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ORAL HISTORY OF
JUSTICE JESSE W. CARTER

INTRODUCTION

JOSEPH R. GRODIN*

Jesse Carter came to the California Supreme Court by appointment of Governor Culbert Olson in 1939 — at a critical time in the Court’s history. Up to that point, the Court had been entirely competent, but not yet as recognized nationally as it later came to be. Carter’s appointment was followed in rapid succession by the appointments of Phil Gibson and Roger Traynor, and, in the decades that followed, the California Supreme Court gradually came to be a leader in the development of new approaches in a variety of areas — criminal procedure and consumer protection, among others.

It is Gibson and Traynor, both of whom became chief justice, who typically get the credit for the Court’s preeminence, and certainly their reputations as legal giants are well deserved. Carter played an important role, however, and his role has been largely ignored. In large measure that is because Carter authored few majority opinions of prominence. His contribution lay mainly in his frequent dissents (510 of them, if one counts dissents from denial of hearing), sometimes joined by others but

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often solo, which asserted positions that in a significant number of cases came to be embraced by the majority of the Court, or (where federal law was implicated) by the U.S. Supreme Court. Carter’s dissents were often vitriolic — he was taken to task by no less a personage than Roscoe Pound for his lack of collegiality — and were often characterized by expressions of righteous indignation, but if one focuses upon substance rather than style, his position on the frontier of legal change is readily discernible, and quite remarkable.

His dissent in People v. Gonzales is an example. The issue was whether illegally obtained evidence should have been rejected in the defendant’s criminal trial. The majority opinion, authored by Traynor and joined by all but Carter, held that it should not. Carter’s dissent insisted that, whatever the rule might be under the federal Constitution (and at the time the rule was unclear), “the provision in our state Constitution compels the rule that evidence obtained in contravention thereof shall not be competent or admissible.” Permitting such evidence to be used, he argued, is “an invitation and encouragement to law enforcing officials to violate the Constitution.”

This opinion deserves recognition as a landmark in the development both of the rationale for an exclusionary rule and of the significance of state constitutions as an independent source of rights. Thirteen years later, in People v. Cahan, the Court in an opinion by Justice Traynor came to accept Carter’s reasoning as to the need for an exclusionary rule, as well as his argument for grounding that requirement in the state Constitution. Justice Traynor’s Cahan is widely acclaimed both for its prescience in requiring exclusion of illegally obtained evidence before the U.S. Supreme Court’s opinion in Mapp v. Ohio, and for its impetus

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1 In a 1953 case in which the majority rejected a finding by the Industrial Accident Commission that the employer was guilty of “serious and willful misconduct,” Carter’s dissent characterized the majority’s view as “the old story of the people and the legislature being defeated by reactionary court decisions.” Carter responded to criticism by saying that a conference of appellate judges “is not a prayer meeting where everyone is expected to nod ‘Amen.’”
2 20 Cal.2d 165, 174-175 (1942).
3 44 Cal.2d 434 (1955).
to the later development of independent state constitutional analysis. Meanwhile, Justice Carter’s contribution has gone virtually unnoticed.

Equally ignored have been the cases in which a Carter dissent was subsequently “validated” by the U.S. Supreme Court, either through direct reversal or subsequent disapproval. In Takahashi v. Fish and Game Commission,\(^5\) Carter authored a dissent, in which Traynor and Gibson joined, disagreeing with the majority’s conclusion, reversed by the U.S. Supreme Court,\(^6\) that it was constitutionally permissible for California to exclude aliens from offshore fishing. In Rochin v. California,\(^7\) the U.S. Supreme Court held that the due process clause of the Fourteenth Amendment required a state court to exclude evidence obtained by pumping the defendant’s stomach, and reversed a California Court of Appeal decision which allowed the evidence,\(^8\) the California Supreme Court had denied hearing, with only Justice Carter voting to grant. In San Diego Building Trades Council v. Garmon,\(^9\) the U.S. Supreme Court held that, under federal preemption principles, a state court had no jurisdiction to grant relief against union activity arguably prohibited or protected by the National Labor Relations Act, and reversed a contrary decision by the California Supreme Court, from which Carter, joined by Traynor, had dissented.\(^10\)

In California v. Taylor,\(^11\) the U.S. Supreme Court in effect disapproved of a prior California Supreme Court decision holding that the Railway Labor Act had no application to a state-owned railway in California v. Brotherhood of Railroad Trainmen.\(^12\) In the prior decision, Carter’s had been the only dissent. And in Konigsberg v. State Bar of California,\(^13\) the U.S. Supreme Court reversed an order of the Supreme Court of California, from which Carter had dissented, denying Konigsberg’s admission to the California Bar based upon alleged communist affiliations.

\(^{5}\) 30 Cal.2d 719 (1947).
\(^{6}\) 334 U.S. 410 (1948).
\(^{7}\) 342 U.S. 165 (1952).
\(^{8}\) 101 Cal.2d 140 (1950).
\(^{9}\) 353 U.S. 26 (1957).
\(^{10}\) 45 Cal.2d 657 (1955).
\(^{11}\) 353 U.S. 553 (1957).
\(^{12}\) 37 Cal.2d 412 (1951).
\(^{13}\) 353 U.S. 252 (1957).
Carter’s dissents in these cases, along with others, reflect a strong-willed commitment to a constellation of values that include self-reliance, individual liberty, procedural fairness, distrust of the state, the importance of juries, protection of the underdog, and collective bargaining. It is a constellation which cannot easily be characterized as “liberal” or “conservative,” but against the backdrop of Carter’s life experiences, reflected in part in this oral history, the constellation takes shape as the expression of a fiercely independent spirit.

From this oral history we learn of Carter’s pioneering forebears; of parents who were small farmers and miners in the California northwest; of Carter’s birth, the seventh of eight children, in a log cabin on the Trinity River; and of his early education — at home until the age of eight, because the nearest school was seven miles away, but an avid reader and intellectually curious. We learn how he left home at the age of fourteen, and worked in mines and logging camps in order to earn enough money to go to San Francisco and enroll in Wilmerding School; how he went to work for United Railroads, repairing electric motors in the day and taking night classes at YMCA (later Golden Gate) Law School; how he became politically active in the Progressive Movement, and later in the New Deal, but always, it seems, with reservations stemming from his own independent thought. Carter had a colorful career as a plaintiff’s lawyer, a defense lawyer, a district attorney, a city attorney, and a state senator before his appointment directly to the Supreme Court.

Not long before his death in 1959, I remember seeing a newspaper story about Carter’s involvement in a dispute with Marin County officials and his neighbors over a dam he had constructed on his ranch. The county insisted the dam was unsafe, and demanded it be removed. There was a picture of Carter, standing outside his ranch house, holding a rifle, and quoted as threatening to shoot “the first S.O.B. who sets foot on my property.” But after several engineers testified the dam had been made safe and was no longer a hazard to nearby residents, the dam was allowed to stand. Carter’s last dissent ultimately prevailed.