trying to figure out in advance people like Carter who had a slant, a really strong philosophy, but in many cases he surprised me.

They're all men of strong opinions, of course, or they wouldn't be there, but when judges get on the appellate court they surprise you with their independence and they surely try to be objective.

You take the United States Supreme Court; of course you know something about the attitudes of Brennan and Douglas and Marshall, because of the cases they participated in over the past, but there are two or three others you never can tell about. And you can never tell about any of them all of the time. When you've got a good court — like our present Supreme

Court in San Francisco, we've got a good court there — nobody can tell in advance what any one judge is going to do on any one case. It depends on the record, the issues, the precedents, too many things, No, you can't worry too much about that.

One thing people don't realize is what hard work it is. Being on the appellate court, especially the Supreme Court, that's a full time job. This is one of the few courts in this country, you know, that is in session all the year round. I took one vacation, myself, and I was on the court 25 years or a little over. Most of the others were the same way. For instance, Shenk; he'd take a couple of weeks up in the country most years, but he always took his briefcase and cases right along with him. He used to call me up at home at night about the cases, too. Mentioning Shenk reminds me, sometimes we'd call him "the greatest distinguisher" because he hated to overrule a case; he'd distinguish it and distinguish it. Of course, a lot of the time we'd all go along with him if he came up with the right result in the end.

Another man you didn't hear much about but while I served with him was one of the ablest men on the Court, was Houser. A very able man, and the amazing thing is that he was sick — he had migraine headaches. How he suffered! He told me that he'd walk for miles and miles just trying to get hold of himself when he'd have that kind of headache, and yet the work he did, he was an able judge. We sure did have a lot of able judges that I served with, and a lot of able lawyers that I saw trying cases — that I tried cases with and against, too, for that matter.

I remember one fellow who used to try a lot of cases in Los Angeles, and he had this one against Bill Gilbert, the great trial man, a jury case. Anyway, all through the trial he kept referring to Gilbert as "Uncle Will;" every time he'd have some reason to mention him or turn to him, he'd call him "Uncle Will." And when Gilbert got up to make his argument to the jury he said: "You know, I had a brother who came up to this country many years ago," and he said, "He never married, but the rumor was that he had a son — and, by God, I finally found out who he is!"

Say, how about a glass of wine or something now?

LASCHER: It would be a pleasure.

And it was. A pleasure and an honor.

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.

Looking back, I think the Chief achieved three goals.

First, he provided us a bridge from the academic world to the practical world of law practice. More than once he told us, “My job is to undo the way you learned to think in law school and to train you to think like lawyers.” Of course, watching the law being made and being allowed to participate in the process provided a superior learning experience to reading and discussing case book opinions in law school.

Second, by his comments and by his example he taught us respect for the judicial system and for the people who administer it. Watching him conduct court and listening to his comments in chambers taught us a great deal about what he expected of attorneys in terms of competence, integrity and decorum.

Third, and perhaps most important, he wanted us to learn to produce our best effort as a way of life.

We took our first steps in the transition from law student to lawyer by observing how judges decide cases. I learned that case names belong to real people and that a fair disposition of the case at hand exercised a strong pull on the court even while it was formulating judicial doctrine. In *Zentz v. Coca Cola Bottling Co.*,¹ as I labored through the mysteries of the doctrine of *res ipsa loquitur*, I was never allowed to forget that Mary Zentz really was injured when a Coca Cola bottle exploded in her hand and that she hadn't the remotest idea why it happened. Legal doctrine was held accountable to the litigants it affected.

The Chief always described the decision-making process as hard work. Fair and reasoned answers to difficult questions did not come easily. If we submitted a memorandum which took a simplistic or one-sided view of an issue, he sent us back to reconsider the other side even if he agreed with our proposed conclusion. He insisted we understand and respect the point of view with which we disagreed. His own prior opinions were open to reexamination. Shortly after I came to work, he asked me to research a point which he had decided several years earlier. I found a Cardozo opinion which went the other way. It did not dawn on me immediately that I was not the first to discover it. Without expressing an explicit preference, I submitted a memorandum in which the Cardozo opinion was prominently

¹ 39 Cal.2d 436, 247 P.2d 344 (1952).

displayed. At our next conference, the Chief asked: “Do you think I was wrong?” Then, noting my hesitation, he smiled and said: “That’s a tough question. I’ll rephrase it. Do you think Cardozo was right?” The Chief’s openness and willingness to hear and genuinely consider all sides was more than a matter of tolerance. It was a high duty, which he made clear we were obligated to share with him.

But if an attorney attempted to deceive or mislead the court, particularly a public attorney, the Chief’s disapproval was withering. I recall one occasion when an attorney misstated a crucial rule during oral argument. Another member of the court proceeded to take him to task with a series of questions which left the attorney’s position in a shambles. At lunch, the Chief expressed his disapproval and then commented as an afterthought: “I don’t know why a lawyer would ever attempt to mislead this court. There is always one judge who knows the law and usually seven.”

The Chief was a stickler for clear and precise writing. When we overworked our thesaurus and used stilted or uncommon language, he struck the offending passages and cautioned us: “If you don’t talk that way, you can’t write that way.” I also learned early to quote rather than paraphrase key holdings from cited cases. “Some judge worked hard to write that opinion,” he said, “and you’re not yet ready to improve on it.” And we drafted, redrafted, and redrafted again until all the fat was trimmed and the written words carried the precise message intended. In short, we were given a graduate course in logic, composition, and style.

It is impossible to explain what it was like working for the Chief without attempting to describe the richness, warmth, and force of his personality. A working conference with the Chief was an event, never routine. He had an extraordinary ability to generate excitement and rivet our attention on the work at hand. He was relentless in demanding our best and resourceful in getting it. At times he was gently cajoling, at other times stern and scolding, sometimes both within moments. His scoldings, colorful, salty, often laced with humor and warmth, were legendary. I remember more than one occasion, however, when a stern lecture fell victim to his own sense of humor, and he would dissolve into a warm smile and laughter. On the other hand, a well-written memorandum or draft elated him, and we shared the enjoyment with him. A compliment from the Chief, however, was measured, genuine, and not intended to

induce complacency. I often left conferences feeling good, never feeling complacent.

Throughout, the Chief delivered two powerful underlying messages. First, he transmitted to us his own deep dedication and devotion to the judicial process in its broadest sense. Second, he was interested in us individually, he wanted to contribute as much to our legal training as he could within the short time we were with him, and he enjoyed having us there.

His law clerks were not the only beneficiaries of the Chief's caring and generous nature. These qualities found constant expression in his relations with his entire staff. He was interested in our lives and families; he concerned himself with our well-being; when trouble or misfortune beset any of us, he somehow found out about it and came forward to express his concern and to help; when tragedy struck, he wept. Despite the demands of his office, he found time for everyone.

The Chief will be remembered as a great jurist and as a giant in judicial administration and court reform. Those of us who worked for him and knew him will also remember him as a wise, generous, and loving man. His great heart embraced us all.

The last time I saw the Chief he was approaching his 90th birthday. My wife, Angela, and I visited him in Carmel. Angela had never met him. She and I were seated on a love seat. He squeezed in between us, turned to Angela, "Now darlin', tell me about . . ." and they proceeded to charm each other.

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