

July 1984

## A Personal Note

Ellis J. Horvitz

Follow this and additional works at: <https://scholarship.law.berkeley.edu/californialawreview>

---

### Recommended Citation

Ellis J. Horvitz, *A Personal Note*, 72 CALIF. L. REV. 503 (1984).

### Link to publisher version (DOI)

<https://doi.org/10.15779/Z38BJ1Z>

This Article is brought to you for free and open access by the California Law Review at Berkeley Law Scholarship Repository. It has been accepted for inclusion in California Law Review by an authorized administrator of Berkeley Law Scholarship Repository. For more information, please contact [jcera@law.berkeley.edu](mailto:jcera@law.berkeley.edu).

# A Personal Note

Ellis J. Horvitz†

More than thirty years ago, I had the good fortune to work as a law clerk for Chief Justice Phil Gibson. I did not know then that this relatively brief experience, less than two years, would determine the course of my career as a lawyer, but I did understand that I had lucked into something special.

What was special, of course, was the Chief himself. To his young law clerks, like myself, he was a dedicated and demanding teacher. We came to him bright and fresh from law school, perhaps a bit cocky, unquestionably green and inexperienced. He provided us a bridge from the academic world to the practical world of judges, lawyers, and litigants. How many times 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.”

We took our first steps in this transition 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.*,<sup>1</sup> 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 decisionmaking 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 displayed. At our next conference, the Chief asked: “Do you think I was wrong?” Then, noting my

---

† The author was one of Chief Justice Gibson's law clerks from 1951-53.

1. 39 Cal. 2d 436, 247 P.2d 344 (1952).

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.