

REMEMBERING ELLIS HORVITZ

BY DAVID ETTINGER

ELLIS HORVITZ LOVED TO ARGUE in the California Supreme Court. During a bar association program a year before he died this past March at age 94, Ellis said, “If I had been independently wealthy, I would have paid the client to let me argue.”¹

Paying for the privilege of arguing would have been quite a costly proposition. Ellis appeared more than 50 times in the high court. Yet, despite a prodigious career that would lead Ellis to be routinely dubbed the “Dean of California’s Appellate Bar,” it was happenstance that put him on the path to litigating before reviewing courts.

Ellis said that when he graduated from Stanford Law School, which he attended at the same time as future United States Supreme Court Justices Sandra Day O’Connor and William Rehnquist, “I knew for a certainty that I would never set foot in a courtroom.” Instead, his interest was working in administrative law for the federal government and, in fact, he was hired by the Atomic Energy Commission.

However, a federal hiring freeze postponed his Washington career. Hearing of Ellis’s predicament, Stanford’s placement director pushed him to apply for an opening on the staff of Phil Gibson, then California’s chief justice. Stanford’s dean cautioned Ellis that Gibson was very difficult and demanding, but Ellis interviewed for the position anyway and was hired on the spot.

The dean’s warning proved accurate. Ellis said about his first work meeting with the chief justice, “I’d never had a conference like that before. He took a memo that I’d worked very hard on and simply tore it to shreds.” But, Ellis remembered, Gibson was never “demeaning or insulting. He just gave me a detailed, clinical analysis of my work.”

The demanding atmosphere of the chief justice’s chambers did not deter Ellis. To the contrary, although Ellis worked for Gibson for only a year and a half, the chief was a major, lasting influence on Ellis, probably the most important one of his professional life. Most people who spent any substantial time with Ellis were bound to hear him tell Gibson stories, always of the reverential type.

Ellis wrote that the clerkship “would determine the course of my career.”² He said, “I really became a lawyer when I worked for Chief Justice Gibson.” Gibson told his law

clerks, “My job is to undo the way you learned to think in law school and to train you to think like lawyers.”³

Gibson’s impact extended beyond the professional. About the chief’s relationship with his staff, Ellis remembered, “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.”⁴ Ellis said that Gibson “had great ambitions for those of us who worked for him.” Ellis certainly fulfilled those expectations.

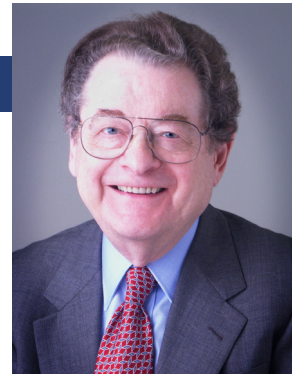
Ellis was a pioneer in developing appellate law as a distinct practice area. So many of us who were fortunate enough to practice with Ellis owe our careers directly to him, but all appellate specialists are at least indirectly indebted because of his pathbreaking innovations in creating a firm-based, collaborative approach to appellate litigation. Also in his debt are the bench and bar, for he contributed greatly to raising the quality of lawyering at California’s reviewing courts.

In his typical understated way, Ellis said the formation of an appellate law firm was not particularly strategic. He began hiring young attorneys because he had more appeals than he could handle. His rationale was straightforward: “I would rather hire lawyers and take the cases that came in than remain a solo practitioner.”

As his appellate skills became widely known, Ellis and his firm became much in demand. Retired Supreme Court Justice Ming Chin said that Ellis “was the gold standard” and that “whenever I saw the name of his firm on any of the court papers, I knew we were going to hear good sound legal arguments without a lot of fluff.”⁵

Credibility with the courts was key to Ellis. “Credibility is everything,” he said, explaining, “if you are credible, you’re halfway home. If you’re not credible, you’re in deep trouble from the beginning.”

Clients came to trust Ellis with their most important institutional issues. He generously shared a secret with junior attorneys in the firm that clients often came away from a



Ellis Horvitz.
Photo: Horvitz & Levy.

1. The virtual Beverly Hills Bar Association program was part of its “War Stories” series and took place on February 22, 2021. Video of the event is here: <https://www.youtube.com/watch?v=dbOoPT0p0Zk> [as of Aug. 14, 2022]. This article includes Ellis’ reminiscences about his life from the program. Quotations without citations are from the program. Ellis also gave an extended podcast interview to the *Daily Journal* in 2018: <https://www.dailyjournal.com/articles/349649-the-dean-of-the-california-appellate-bar> [as of Aug. 14, 2022].

2. Ellis J. Horvitz, “A Personal Note” (1984) 72 *Cal. L. Rev.* 503, 503.

3. *Ibid.*

4. *Id.* 505. Ellis’ descriptions of Gibson are not an aberration. A former staff attorney for the chief justice wrote that Gibson was “a hard taskmaster” with a “stern and forbidding” public demeanor, but a “marshmallow at heart” and who “treated his staff almost like family.” Olga Murray, *Olga’s Promise* (2015) pp. 66–67. For more about Phil Gibson, see “Chief Justice Phil Gibson,” 5 *Cal. Legal Hist.* (2010) 1–62.

5. Maclachlan, “Ellis J. Horvitz, 1928–2022: Litigator, raconteur is credited with creating the appellate law firm,” *Daily J.*, Mar. 29, 2022.

meeting impressed when all he did was listen. He said this in a humble way, with a hint of surprise. But his ability to listen to clients, co-counsel, and judges, and to distill what he learned into a winning theme, was one of his greatest talents.

Whether Ellis realized it or not, many of the traits that he admired in Chief Justice Gibson were ingrained in Ellis himself. If he benefited from Gibson's demanding but empathetic mentoring, he certainly paid it forward.

Ellis was a superb mentor, requiring that attorneys meet the highest standards of analysis, writing, and ethical lawyering — and teaching them how to do so. Justice Chin said Ellis “was not only an incredibly effective appellate lawyer, year after year he trained legions of effective appellate lawyers.”⁶ And he cared personally for his colleagues. As one of his former partners said at his funeral, Ellis made his firm not just a pleasant place to work, but more like a home.

Ellis' ego was much smaller than his well-deserved reputation. He would always say that the clients weren't his clients, but the firm's clients. Also, as much as he loved appellate arguments, Ellis would not commandeer court appearances, even those in the California Supreme Court. Rather, the general firm rule was — and still is — that the attorney who read the record and took the lead in drafting the briefs is the one who will argue the case.

By the time Ellis retired, the firm he started had become the largest appellate specialty law firm in the nation. He was a founding member and early president of the prestigious California Academy of Appellate Lawyers. He coauthored the leading treatise on California appellate law, the Rutter Group's *Civil Appeals and Writs*. He was on the board of directors of the California Supreme Court Historical Society in the 2010s. And in 2018, Ellis was the first to be inducted into the Appellate Lawyer Hall of Fame by the California Lawyers Association.

Ellis' efforts were not limited to private practice. His relationship with the courts was more than just as an advocate. Among other things, Chief Justice Rose Bird

6. *Ibid.*

appointed Ellis to the Advisory Committee for an Effective Publication Rule; he served on a committee chaired by Supreme Court Justice Allen Broussard that revised the rules regarding the manner of Supreme Court review; and Chief Justice Malcolm Lucas appointed him to the Judicial Council's Appellate Advisory Committee while it was chaired first by Supreme Court Justice Marvin Baxter and then by Supreme Court Justice Joyce Kennard.

Ellis' training of legal minds was not limited to those at his law firm. For more than two decades, he taught at the University of Southern California's law school.

Ellis was a special person — a great legal talent, a wise advisor to clients, a courteous and ethical opponent, and a kind and loving man. During Ellis' Supreme Court clerkship, Chief Justice Gibson wrote the decision for a divided court striking down California's alien land law that barred Japanese people from owning real property in the state.⁷ Ellis recalled that, when he read that opinion, he said to himself, “Boy oh boy, I'm working for a great man.”

Ellis was pretty great, too.

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7. *Sei Fujii v. State of California* (1952) 38 Cal.2d 718, 737–38 (“The California alien land law is obviously designed and administered as an instrument for effectuating racial discrimination, and the most searching examination discloses no circumstances justifying classification on that basis . . . [T]he alien land law is invalid as in violation of the Fourteenth Amendment.”). Sixty-five years later, the court posthumously granted membership in the State Bar to the plaintiff in the case, who, despite being a law school graduate, was prohibited from practicing law because of his race. (*Administrative Order 2017-05-17* (Cal. 2017) 217 Cal.Rptr.3d 730.)