

APPOINTMENTS TO THE CALIFORNIA SUPREME COURT

EDMUND G. BROWN, SR.*

MR. LOWENSTEIN¹: When I run into students, as I occasionally do, who hold the view that successful politicians are all either crooks or sell-outs or wishy-washy or whatever, I like to hold up as one of the primary exhibits against that point of view, Pat Brown. Unfortunately, some of my students now are young enough so they don't know who I'm talking about; but for those who know anything about Pat Brown, it's a very persuasive exhibit indeed. So it is my pleasure to introduce to you the former district attorney of San Francisco, the former attorney general of California, and the former governor of California, Pat Brown.

GOV. BROWN: Thank you very, very much. I am very, very surprised to hear that there are students at the School of Law, the University of

* Governor of California, 1959–1967. Remarks delivered at the The Chief Justice Donald R. Wright Memorial Symposium on the California Judiciary at the University of Southern California, November 21, 1985, sponsored by the Judicial Committee of the California State Senate, et al. Published in *Proceedings and Papers*, Timothy A Hodson, ed. (Sacramento: Senate Office of Research), 25–33. [Editor's Note: The introductory portion of these remarks is included here in part to highlight the prescience of Gov. Pat Brown's comment about the eventual return to public office of his son, Gov. Jerry Brown, whose first two terms had ended in 1983. — Selma Moidel Smith]

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California at Los Angeles that haven't heard of Governor Edmund G. Brown, Sr.

MR. LOWENSTEIN: They're getting young enough so pretty soon they won't have heard of Jr. either [laughter].

GOV. BROWN: Oh, he'll be back — don't worry.

My remarks are going to be non-chronological.

I had the great privilege of appointing, I think, nine members to the Supreme Court of the State of California. And I'm going to quickly go over their names just so you'll get a little idea of the philosophy of a governor in making appointments to the highest court in this state.

But you have to go back a little bit with me, because I was admitted to the Bar in October of 1927. I didn't have the privilege of going to college at all. I went directly from high school into law school. I suppose it was because I was always a young man in a hurry. However, not having gone to college gave me somewhat — somewhat, I underline that — of an inferiority complex; and I always felt that there were — I'm not so sure now, but I always felt that there were people that were much smarter than I and I was willing to call upon other people for advice in legislative matters and the tremendous importance of a governor in making appointments.

But, I practiced law for a period of seventeen years before I ever held a public office of any kind. I would appear before judges in various counties around the Bay Area, and I was impressed with some who were so courteous to a young lawyer and some that were so, I'll use the term, ugly. When I became governor, I tried my level best to get a real background on the appointment of all of the judges that I made. But when you appoint, and I think any governor serving a period of eight years will appoint 700 or 800 judges, you can understand that all of the men or women that you appoint are not going to be great jurists.

The fact is, however, that I think those seventeen years of practice in the civil courts before the municipal court, the superior court, appellate courts, and occasionally in the Supreme Court of the State of California, never in the Supreme Court of the United States, and as district attorney, you would run into the many judges that you appeared before or your deputies would make reports upon them. And one of the things that impressed me very much in my appointments was Earl Warren. When I was district

attorney in San Francisco, Governor Warren appointed two young men who were extraordinarily able lawyers in my office — a man by the name of Al Weinberger and a man by the name of Charles Perry — both of whom were Democrats. Now, I mentioned that only to show you that here was a governor that had appointed judges because of their ability — not because of their political affiliation. He had to get their legal reputations from other lawyers and judges in San Francisco. And, Warren's method impressed me very much. I wanted to have a bench of able people, of able men and women. But, the Warren appointments impressed me very, very much.

You have to remember, too, that I became governor after twenty years of Republican governors; Earl Warren was governor, I think, for a period of three terms, almost twelve years. It was sixteen years — no, it was three terms of Earl Warren and a term and a half of Goodwin Knight. But before that, Governor Olson had appointed four judges. He had appointed Chief Justice Phil Gibson. He had appointed Roger Traynor. He appointed Justice Carter. And I can't think of the other judge that he appointed. So here was a Democratic governor appointing four justices. Then Earl Warren, serving eleven years, appointed only one; and Governor Knight only appointed one. And I came along — they had been in office for a long period of time, so there was a natural change in the Supreme Court in the State of California.

I'm pointing this out to you to show how the appointments of a governor, how they can change, how important they can be. I think that Governor Reagan only had two appointments. And I think Jerry — I think my son had five or six. Now, the importance of that is that I've observed in some of the discussion the question whether there should be a change in the method of the appointments to the appellate courts.

I might say, weighing it all and watching the governors going back to Culbert Olson — Olson, Warren, Knight, myself, Reagan, Jerry, and now Governor Deukmejian — I do think that governors are really trying to appoint people that will do a good job in their appointments.

And I think that the fact is that the Supreme Court of the State of California has been regarded as one of the best courts in the United States. Some of the law review writers, some of the other jurists throughout the state feel that it was during my administration that the appointments not only made by me, but the appointments made by Warren, made the

California Supreme Court the best court, even better than the Supreme Court of the United States.

I want to just name the people that I appointed so you get an idea of the kind of people I appointed and the source of the recommendations to me. The first man I appointed was Ray Peters who had been a law secretary to the Court after he left law school. In addition to that, he gave a bar review course; and, he was regarded as a truly brilliant lawyer. I might add that when I was district attorney of San Francisco, I appointed two men and someone sued me, sued me because I made these two appointments illegally. There were two war veterans. They were both San Franciscans. But they worked in the Alameda District Attorney's office. They came to me and sought an appointment and I appointed them. But they had not had two years' experience. The charter of the County of San Francisco provided that they had to have two years' experience. Well, someone sued me for making an illegal appointment and got a judgment against me for \$10,000. I can only tell you that when the salary of the district attorney of San Francisco was only \$8,000 a year and to get a judgment for \$10,000 — so after I lost it, I had to put up a bond of \$20,000 so they wouldn't execute upon my property. And then it went to the appellate court, and I'm not going to go into what happened; but Ray Peters, writing the opinion, reversed that opinion of the superior court. So the first appointment that I made to the Supreme Court of the State of California was Ray Peters.

Now, if you think that was really the motivating force, I think the lawyers will agree that Ray Peters was truly a great jurist. Now, I'm not going into all the others. Tom White had started in the justice court of Los Angeles. He's been in the municipal court; he's been in superior court, the appellate court. And I appointed him. He was an elderly man when I appointed him. I think he was 68 years of age. And when I appointed him, he agreed to resign upon reaching the age of 70.

The next ones were Matt Tobriner, Paul Peek, Stanley Mosk, Louis Burke, and Ray Sullivan. And then I had the great opportunity of appointing Roger Traynor as the chief justice of the Supreme Court of the State of California.

In all of these appointments, of course, you had to get the Qualifications Committee approval, consisting of the chief justice, the senior presiding justice, and the attorney general of the State of California. I didn't

want any jurist or any person I appointed disapproved. There was no formal way of asking for this approval. There was no formal way in the Constitution or any of the codes. So, I would call the chief justice. I would tell him that I intended to appoint blank, what do you think about it? And, going further, I would ask the chief justice for his recommendations. I can tell you that when Chief Justice Gibson resigned I spoke with him, and he highly recommended Roger Traynor to be his successor. And when Roger Traynor became the chief justice, it was my practice to call him and ask him about the appointments. He would then confer with the other members of the Qualifications Commission (the senior presiding justice and the attorney general). I knew before the appointment was announced whether there would be approval.

I really feel that the State of California has the best system of making appointments to the higher courts in the United States. The appointments, of course, to the Supreme Court of the United States must be confirmed by the Senate of the United States. But, you don't have that real Qualifications Commission of people that are working in the law every day — the chief justice, the senior presiding justice, and the attorney general. The attorney general is really the only political figure in the group. And you will observe, I'm not commenting or criticizing in any way at all, you will observe that when Governor Deukmejian was the attorney general, that he disapproved of several of my son's appointments to the Supreme Court. I can't pass on the reasons why he did. But I would call attention to the fact that in the statements made by — in the paper prepared by yourself, that you pointed out the tremendous difference between Associate Justice Clark on the Supreme Court and the other appointment made by Governor Reagan, Chief Justice Wright — two appointments by Governor Reagan, and absolutely philosophically different. And there's no way in the world you're going to avoid the philosophy of the governor in the making of the appointments to the various courts in this state. I'm not talking about the appellate court because I haven't had the time to research the appointments that were made.

I can only tell you that I was tremendously proud of my appointments. In the making of appointments, the question that I would ask was the legal ability of the lawyer. In Southern California I didn't know the ability of too many lawyers. I had a group of lawyers whom I respected and I would

ask them for recommendations. They were lawyers in large firms and individual practitioners. I think I had six Democrats and two Republicans in this group from whom I sought their opinions. They would give their recommendations very, very objectively.

I'm not trying to personalize these remarks, but you have to look at the character of the governor and his political philosophy in trying to find out whether the system that we now have is a good one or a bad one. I really wanted judges that were humane. I wanted people that knew the law but were gentle and understanding. In the seventeen years that I was in private practice, I appeared in courts all over the state. Sometimes the judges were really mean and intolerant, particularly during the first two or three years of my practice. With one of the judges before whom I appeared in a preliminary hearing in the municipal court in San Francisco, I started to put on my case and the judge said, "Counsel, I want you to put your case in this order." This was in a preliminary hearing. And I said, "If the Court pleases, I prepared this case and I'd like to put it on the way I planned." He says, "You put them on in the way that I tell you to put them on or we will not hear anything further in this case." I said, "If the Court pleases, I'm through." And I stopped the case. The person was held to answer. I might say, this man came up, recommended for appointment to the Supreme Court later on [laughter]. He had been appointed to the appellate court by another governor. He came highly recommended to me by one of my large contributors. I could not forget the mean way that he treated me when I was a young lawyer.

The other things that were important were the opinions of other lawyers. I would confer with Roger Traynor after he became the chief justice. And, I might say that he made several recommendations. I accepted every one of them. I made recommendations and he accepted mine, of course, or they wouldn't have been approved by the Qualifications Commission. But, he recommended me to Ray Sullivan, who was in San Francisco. He had been an associate of William Malone who was the Democratic chairman. And I was a little bit, a little bit afraid to, not afraid, that's not the word. I didn't want to appoint a political figure. But Roger Traynor called me, came up to Sacramento, and he told me that Ray Sullivan was a great jurist. And as a result of that, I appointed him. And I think that the bench and bar of California recognize Ray Sullivan as one of the best judges that I had the privilege of appointing.

I'm calling these things to your attention so that you'll be able to see what a governor does in trying to make good appointments. Governor Reagan, in his appointment of the chief justice, later said he was disappointed. He spoke critically of the chief justice, later said he was disappointed. But I think the bench and bar agree with Stanley Mosk's opinion of this great chief justice.

There are so many other things that I could say about the appointments to the Supreme Court, but let me conclude by saying that the appointments by the governor, with the approval of the Qualifications Commission (the chief justice, the senior presiding justice and the attorney general), resulted in excellent appointments to the appellate court and the Supreme Court. This is true, whether it happens to be a Ronald Reagan or a Jerry Brown or a Governor Deukmejian. I think we have a good system. I'm sure that any system could be improved upon. But, as I look back on the appointments to the appellate courts (and I'm not talking about the superior courts — it would take too long to get into that) — that are here today, looking at the origins of the present system of appointments that I think as an old governor that it's a good one. Thank you. [Applause]

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