Reminiscing about 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.”

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 his reminiscences about his life from the program. Quota

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=d-boOeP70pOZk [as of Aug. 14, 2022]. This article includes Ellis’s 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/34964-car-the-dean-of-the-california-appellate-bar [as of Aug. 14, 2022].


3. Ibid.

4. Id. 505. Ellis’s 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.

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.” 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 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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impacts their clients. In my experience, sometimes the only persons in the courtroom consciously living that reality are the defendants and their public defenders. That said, I do not subscribe to the notion, as hinted at by Mayeux, that public defender offices should also don the mantle of social worker. The primary task of the optimal public defender’s office is to train and retain excellent trial lawyers whose skills outstrip those of opposing counsel so the client can obtain every advantage. And, of course, this primary task can be accomplished, no matter how sensitive an attorney is, only with adequate funding to wring out of the criminal case all there is to get.

Mayeux’s book is food for thought for everyone practicing in the criminal justice arena. The much-hyped promise of Gideon’s imprimatur on the right to counsel led us all to expect Herculean societal changes. Yet despite the best courtroom efforts of even well-funded, skilled public defenders, many of their clients still can’t breathe. That recognition by all of us would go a long way toward balancing the scales of justice.

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6. Ibid.

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.)