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Phil Sheridan Gibson

*Eugene M. Prince**

PHIL SHERIDAN GIBSON retired from the Supreme Court of California after serving twenty-five years, less sixteen days. The potter's wheel which shapes the course of human affairs turned fortunately when it made him Chief Justice for all but a few months of this period. Gibson would have achieved high reputation as a judge if he had continued as Associate Justice. It was, however, the chief justiceship and its affiliated duties, including chairmanship of the Judicial Council, which gave scope for his pre-eminent abilities as an administrator and as a man who could propose badly needed reforms in judicial administration and procedure, and then get them adopted and successfully working. As a result he was enabled to contribute more than any other man to a better administration of justice in California, and incidentally to earn a sure and great place in American judicial history.

This brief sketch cannot be a biography. It must suffice to say here that Gibson was born in Grant City, Missouri; that he graduated from the University of Missouri and its law school and was admitted to the Missouri bar; that he had combat service in France in World War I; that he came to California, was admitted to the California bar in 1923 and practiced law in Los Angeles until he became State Director of Finance in January, 1939. He was appointed Associate Justice of the supreme court on August 15, 1939. He was appointed Chief Justice on June 10, 1940. He retired August 31, 1964. Only William H. Beatty had served longer as Chief Justice (1889-1914) and he just by a few months, and only Beatty and Associate Justice John Shenk (1924-59) were longer than Gibson on the court.

Gibson came to the bench without judicial experience. Nevertheless he took his full share of the court's work load at once. Even among lawyers, few realize how heavy that work load is or how it grew during Gibson's time on the bench, a time during which California's population increased from seven to eighteen million. Presently the court writes some

* A.B., 1917, J.D., 1920, University of California; Member, California Bar (President, 1953-54).

160 opinions a year, and rules on some 950 petitions for hearings after decisions of the district courts of appeal besides taking care of applications for original writs and all the miscellany incident to the functioning of a court of last resort.

Gibson wrote 670 majority opinions for the court, averaging one for every two weeks of his entire service. He participated in thousands of other cases. This was a full quota of decisional work exceeded by none of the fourteen associate justices with whom Gibson served, and he carried it along with the heavy administrative burdens of the chief justiceship and its related offices and obligations.

Gibson's style of judicial writing is direct and clear. His opinions reflect thoughtful consideration of briefs and argument. They state the facts fairly. They rest on thorough research. Yet they are not prolix. They are simply phrased and are free of any affectation for picturesque language by which the intended meaning of judicial expression is sometimes obscured.

As to subject matter, and as a natural result of the selective jurisdiction exercised by the supreme court, practically all of Gibson's opinions involved legal questions and subject matters of far-reaching public importance. However, despite the importance and oftentimes great difficulty of the cases, most of them were in familiar fields of law and involved legal principles on which the court was unanimous or nearly so. In such cases the Gibson opinions are those of a highly competent judicial craftsman with a fine sense of what is practical and what is fair.

Other cases brought up some of the most difficult and delicate problems with which a supreme court is asked to deal; questions as to which there were, and still are, wide, or even diametrical differences of opinion within courts themselves, among lawyers, and throughout the public. These questions are controversial far beyond the sense in which every lawsuit is controversial. How far may a supreme court rightly go or wisely go in overruling prior decisions of long standing? Where is the proper line between legislative and judicial authority? What is the proper balance between the constitutional rights of a person accused of crime and the necessary protection of the law abiding public?

In cases involving these problems and others of comparable nature the Supreme Court of California has divided sharply. Since the limits of this sketch do not permit a review of the decisions, no definition is attempted of the judicial philosophies which entered into them. To use an expression useful in this context, even though an inexact word of many meanings, Chief Justice Gibson was consistently on the liberal side, which presently is the majority side. Quite often voting contrary to the Chief Justice has been his warm friend, former law partner, and highly

esteemed judicial colleague for twenty-two years, Associate Justice B. Rey Schauer.

In turning from Gibson's decisional work to his outstanding contributions to the administration of justice, a good starting point is his administration of his own court. His associates bear cordial witness to the high standard he maintained as presiding officer, in the assignment of cases and in the maintenance of personal harmony within the court itself.

When Gibson became Chief Justice, the supreme court had a three-year backlog of more than 600 cases. Within two years the number of uncalendared cases had been reduced to twenty-four. This had been accomplished by a sweeping policy of transferring to the district courts of appeal for initial decision all cases except those involving the death penalty or questions of great public importance. This policy did not impair the efficiency of the district courts of appeal; to the contrary, they were enabled to cut down their own backlogs by assignments of pro tem justices and by the addition of a new, third, division in overburdened Los Angeles.

In relation both to his own court and to the judicial system of which it was head, Gibson built public relations as few men could have done. His many appearances all over the State made him personally well known and well liked and he was able to develop, not only throughout the bar and with other departments of State Government, but to a considerable extent with the public generally, a feeling of connection with and respect for the courts.

The Chief Justice is Chairman of the Judicial Council. He appoints the other judicial members of the Council. He exercises throughout the State the power of assigning judges to courts with vacancies or in place of judges unable or disqualified to act. Almost 3,000 such assignments were made in 1963.

Within a few months after he became Chief Justice, Gibson pointed out in public speeches that the constitutional provisions made the Chief Justice the administrative head of the State's whole court system. He likened the position to that of a superintendent of a business. As showing the pressing need for management, he emphasized that the structure of all courts below the superior court was obsolete, complex, and unwieldy, with great uncertainties of jurisdiction and venue, and that with regard to all courts the burdens of litigation were unequally distributed with little business in some courts and huge backlogs in others.

To remedy these conditions Gibson proposed that the Judicial Council be equipped with a staff sufficient to do the work which the Council was intended to do; that the procedural rule-making power be trans-

ferred to the Council; that a survey be made as a basis for simplifying the organization and jurisdiction of courts below the superior court; that the rules of appellate procedure be revised; and that a third division of the district court of appeal be set up in Los Angeles.

The new division of the district court of appeal was authorized by the legislature in 1941 and started functioning in October of that year.

Also in 1941, the power to make rules of appellate procedure was transferred to the Judicial Council, and by 1943 new rules had been drafted. These consolidated into thirty-four pages material theretofore scattered through countless pages of statutes, court decisions and court rules. Procedure, as Gibson recognized in pressing for this reform, was not something to pass over as unimportant. To the contrary, in the words of his successor, the present Chief Justice Traynor, "procedure, too, evolves from experience, and . . . as substantive rules are the living stuff of the law, [procedure] is the living form . . . he who knows procedure well knows the law whole."

Another major step forward, but in a different field, came in 1944 with the passage of the California Administrative Procedure Act. This was based on a study by the Judicial Council. The statute sets uniform rules of practice and procedure for state-wide statutory agencies which issue or revoke professional and business licenses and similar rights or privileges. This statute has worked well in California and has been taken as a model in other states.

In 1950 came a measure which was possibly the most important judicial reform in California history. The voters approved a constitutional amendment drafted by the Judicial Council which reorganized the court system below the level of the superior court. There had been 768 separate inferior courts. These had been operating in complete disharmony under city charters, statutes, and constitutional provisions. As many as four different types of court handled the same kind of case in the same city. The constitutional amendment eliminated this whole system of confusion and waste. It provided for two types of courts only, municipal courts and justice courts, and provided definite and uniform rules as to their jurisdiction, venue, and procedure.

Gibson had worked ten years to bring about passage of this amendment. On this mission he visited nearly every county in the State. During 1950 alone he made forty major speeches covering all the larger cities. He built up powerful support for the measure, and while he could not eliminate all opposition, he allayed a great deal of it. A noteworthy example is the endorsement, for which Gibson is generally credited, of the Justices and Constables Association, many of whose members stood to lose their positions if the measure passed.

In 1960 a constitutional amendment made four more major reforms on recommendation of the Judicial Council. The amendment expanded the Council itself by adding another judge of the municipal court, four members of the State Bar, and one member of each house of the legislature, making a total membership of eighteen.

The amendment also established a Commission on Judicial Qualifications, composed of five judges appointed by the supreme court, two members appointed by the Governor with consent of the senate, and two lawyers appointed by the State Bar. The Commission is to take proceedings against any judge who does not perform his judicial duties because of misconduct, intemperance or disability. It may recommend to the supreme court the removal or retirement of judges, on which subject rules have been promulgated by the Judicial Council. The need for such a commission was first brought forcibly to public notice by Gibson in a speech in 1955. He there stressed the necessity for a method of forcing retirement of mentally or physically incompetent judges for causes other than misdemeanors in office or conviction of crime involving moral turpitude.

A third innovation made by the amendment was the establishment of the Administrative Office of the California Courts. That office began to function in January, 1962, under its own administrator, but with Gibson giving it much time and supervision. The Administrative Office has a range of interest and activities as broad as the authority of the Judicial Council itself. Thus the Council and Administrative Office together provide a mechanism to cope with our era of continuous change and provide efficient means for meeting problems as they arise, not some time in the indefinite future. The practical importance of such a setup could hardly be overestimated.

The amendment also provided that the State Bar of California is a public corporation with perpetual existence and succession. Years before, the Chief Justice had stated that the charter of the State Bar should be a constitutional provision, not a statute. All through his tenure he was notable for his support not only of the State Bar but of the whole organized bar and of the legal profession generally. He spoke before gatherings of lawyers frequently and all through the State. The bar holds him in high esteem both personally and professionally.

In 1961, the Judicial Council, at Gibson's instance and with his personal participation, took up, in conjunction with the State Bar, the problems caused by the increasing number of published judicial opinions, already comprising an almost unmanageable bulk. On recommendation of the Council and State Bar, the legislature, in 1963, repealed obsolete (and quite possibly unconstitutional) statutes which required publication of all

opinions of the supreme court and district courts of appeal. The legislature specifically affirmed the power of the supreme court to determine what opinions merit publication. The court promulgated rules effective January 1, 1964, calling for nonpublication in the official reports of opinions of the district courts of appeal or appellate departments of superior courts in cases not involving a new and important issue of law, a change in an established principle of law, or a matter of general public interest. Determination of whether a given case meets this standard is made in the first instance by a majority of the court rendering the opinion. This rule has already resulted in a substantial reduction in the number of opinions published without damage to the development of the law.

Despite the magnitude of what has been accomplished, Gibson would be the first to insist that much remains to be done. He believes that improvement of the administration of justice requires constant effort; not to progress is to retrogress. One specific example of this belief is Gibson's emphasis on the need for a thorough revision of the Penal Code, which has gone without basic revision for more than ninety years.

Gibson also would be the first to insist on sharing credit with other large contributors for the results achieved: his colleagues on the supreme court, other judges, the court and Judicial Council staffs, the bar associations, and many individuals both in and out of public office. Greatly as others contributed, however, Chief Justice Gibson was the innovator and impelling cause of the end result.

Probably the most illustrious of Gibson's predecessors as Chief Justice of California was Stephen J. Field. Well along in his judicial career Field remarked, plaintively and in the tone of the biblical prophet not without honor save in his own country, that there is "little appreciation for conscientious labor on the bench, except from a small number of the legal profession, until after the lapse of years." This turned out not to be true in Field's case, and it is decidedly not true of Gibson, who has had distinguished recognition from many sources.

Midway in World War II, President Roosevelt tendered Gibson one of the most responsible offices in the national government, that of Undersecretary of War. President Truman offered him the Solicitor Generalship, and considered him seriously for the appointment as Chief Justice of the United States, which ultimately went to Fred Vinson. Gibson has honorary doctorates of laws from six institutions of higher learning, including the University of California.

Recognition for Gibson's work as a judge and in the fields of court organization, court administration and procedural reform, has been nationwide, and has come from distinguished judges, lawyers, public figures, and from the press. It has been expressed in the highest terms.

Thus Governor Brown said: "With Chief Justice Gibson's retirement, American law loses one of its giants. . . . In addition to his contributions to substantive law, his efforts on behalf of better administration of justice through procedural reforms have been unmatched anywhere in the United States."

Gibson has taken all this success unspoiled. He never abated his own proper dignity and always maintained that of his court, but he was always considerate of and courteous to the lawyers who practiced before him. Despite his almost incredible work output, he found time for social contacts and civic activities. He has had dealings with people from all walks of life, being always simple, friendly, and approachable. To a rare degree, Phil Sheridan Gibson combines a great record of achievement with the finest traits of human understanding, personality, and character.