

*Shirley M. Hufstедler**

I received the invitation to join the encomiums for Chief Justice Donald R. Wright with delight and dismay. The opportunity to pay tribute to a great Chief Justice, a distinguished lawyer, and a beloved friend is a joyous event. The reverse side of the invitational coin, however, is that the occasion is his retirement as Chief Justice—an inescapable reminder that the years have passed more swiftly than I like to recall since we were colleagues on the Los Angeles County Superior Court and discussing the frailties of the appellate bench and other endemic aggravations of trial judges. I am also required to confront my inability to write the standing ovation merited by his years of dedicated service to the cause of justice.

No Chief Justice in the history of California has brought to that office greater understanding of the California judicial system. His tutors were private law practice, service on every level of the California judiciary, and participation in the work of a seemingly endless array of task forces, committees, conferences, and commissions devoted to the public good in general and to the administration of justice in particular. From these he learned about the complex of public and private institutions and persons with which and through which the judiciary must operate to produce the quality of justice that has made California's judicial system the nation's leader.

No preparation for the Chief Justiceship was more invaluable than his service as presiding judge of Los Angeles County's Superior Court in 1967-68. An outstanding presiding judge only needs to combine the skills of a corporate executive, an architect, a lobbyist, a trial boss, a ringmaster, a faith healer, a den mother, a psychiatric caseworker, a prophet, and a conjurer. With these attributes, a presiding judge can wheedle the funds necessary to staff and to run the court from reluctant members of the executive and legislative branches of government; he can satisfy the media, control belligerent lawyers, soothe distressed litigants, and inspire judges and supporting personnel (whom he cannot hire, fire, or retire) to work harder and more innovatively than they ever thought they would or could. He can also use his sorcery to make three courtrooms appear in the place of one and multiply judges parthenogenetically when docket congestion per-

* Judge, United States Court of Appeals, Ninth Circuit.

sists. Of course, his image is not maimed if he or she is also a legal scholar, a linguist, and a person who can type and make coffee. Don Wright was a splendid presiding judge, but I cannot warrant his coffee.

Some commentators have registered surprise about Chief Justice Wright's legal philosophy as expressed through his votes and his judicial opinions during his tenure as Chief Justice. They have assumed that, on his way to the Supreme Court, he was either the beneficiary or the victim of a conversion from bone-deep conservatism to born-again liberalism. The assumption can only be made by those who did not know Chief Justice Wright very well, or who did not understand the judicial hierarchy, or both. Chief Justice Wright's mind was never packaged, let alone labeled. He has always been a man of wide-ranging interests, a thoughtful man who is well-educated and very well read. He has also always done the job before him, whether the job was advocacy, or trial or appellate judging. The jobs are not similar.

An advocate who assumes the role of a detached and neutral adjudicator is a failure as a trial lawyer. The trial judge who does not concentrate on the case before him, but who uses that case as a vehicle for overturning old precedents or for expounding his views of social policy in an area bristling with appellate opinions misconceives the proper functions of the trial court. A justice of the Supreme Court who thinks that the function of that court is simply applying settled law to the case before it, and not as the institution that sets future policy and precedent for the whole judicial system which it heads, is an incompetent justice.

*People v. Anderson*¹ was not the result of an experience on the road to Damascus or to the Supreme Court. *Anderson*, which he authored, *Serrano v. Priest*² and many other landmark opinions which he wrote or in which he joined,³ were the culmination of a lifelong dedication to the law and of adherence to the discipline of the judicial system of which he was a part. His performance on the Supreme Court is also a reflection of the depth of his moral and intellectual convictions, again the harvest of the experiences of his lifetime.

When Don Wright moved up the judicial ladder, he left not merely colleagues, he left friends. He understood the problems of trial courts and trial judges. He had firsthand experience with assembly-line justice in traffic

1. 6 Cal. 3d 628, 493 P.2d 880, 100 Cal. Rptr. 152 (1972) (holding the death penalty unconstitutional under Art. 1, § 6 of the California Constitution).

2. 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971).

3. *E.g.*, *People v. Barlesdale*, 8 Cal. 3d 320, 503 P.2d 257, 105 Cal. Rptr. 1 (1972); *Brown v. Reagan*, 6 Cal. 3d 595, 492 P.2d 385, 99 Cal. Rptr. 481 (1972); *Esteybar v. Municipal Court*, 5 Cal. 3d 119, 485 P.2d 1140, 95 Cal. Rptr. 524 (1971); *Jones v. Superior Court*, 3 Cal. 3d 734, 478 P.2d 10, 91 Cal. Rptr. 578 (1970).

court and with mass arraignments in the municipal courts. He knew the sorrows of the tangled heap of humanity that crams the domestic relations departments and juvenile hall. He knew the paper inundations that beset the California Courts of Appeal. As Chief Justice, he worked with the lower courts to promote reform. He worked with Administrative Chief Ralph Kleps and court administrators throughout the system to try to achieve efficiency without dehumanization of the process. He worked with the legislature, the Judicial Council, the State Bar, the California Conference of Judges, and all of the other components of the intricate institutional mechanisms that together comprise the California justice system. Despite the burdens of his office, he remained ever accessible to his friends who were former colleagues—to help, to sympathize, to soothe, and to prod.

Throughout all of these years of public service, Margo Wright has been Don's don. She has helped, sympathized, soothed, and prodded, but prodded only when necessary to convince him to spare his health. The Wright partnership has always been very close and very happy. Margo and Don Wright have earned their active retirement together with the admiration and affection that both of them hold from the whole bench and bar of California.

