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# Phil Sheridan Gibson—A Fond Recollection

B. Abbott Goldberg†

Phil S. Gibson, “the Chief,” was named for General Philip Sheridan, the beloved “Little Phil” of the Union Army. The name was prophetic because the Chief not only served his country but also became beloved and a hero in his own way. The Chief came from Missouri, the state “that raises corn and cotton and cockleburs and Democrats, and frothy eloquence neither convince[d] nor satisfie[d]” him.<sup>1</sup> He lived up to all but one of these native attributes. There was nothing corny about him;<sup>2</sup> he was never trite, trivial, or lacking in subtlety. He was soft on the inside like cotton, prickly on the outside like a cocklebur, a staunch but discerning Democrat, and the rest will be explained.

Let others expatiate on his legal acumen, his magisterial opinions, and his genius for administration. I rest on what the late Dudley O. McGovney wrote of the Chief’s dissent in *Laisne v. California State Board of Optometry*:<sup>3</sup> “That dissenting opinion ranks [with] the ablest opinions to be found in the reports of any court.”<sup>4</sup> Professor McGovney was not noted for lavishing fulsome praise. No words of mine can or should carry the weight of his, so I confine myself to some happy, grateful, indeed loving memories of a great, good, and generous man.

A semi-invalid following repeated surgery, I was retired from the Army in 1944 after more than a year in Letterman Hospital. Coming from an eastern milltown, I liked California better and decided to stay. But I needed a job and was without connections. The attitude of various major San Francisco law firms was below gelid. None showed a glimmer of interest in a newly fledged member of the Massachusetts bar whose total experience was four years in the service. By good for-

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1. Speech by Willard D. Vandiver, Naval Banquet, Philadelphia (1899), *reprinted in* J. BARTLETT, *FAMILIAR QUOTATIONS* 830 (14th ed. 1968).

2. Serious writing does not have to be solemn. The informal words I use and the playful tone of the anecdotes are intended to show that the Chief, despite his stern decorum on the bench, was, when out of his robes, a warm and affable gentleman who sometimes suffered fools—although not gladly.

3. 19 Cal. 2d 831, 123 P.2d 457 (1942).

4. McGovney, *The California Chaos in Court Review of the Decisions of State Administrative Agencies*, 15 S. CAL. L. REV. 391, 402 (1942).

tune I met Patricia Lane, then Secretary of the Bar Examiners and sometime law clerk to the Chief, and she suggested I call him. Although I thought it was presumptuous to call on a Chief Justice, I had nothing to lose.

The Chief received me with courtesy that ripened to interest when I told him I had taken Dean Landis's seminar in administrative law. He had just involved the Judicial Council in the study of California administrative procedure<sup>5</sup> that was to result in the Administrative Procedure Act.<sup>6</sup> After getting the approval of Ralph Kleps, director of the project, the Chief hired me as a very junior research attorney at the salary of \$325 per month. (The \$25 was a temporary war-time supplement.) This was great in those days.

At first I thought that the reason he even considered me was because he had suffered some disability as a result of his service in World War I and had a soft spot in his heart for dilapidated veterans.<sup>7</sup> It was quite a while before I realized that among his manifold administrative skills was the ability to pick competent help. Among the excellent lawyers also working for the Chief were Ralph Kleps, later Legislative Counsel and Administrative Director of the California Courts; John J. Egan, who became an outstanding title insurance executive and authority on the law of real property; Judge Thomas Caldwell; Elvira Wollitz; Judge Martin Katz; Victoria Glennon, later Mrs. Gibson; and, of course, that *unique*st of writers, Bernie Witkin. (Only that solecism can describe Witkin.)

The brannigans began with the work. But, as the poet wrote, "That which was bitter to endure may be sweet to remember." The Chief decided he could use me as a speech writer. The first subject was on the proliferation of appellate opinions. Somebody had come up with the idea that not all the opinions should be published. The Chief did not like the idea;<sup>8</sup> he thought the real problem was the constitutional requirement that an opinion be written in each case on appeal no matter how trivial the case might be. I agreed with the Chief and was able to write with some zest. So I put in the draft:

If the opinions are written but not published we shall suffer a renaissance of that bibliographical anomaly, The Reports of the Unreported

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5. 1944 JUD. COUNCIL CAL. 10TH BIENNIAL REP.

6. CAL. GOV'T CODE § 11370 (Deering 1982).

7. Mine is not the only instance of the Chief's empathy with the physically afflicted. See the remarks of Bonifacio V. Yturbe, Esq., at the memorial session of the California Supreme Court in San Francisco, June 7, 1984 (forthcoming in the *California Reports*).

8. Imagine what the Chief would say of the present system under which a published opinion can be "depublished" and, nevertheless, remain in the books, e.g., *Schliesman v. Fisher*, 158 Cal. Rptr. 527 (1979). "Son, how many times do I have to tell you, you can't unring a bell."

Opinions.<sup>9</sup>

The Chief's practice in reviewing drafts was to sit at the head of his big conference table and read the draft aloud while the unfortunate scrivener sat at the foot and had his own words thrown back at him—a grueling ordeal. The Chief had a Missouri twang and slight impediment of speech. He got to my “frothy eloquence,” and it came out something like “we will have a renonsense of that bible, bible, . . . .” He threw down the draft in disgust. “Dammit, son, that ain't Gibson talk. That's Goldberg talk. Gibson can't even pronounce it.”

Presently, the Chief embarked on what was to be one of his stellar administrative and political achievements, the reorganization of the inferior courts. At one point of a proposed speech he wanted to stress the remarkable number of local courts in the small mountain counties (obsolete relics, I suppose, of the needs of the Gold Rush days), and thought it would be graphic to compare these small counties with the vast extent of San Bernardino County. So he asked me, “If you inove San Bernardino north, hlow many counties will it cover?” I had learned not to deviate from his instructions, and being as clever with cartography as with the law (*honi soit qui mal y pense*), I took a wall-size map of the state, cut out an outline of San Bernardino, moved it north, and found it covered between 10 and 20 hittle counties. Then I noticed there was a tip at one end of San Bernardino, and if the cut-out were turned upside down, the tip was out at the Farallone Islands while the extreme opposite corner was somewhat east of Reno, Nevada. So, desiring to add a little originality, I put in the draft:

If you move San Bernardino north it will cover [10+] counties, and if you turn it upside down it will go from the Farralones to Reno.

The Chief read this and turned color. He had a dark complexion which became thunderous black when angered—I am sure he saw red. “Son, ain't you got good sense? How can I go out there and turn San Bernardino upside down?” To which I replied, “Just like you moved it north.” “Abbott,” he said (he used my first name only in moments of total frustration), “you are an incurable smart aleck. Someone's not going to like you.” San Bernardino County remained upright.

Somebody told the Chief that justices of the California Supreme Court had to live in Sacramento. He asked me about this and I told him such was the law. He said, “Son, don't tell me things like that without knowing them.” (A true son of Missouri, he had to be shown.) So I took down a copy of the old Political Code, and showed him the section.<sup>10</sup> He looked at it, reflected a bit and said, “Son, that's a very bad law.” I replied, “Chief, if you say it is, I guess it is.” More than a

9. CALIFORNIA UNREPORTED CASES (1913) (published in 7 volumes by Bender-Moss Co.).

10. CAL. GOV'T CODE § 1060 (West 1980) (original version at ch. 134, 1943 Cal. Stat. 955).

decade later, the court held that my guess was correct.<sup>11</sup>

The Office of Price Administration (OPA) complained that in the Alameda County Superior Court it was being denied the preferential setting and speedy trial of its cases to which it was entitled under the federal statute. T.W. Harris, a gentleman elderly even by my present standards, held the title of Presiding Judge in Alameda, but actually he was the autocrat, despot, and Tsar. The Chief sent me over to investigate with the admonition, "He's a frosty old coot, so be tactful and diplomatic." I went on the day of the next setting calendar and explained to Judge Harris that the Judicial Council was interested in his setting practices. I was so tactful that he thought I had come to admire his efficiency. Thus he received me cordially and invited me to join him on the bench "to see how a setting calendar should be run."

The calendar was administered by Mr. Gayle, Judge Harris' clerk, satrap, and chief commissar. Mr. Gayle would call a case and assign a date. The attorneys would wistfully object to the judge who would reply, "You have your day." And that was that. We retired to Judge Harris' chambers, and he said, "Now you see how to do it." At that point I could no longer conceal the purpose of my visit and began, "The OPA is complaining . . ." Judge Harris interrupted, "Yes, I know they're complaining. And you go back and tell your Chief Justice that no goddam act of Congress is going to tell me how to run the Superior Court in Alameda County." I reported to the Chief *in haec verba*. The Chief said, "It's alright son. I'll give him a little call and tell him about the supreme law of the land." I was not present during the conversation, but we had no more complaints from the OPA. Thus the Chief accomplished by a telephone call for California what it took a decision of the United States Supreme Court to do for the state of Rhode Island.<sup>12</sup>

These are some reminiscences of a fine gentleman. I do not recall ever hearing anyone speak ill of him except some antediluvians who thought Franklin D. Roosevelt was the devil incarnate. I say for myself, and think I can say for all of us who worked for him, that he affected our lives in many ways and each way was a boon and a blessing. We loved him in life and cherish his memory now that he is gone.

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11. *People v. Chessman*, 52 Cal. 2d 467, 341 P.2d 679 (1959). Chief Justice Gibson concurred in the unanimous opinion.

12. *Testa v. Katt*, 330 U.S. 386 (1947).