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A Legacy of Accomplishment

Adrian A. Kragen†

On May 13, 1983, California and the nation lost one of their most illustrious jurists and legal scholars, and many of us who were fortunate to have had to the opportunity to know him as a teacher or as a jurist lost our finest mentor.

Roger John Traynor was a giant in the law and was recognized as such not only throughout the United States legal community but all over the western legal world.¹ He was generally regarded as the finest legal mind ever to occupy the post of chief justice in a state supreme court and one of the greatest jurists to serve on any court in the history of this nation.

I first encountered Roger Traynor in 1928 when I enrolled in a course in the political science department of the University of California at Berkeley entitled Jurisprudence 10. My classmates and I were surprised to see this very young (twenty-eight years old) teacher appear at the first class. It was his first teaching assignment. The course involved a study of the common law and to some extent its application in the United States. Our text was Blackstone. The presentation was dynamic and the material made so interesting that even though I had no previous exposure to and not a lot of interest in the law, this lecturer and this course convinced me that I should try to be a lawyer. My first experience with the extraordinary vitality, power of analysis, and rigorous discipline of Roger Traynor has been repeated frequently over the last fifty-five years and my admiration for its dispenser has never lessened.

It is, of course, impossible in a few paragraphs to write a fitting tribute to this man and to indicate what he has meant not only to the legal world but also to the tremendous number of people in all walks of life who have been affected and influenced by his farseeing and ground-breaking judicial opinions.

There have been many articles written about Chief Justice Tray-

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1. Schwartz, *The Judicial Ten: America's Greatest Judges*, 1979 S. ILL. U.L. REV. 404, 438-42; Schaefer, *Justice Roger J. Traynor*, 13 STAN. L. REV. 717 (1961); G. WHITE, *THE AMERICAN JUDICIAL TRADITION* 295 (1976); Dean Roscoe Pound, 108 CONG. REC. 1620 (1962); *Chief Justice Traynor is Awarded the American Bar Association Medal*, 53 A.B.A. J. 828 (1967).

nor's opinions and their influence on the law.² I am sure that soon some highly qualified scholar will put forth a volume or more analyzing in depth his work and its monumental contribution to the law. All that can be done here is to give a brief résumé of his accomplishments. They started early and accelerated rapidly. A miner's son from Park City, Utah, he enrolled as an undergraduate at Berkeley in 1920 and in the School of Jurisprudence in 1924. Although he was simultaneously engaged in obtaining his J.D. in law school and his Ph.D. in Political Science, a feat seldom attempted and less frequently achieved, he had the ability and energy to be Editor of the *California Law Review* and one of the leaders of an extraordinarily talented law school class. Thus he early showed his ability to perform Herculean tasks.

Although, like all young teachers, he taught a number of subjects, he was farsighted enough to plan and to be able to persuade the law school by 1930 to offer a course in Taxation. Professor Traynor made this course a rigorous and inspiring experience for those of us who were lucky enough to be enrolled in the course. The students learned not only the law but obtained an understanding of the basis of and defects of the law and what could and should be done to remedy them. Within a very few years Professor Traynor was regarded as one of the leading tax scholars in the country and he served both the U.S. Treasury Department and the California Board of Equalization and Franchise Tax Commissioner as a consultant. His work in California tax matters resulted in the Sales and Use Tax Acts and the Bank and Corporation Tax Act, which have been the major sources of revenue for the state since their enactment. During the 1930's when he was carrying a full law school teaching load, acting as a consultant for state and national tax agencies, and as Special Deputy Attorney General under Attorney General Earl Warren, Professor Traynor also wrote extensively.³ His style was exceptional. His language was pure and he made even the most complex concepts understandable. The ideas expounded in these articles were the basis for many legislative enactments and judicial decisions. From 1928 to 1940 he served the law school and the university with dedication and skill, and a myriad of today's lawyers and judges owe much of their success in the profession to his efforts to make them

2. The following are only a very few examples of a multitude of articles. Schaefer, *Chief Justice Traynor and the Judicial Process*, 53 CALIF. L. REV. 11 (1965); Twardy, *Justice Roger J. Traynor and the Development of Strict Liability in Products Liability Cases*, 53 CONN. BAR J. 423; Ratner, *Reflections of a Traynor Law Clerk—With Some Emphasis on Conflict of Laws*, 44 S. CAL. L. REV. 876A (1971); Currie, *Civil Procedure: The Tempest Brews*, 53 CALIF. L. REV. 25 (1965); Malone, *Contrasting Images of Torts—The Judicial Personality of Justice Traynor*, 13 STAN. L. REV. 779 (1961); Kay, *Conflicts of Laws: Foreign Law as Datum*, 53 CALIF. L. REV. 47 (1961); Armstrong, *Family Law: Order Out of Chaos*, 53 CALIF. L. REV. 121 (1961); Kalven, *Torts: The Quest for Appropriate Standards*, 53 CALIF. L. REV. 189 (1961).

3. See Sabine & Clark, *The Writings of Chief Justice Traynor*, 1980 B.Y.U. L. REV. 561.

understand the premises upon which law is based and to the inspiration he gave to them.

When in 1940 Governor Culbert Olson appointed him a justice of the Supreme Court of California, he faced an entirely new challenge which he met in his usual way by complete dedication to the task. He had had only a very brief exposure to private practice, although he had been involved in the preparation and presentation of state and federal tax cases. For a number of years his teaching assignments were only in the area of taxation, but he did not hesitate for a moment to take on as a justice the most difficult and complex cases in criminal law, conflicts, torts, and other areas of the law. His opinions were models of clarity. From the first he carried his share or more of the burden of the court and in his thirty years on the court he wrote hundreds of opinions. From the first he emphasized that the law was not a stagnant concept but one that responded to the needs of the society in which the court lives and operates. As one writer noted, he brought about "a dramatic renaissance of the common law."⁴ His opinions from the beginning evidenced the thoroughness and craftsmanship which had characterized his teaching and writing as a law professor—showing a power of breadth and expression which was quickly noted throughout legal circles and led to the early recognition of his unique position among jurists.

Justice Traynor, as I mentioned earlier, was not afraid to tackle any case whether or not it was an area which he had confronted previously. Within a few years after his appointment he began writing opinions which set forth concepts and ideas which were destined to result in far-reaching changes in legal reasoning throughout the nation. One example is his concurring opinion in *Escola v. Coca Cola Bottling Co.*,⁵ written only four years after he became a member of the court, which set forth the legal reasoning on which the present law of products liability nationwide is premised and which was a dramatic change from prior law.

His 1955 opinion in *People v. Cahan*⁶ regarding the admissibility of illegally secured evidence was ultimately followed by most courts throughout the nation. In one of the opinions written shortly prior to his retirement he tackled the intricate problem of the rights of minority shareholders holding that "the comprehensive rule of good faith and

4. 83 HARV. L. REV. 1769 (1970).

5. 24 Cal. 2d 453, 461, 150 P.2d 436, 440 (1944) (en banc) (Traynor, J., concurring). The reasoning of this concurring opinion was approved *in toto* by the California Supreme Court in *Greenman v. Yuba Power Prods., Inc.*, 59 Cal. 2d 57, 377 P.2d 897, 27 Cal. Rptr. 697 (1963) (en banc).

6. 44 Cal. 2d 434, 282 P.2d 905 (1955) (en banc).

inherent fairness to the minority in any transaction where control of the corporation is material properly governs controlling shareholders in this state."⁷ Another one of his many precedent-setting opinions was *Muskopf v. Corning Hospital District*,⁸ which eliminated the defense of sovereign immunity in actions for negligence.

The decisions mentioned indicate only a few of the areas of the law where this former tax expert became accepted as the judicial leader. However, the subject which came to be one of his favorite areas of the law and in which he was regarded as the foremost innovator in the judiciary was conflicts of laws. He wrote many precedent-setting opinions as well as several articles on this subject.⁹

In 1964, Justice Traynor was appointed chief justice by Governor Edmund G. Brown, Sr., and the approximately six years that he served in that capacity are regarded as the golden years of the court. It was considered during that period to be the most prestigious state court in the land. An earlier statement by Justice Walter Schaefer that "there is no sounder currency in the courts across the country than a Traynor opinion"¹⁰ came to be applied to what was known as the Traynor court. In 1970, when Chief Justice Traynor retired, he left a court regarded everywhere as preeminent.

Chief Justice Traynor, of course not content to abandon his life-long habit of legal contribution when he retired from the court, took on the task of teaching new generations of students at Hastings College of Law, University of Utah, University of Virginia, and Cambridge University in England. He continued to write and speak extensively, took on projects for the American Bar Association, served on the Council of the American Law Association, chaired the National News Council, and engaged in numerous other activities until at the age of 80 he finally "retired" to his home in Berkeley, where he continued his study, reading, correspondence, and conversations with jurists and scholars from all over the world.

Chief Justice Roger Traynor was a gentle, kindly man with great tolerance for others and a wonderful sense of humor. He was only aroused to anger by actions violating the rights of others or by the fail-

7. *Jones v. H.F. Ahmanson & Co.*, 1 Cal. 3d 93, 112, 460 P.2d 464, 474, 81 Cal. Rptr. 592, 602 (1969) (en banc).

8. 55 Cal. 2d 211, 359 P.2d 457, 11 Cal. Rptr. 89 (1961) (en banc).

9. *Grant v. McAuliffe*, 41 Cal. 2d 859, 264 P.2d 944 (1913) (en banc); *Emery v. Emery*, 45 Cal. 2d 421, 289 P.2d 218 (1955) (en banc); *Reich v. Purcell*, 67 Cal. 2d 551, 432 P.2d 727, 63 Cal. Rptr. 31 (1967) (en banc); *Henry Falcon & Son v. Superior Court*, 49 Cal. 2d 855, 323 P.2d 437 (1958) (en banc); *Atkinson v. Superior Court*, 49 Cal. 2d 338, 316 P.2d 960 (1957) (en banc). Traynor, *Is This Conflict Really Necessary?*, 37 TEX. L. REV. 657 (1959); Traynor, *Conflict of Laws in Time: The Sweep of New Rules in Criminal Law*, 1967 DUKE L. J. 713; *Conflict of Laws Roundtable*, 49 TEX. L. REV. 239 (1971).

10. Schaefer, *supra* note 1, at 717.

ure to assume obligatory responsibilities. As one of my colleagues has stated, he exercised compassion with judgment.

There have been few of his stature in the history of our nation. He leaves a legacy of accomplishment that will affect each of us and the generations to come.