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CHIEF JUSTICE DONALD R. WRIGHT

Stanley Mosk[†]

When former Secretary of State Kissinger made his farewell trip to NATO headquarters in Europe, he was interviewed by a West German reporter. "As you leave office," the Secretary was asked, "what do you consider your greatest success and what do you consider your greatest failure?" "Sorry," said Kissinger, "I don't understand the second part of that question."

If Chief Justice Donald Wright were less of a modest man, he could with equal grace respond to the same question in the same manner. His legal and judicial career is studded only with success and distinction. I shall not resort to hyperbole by describing the Chief as an amalgam of Justinian, Lord Mansfield, and Oliver Wendell Holmes. But, circa 1977, he comes preciously close to being the compleat judge.

I recall that day nearly 7 years ago when, fortuitously as the Acting Chief Justice, I had the honor of administering the traditional oath of office to Donald R. Wright. We stood on the balcony of historic Colton Hall in Monterey. Nothing as momentous had happened in the Monterey area since Sir Francis Drake sailed into the harbor, John Steinbeck memorialized Cannery Row, and Bing Crosby inaugurated his annual Pebble Beach golf tournament.

The new Chief Justice began his first session when we held court right there in Colton Hall. One of our cases that day involved a problem of statutory construction. After a somewhat convoluted argument by counsel about legislative intent, the new Chief mused out loud that he was reminded of A. P. Herbert's query: "If Parliament didn't mean what it said, why didn't it say so?"

The members of the Court concluded right then that they liked the new addition. Our reaction was accurate, for as has been recounted many times these past years, the grandest hopes of the bench

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and bar of California were fulfilled by the distinguished judicial service of Don Wright.

Perhaps his most noteworthy characteristic has been a fierce independence. Don Wright yields to no master: not the bench, the bar, the Governor, the press, or public opinion. He marches to the beat of no drummer, only to an ethical and compassionate conscience.

Don Wright came to the supreme court with a rich background of service on the municipal court, the superior court, and the court of appeal. That was in a bygone era of heightened expectations; in the current environment judicial appointees with his vast experience must be listed among the endangered species.

In addition to the benefits of experience and the trait of independence, Don Wright has been literate, scholarly, courageous, forthright, indefatigable. His sterling qualities have come through, and he has been immensely popular. Yet, with all his abundant talent, he has retained an innate and beguiling modesty. He is an ardent opera buff; indeed, he loves all music, and during evenings at home he reads petitions to a symphonic accompaniment. He collects modern art, particularly the impressionists. He knows history, ancient and modern. He is an avid reader and often quotes literary gems during court sessions. He is a Stanford and Harvard alumnus, but also has a graduate degree from USC. He is a favorite of Montgomery Street and all the legal establishment types, and yet in 1972 the California Trial Lawyers Association designated him the Appellate Judge of the Year. Don Wright is indeed a man for all reasons, a man to be long and fondly remembered.

I am aware, of course, that judges and courts are not identical. Judges are expendable; they come and go, so it is said, but courts remain as granitelike impersonal institutions.

California has had 24 chief justices between 1849 and 1977, Serranus Clinton Hastings being the first and Donald R. Wright the 24th. Yet remarkably few chiefs who served during those 128 eventful years readily come to mind; this is largely because the court as an entity has been remembered rather than its personnel.

The trend has been noticeably different in recent years. We recall with awe the unprecedented administrative achievements of Chief Justice Phil Gibson. We recall with admiration the judicial trailblazing of Chief Justice Roger Traynor. And I predict we shall long and gratefully recall the leadership of Chief Justice Donald Wright, who in many respects has combined the best of the attributes of his two immediate predecessors. He has been both an efficient administrator and a talented judge.

The Chief Justice has innumerable physically taxing chores in the daily administration of the court and the Judicial Council. Nevertheless he has since 1970 produced nearly 200 full-length majority opinions for the supreme court, not counting, of course, the torrent of literature he created in the court of appeal before he ascended the Olympian heights. A remarkably high percentage of his opinions have been unanimous, although it is no small feat to persuade the seven prima donnas on our court to be unanimous about anything.

What kind of a tribunal has the Don Wright court been? To a large extent that lies in the eye of the beholder. If you believe the dissenters—and that includes each of us at one time or another—the majority is wreaking havoc on California jurisprudence.

On the other hand, an issue of the Wall Street Journal a couple of years back said in effect: "The Supreme Court of California is to courts what the Oakland Raiders are to football." Somewhat more profound were two scholars who noted the tendency of our state court to rely on state rather than federal constitutional provisions; they concluded that the "California Supreme Court may be likened, in these years of equal-protection gloom on the national scene, to those monks who kept classical learning alive so that it might be rediscovered in the Renaissance."

In the final analysis only the perspective of history will permit determination of whether the California Supreme Court can remain right without the capital W.

One of Chief Justice Wright's most eloquent opinions was *People v. Anderson*, which in 1972 declared the death penalty to be cruel or unusual punishment, prohibited by the Constitution of California. If it is possible to be lyrical about a subject as melancholy as capital punishment, Don Wright reached that peak in his memorable opinion. He was both lighting a candle and cursing the darkness. The whole process of legally exterminating a living person, he wrote, "degrades and dehumanizes all who participate in its processes," and it is, he added, "incompatible with the dignity of man." Finally, he declared, society "diminishes itself whenever it takes the life of one of its members."

The Supreme Court of California is diminished by the loss of its leader: Chief Justice Donald R. Wright. He has been a great guy to work with, to play with, to plan with, to discuss issues with, even to argue with. He and his lovely wife, Margo, deserve a future of good health and contentment.