

*Stanley Mosk**

Nearly three decades ago, Jerome Frank wrote in one of his classic books on American justice an entire chapter responding to the query “Are Judges Human?”¹ He implied the answer was not self-evident; there exists a well-perpetuated myth that judges are more—to others less—than human. In my, lo, these many years on the trial and appellate bench, I have known no more genuine 18-carat human being beneath a judicial robe than Donald R. Wright, the twenty-fourth Chief Justice of the California Supreme Court. He came to the court, as George Eliot would put it, with “a great deal of unmapped country within him.” He left the court seven years later a towering giant.

Nothing I pen for this issue can further elevate the lofty pedestal upon which the bench and bar of California have placed Donald Wright.² First and foremost, Donald Wright has been a thoroughly skilled technician in this appellate judging profession. His opinions were lucid, his analyses dealt with all relevant issues and his conclusions were generally bottomed on an irrefutable rationale. Many of his productions were virtual textbooks on the subject at hand.³

The Chief consistently demonstrated his devotion to fundamental fairness for all, including those charged with heinous offenses and miscreants with a prior record of felony convictions. Thus, his concern that a defendant in a criminal case might be prejudiced by the prosecution’s use of prior felonies for impeachment impelled him to produce the leading cases on this subject: *People v. Beagle*⁴ and *People v. Rist*.⁵ He quoted with approval from an opinion of Judge (now Chief Justice) Burger declaring “it is more important that the jury have the benefit of the defendant’s version of the case than to have the defendant remain silent out of fear of punishment.”⁶ And

* Associate Justice, Supreme Court of California.

1. J. FRANK, COURTS ON TRIAL: MYTH AND REALITY IN AMERICAN JUSTICE 146 (1949).

2. I have, on other pages, testified to my high regard for the recently retired Chief in his dual role as a jurist and as the general of the troops in the state’s judicial system. See Mosk, *Chief Justice Donald R. Wright*, 65 CALIF. L. REV. 224 (1977).

3. See, e.g., *City of Los Angeles v. City of San Fernando*, 14 Cal. 3d 199, 199-305, 537 P.2d 1250, 1250-1328, 123 Cal. Rptr. 1, 1-79 (1975).

4. 6 Cal. 3d 441, 492 P.2d 1, 99 Cal. Rptr. 313 (1972).

5. 16 Cal. 3d 211, 545 P.2d 833, 127 Cal. Rptr. 457 (1976).

6. *Gordon v. United States*, 383 F.2d 936, 940 (D.C. Cir. 1967), *cert. denied*, 390 U.S. 1029 (1968).

he refused to permit unnecessary shackling of defendants in a manner that would prejudice them in the eyes of the jury.⁷ Similarly he insisted that narcotic offenders, threatened with loss of their conditional liberty under the state rehabilitation program, were entitled to a due process hearing to assure that termination of their release was "made upon a full understanding and awareness of all relevant facts."⁸ In juvenile cases, he also required adherence to the same fairness doctrine,⁹ including the requirement that proof be beyond a reasonable doubt.¹⁰

One of the qualities that reveals strength of character is a willingness to confess error. Chief Justice Wright has done so. He joined the 4-3 majority in *People v. Nudd*¹¹ which permitted statements taken in violation of *Miranda v. Arizona*¹² to be used for impeachment purposes.¹³ Two years later he changed positions in *People v. Disbrow*¹⁴ and agreed that such *Miranda* violative statements must be excluded. The Chief was plainly shocked by the revelation that a deputy sheriff would surreptitiously tape the conversation of a wounded suspect on a gurney being wheeled into surgery upon the deputy's express assurance that any statements made could not be used in court, after the suspect had stated his wish to remain silent and to consult an attorney.¹⁵

Chief Justice Wright also changed an earlier view¹⁶ and became a strong convert to employment of the doctrine of independent state constitutional grounds. Indeed, it may well be that in the eyes of many commentators the Wright court will have earned its niche in judicial history for its consistent advocacy of this recycled federalism. He observed in *People v. Norman*¹⁷ that in 1974 the people of California added to the state constitution a provision that "Rights guaranteed by this Constitution are not dependent upon those guaranteed by the United States Constitution," and that this reinforced the need for California courts to examine state constitutional provisions without regard to federal constitutional interpretation by the

7. See, e.g., *People v. Duran*, 16 Cal. 3d 282, 545 P.2d 1322, 127 Cal. Rptr. 618 (1976).

8. *In re Bye*, 12 Cal. 3d 96, 111, 524 P.2d 854, 864, 115 Cal. Rptr. 382, 392 (1974).

9. See, e.g., *In re Damon C.*, 16 Cal. 3d 493, 546 P.2d 676, 128 Cal. Rptr. 172 (1976); *In re Edgar M.*, 14 Cal. 3d 727, 537 P.2d 406, 122 Cal. Rptr. 574 (1975).

10. *In re Arthur N.*, 16 Cal. 3d 226, 545 P.2d 1345, 127 Cal. Rptr. 641 (1976).

11. 12 Cal. 3d 204, 524 P.2d 844, 115 Cal. Rptr. 372 (1974).

12. 384 U.S. 436 (1966).

13. See *Harris v. New York*, 401 U.S. 222 (1971).

14. 16 Cal. 3d 101, 545 P.2d 272, 127 Cal. Rptr. 360 (1976).

15. See *People v. Disbrow*, 16 Cal. 3d 101, 116, 545 P.2d 272, 282, 127 Cal. Rptr. 360, 370 (1976) (Wright, C.J., concurring separately).

16. The Chief Justice signed the majority opinion in *Diamond v. Bland*, 11 Cal. 3d 331, 521 P.2d 460, 113 Cal. Rptr. 468 (1974).

17. 14 Cal. 3d 929, 939, 538 P.2d 237, 244, 123 Cal. Rptr. 109, 116 (1975).

United States Supreme Court.¹⁸ Justice Brennan has urged this course,¹⁹ and his colleagues have encouraged state court activism by their abstention from decisions on the merits in many areas of the law.

Donald Wright firmly believes in the independence of the judiciary. He recognized that in word and deed it is the third co-equal branch of government. He would never permit the judiciary to become the mere handmaiden of the executive department. On the other hand, he was no empire builder; for example, his selections to the Judicial Council were strictly on merit rather than on the basis of the appointee's predilections or commitment to some favored policy direction.

Finally, and perhaps most significantly, Donald Wright elevated the stature of the California judiciary by virtue of his own personal character. Of course, the California Supreme Court as an institution earned plaudits for landmark and oft-times provocative decisions. But the state's highest court also won recognition for having as its titular leader a cultured and literate person of high principle and moral courage. I do not wish to become maudlin in an attempt to describe how Donald Wright's former colleagues shall miss his wisdom and his companionship. Perhaps I can best sum up with a couplet of the English religious writer, Hannah More:

To those who know thee not, no word can paint;
And those who know thee know all words are faint.²⁰

18. *People v. Disbrow*, 16 Cal. 3d 101, 114-15, 545 P.2d 272, 281-82, 127 Cal. Rptr. 360, 369-70 (1976); *People v. Brisendine*, 13 Cal. 3d 528, 548, 531 P.2d 1099, 1112, 119 Cal. Rptr. 315, 328 (1975); *Diamond v. Bland*, 11 Cal. 3d 331, 335, 521 P.2d 460, 462, 113 Cal. Rptr. 468, 470 (1975) (Mosk, J., dissenting); see also Mosk, *The New States' Rights*, 10 J. CAL. LAW ENF. 81 (1976); SCHWARTZ, *AMERICAN LAW: THE THIRD CENTURY* 213 (1976); Brennan, *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489 (1977); Falk, *The State Constitution: A More Than "Adequate" Nonfederal Ground*, 61 CALIF. L. REV. 273 (1973).

19. *Michigan v. Mosley*, 423 U.S. 96, 120 (1975).

20. H. MORE, *Sensibility*, in 1 THE WORKS OF HANNAH MORE 35 (1854).

