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A Judge's Judge

Walter V. Schaefer†

Throughout the common law world—both in this country and abroad—Roger J. Traynor is known as an outstanding common law judge. Curiously, the specialized field of taxation was his first love. All of the Notes bearing the initials “RJT” that appeared in the *California Law Review* during his years as student editor and editor-in-chief dealt with problems of taxation. It has been said that “[n]o one has contributed as much to the tax system of California as Chief Justice Roger J. Traynor. This system is a monument to his creative talents and industry. . . . The State of California reaps endlessly the benefits of his labor.”¹ Even before his appointment to the Supreme Court of California he had become a nationally recognized authority in the field of federal taxation.

It was, in retrospect, a happy chance that diverted his energies from the field of taxation to the broader reaches of the common law. In 1940 Governor Olson had appointed Professor Max Radin to fill a vacancy on the Supreme Court of California, but the appointment was rejected by the Commission on Judicial Qualifications. The Governor, determined to put an academic lawyer on the court, then appointed Roger Traynor, a faculty colleague of Radin. He took office on August 13, 1940, and served continuously, first as associate justice and later as chief justice, until his retirement in 1970. During those thirty years his impact on the law exceeded that of any other American judge.

Even the most distinguished of our law professors are regarded as authorities in only one or possibly two areas of the law. Not so with Roger Traynor. His opinions and his scholarly writings ranged across the whole spectrum of the law. And he was not only at home in all fields of the law; he was an acknowledged leader in every field that he touched.

There have been many scholarly analyses of his work, both in particular areas of the law and in terms of his approach to the judicial process. To me, however it may be to others, his work seemed always to be marked by two characteristics. The first was precision of thought—what was described by Professor Wex Malone as “a passion

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1. Sabine, *Taxation: A Delicately Planned Arrangement of Cargo*, 53 CALIF. L. REV. 173 (1965).

for order.”² The second was a deep concern for the impact of a legal doctrine upon the lives of the men, women, and children to whom it applied. In whatever field of law he wrote, his opinions showed that he had squarely faced the problems of the case, cut through the fictions, and tendered his solution. His style was one of modest mastery, stemming from a knowledge of the roots of the legal doctrines and a lively sense of the relevance of those doctrines to present conditions.

Perhaps his impact was most strongly felt in the law of conflicts. When he came to it, rigid concepts were dominant. Tort actions were governed by the law of the state in which the tort occurred—*lex loci delictus*—while contract actions were governed by the law of the state where the contract was made—*lex loci contractus*. “After an early struggle to work within the framework of these concepts—in which he increasingly questioned their usefulness—Traynor eventually abandoned them altogether, first in a contracts case and then in a torts case. In their place he substituted an analysis that compared and evaluated the respective interests of the states affected. . . . Interest analysis in conflicts led ultimately to a consideration of the social policies promoted by choosing the legal rule of one state over that of another. That was the kind of inquiry Traynor attempted to make in all his decisions. Rules were meaningful only to the extent that they reflected rational policies derived from a responsiveness to social conditions.”³

“Roger Traynor is a law professor’s judge,” said the late Professor Harry Kalven, pointing out that his own casebook on torts used eight Traynor cases and that “we would have been well advised to have used more.”⁴ What was true in torts was true across the law school curriculum. Except in the area of federal jurisdiction and procedure, no casebook is without its full complement of Traynor opinions and excerpts from Traynor law review articles.

That Roger Traynor was also a judge’s judge is obvious from the frequent citation of his opinions. A Traynor opinion is always sound currency, always to be reckoned with. His influence upon judges was enhanced by his warm personal relationships with so many of them. Over a span just short of ten years, he served on the faculty of the Appellate Judges Seminar at New York University Law School. There he met for two weeks each year with twenty to twenty-five judges of top state courts and federal courts of appeals. The atmosphere was informal; common problems were discussed frankly and lasting friendships resulted. In his relations with other judges there was no trace of arro-

2. Malone, *Contrasting Images of Torts—The Judicial Personality of Justice Traynor*, 13 STAN. L. REV. 779-81 (1961).

3. G. WHITE, *THE AMERICAN JUDICIAL TRADITION* 311-12 (1976).

4. Kalven, *Torts: The Quest for Appropriate Standards*, 53 CALIF. L. REV. 189 (1965).

gance or condescension. Their concerns were his, and each colleague was engaged in the same basic enterprise, the pursuit of justice.

There is a danger, I think, that our interest in Roger Traynor, the scholar and the jurist, may cause us to lose sight of Roger Traynor, the man. For all his thirty years of leadership, and his brilliant opinions and law review articles, he was a very shy man, at his best in small groups. It was there that his warmth and his engaging wit came through most clearly—free of the shy restraint that so often characterized the delivery of his formal lectures. On the Council of the American Law Institute he was not quick to volunteer his opinions, but whenever he spoke the Council welcomed his views.

There was a strong touch of the poet in Roger Traynor. It did not appear in his opinions, but it came through strongly in his extrajudicial writings. Legal problems and the work of judging were described in metaphors that suggest both his constant struggle to achieve an orderly body of legal rules and his own tireless zest for that struggle.

A current of affection ran deep in him. His family circle was close and warm. Madeleine customarily accompanied him on his many visits to law schools and to meetings of the American Law Institute and its Council. His pride in his two sons, Michael, a lawyer, and Joseph, an agricultural consultant, was a joy to see. And of Stephen, the son who predeceased him, he once said, "There isn't a morning that I don't think of that boy as I wake up."

More than twenty years have passed since 1961, when I first expressed my opinion that Roger Traynor had been for many years the nation's number one state court judge. Five years later I removed the state court qualification. Nothing has happened in the years since then to alter that opinion. "The old order changeth, yielding place to new."⁵ There were great judges before Roger Traynor and there will be great judges in the years ahead. But the standard that he set will remain the ideal for all judges.

5. A. TENNYSON, *The Passing of Arthur* line 408, in *IDYLLS OF THE KING*.