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Justice Raymond E. Peters -- A Tribute

*Mathew O. Tobriner**

No part of a justice's performance on the California Supreme Court gives a more revealing clue to his approach to the law than his response to the challenge for change and to the demand that accepted doctrine be overturned. He confronts that problem not only in the opinions he writes but in the petitions for hearing he must rule upon: when a matter comes before the court crying for a novel legal ruling, the justice can, if he chooses, in effect, bury it in good (or bad) technical reasons for denial, or plunge ahead in an attempt at change.

But what are the factors that lead the justice to his decision? When does he determine that the time has come to alter the ancient doctrine—to move ahead in accord with the claimed need for adjustment? When does the justice decide the revision is premature—that the need for stability in the law at least temporarily outweighs the plea for social justice? The answer to that basic query has confounded generations of lawyers and judges.

I would hazard the guess, however, that most of the justices would undertake the development of a new legal doctrine only when the way had been paved for it by the compulsion of logic, the consensus of the writers of the subject and by the felt social necessities of the times. When the legal thinkers, particularly those in academia, concur in the belief that a doctrine has become obsolete, surely a court should not persist in preserving it; once born, the new theory should not be over-extended; zealous expansion could be counter-productive, dooming it to early demise or distinction. Since the grant of a hearing, however, could very often confront the court with the problem of developing and defining a new doctrine and would undoubtedly open up new and difficult issues, it has been characteristic of the court to proceed with great caution.

* Associate Justice, Supreme Court of California.

In weighing these considerations Justice Peters usually decided in favor of granting a hearing; to him, the unjust decision called for immediate correction. An injustice amenable to correction by the courts could not be tolerated for an extra moment. The approach of Justice Peters was heroic. Less theoretical than particularistic, he would sense an unjust decision below and urge that we grant a hearing. If I would counter that the case did not affect the pattern of the law and had no value in the development of legal theory, he would invariably respond that our court was a court of last resort and that we were obligated to see that justice was done. If I would plead that we could not possibly dispose of all the cases that we would be compelled to grant if we were to be guided by such standards, he would look at me with pity and tell me that my plea did not excuse me from doing my job.

Justice Peters sat next to me at the conference table for the better part of ten years, and, looking back, the memories crowd in. We seldom disagreed. On those few occasions when we differed, he would not hesitate to let me know, but when he did so, his eyes were warm and laughing a little but his words were strong. Once I voted against taking over a case involving a basic doctrinal change, which I favored, but which I thought was premature, and Justice Peters knew that I basically agreed with the new doctrine. When I voted he whispered to me under his breath, "Traitor." Another time, when I came in with a memorandum to deny a petition for hearing, he pronounced, "For each of the reasons stated in the memo, I would *grant*." And his favorite comment when disagreeing would be, "That is the most ridiculous argument I have ever heard."

The opinions of Justice Peters, in many instances, proceed with the majesty of Beethoven's *Eroica*. *Rowland v. Christian*,¹ for instance, sweeps away the ancient distinctions drawn as to the duty of care owed by a landowner to a trespasser, licensee or invitee. He wrote:

A man's life or limb does not become less worthy of protection by the law . . . because he has come upon the land of another without permission or with permission but without a business purpose. Reasonable people do not ordinarily vary their conduct depending upon such matters, and to focus upon the status of the injured party as a trespasser, licensee or invitee in order to determine whether the landowner has a duty of care, is contrary to our modern social mores and humanitarian values.²

This concern for the sanctity of human life and limb, and the recognition of the individual hardship that could result from an uncompensated loss, marks his earlier decisions also.³

1. 69 Cal. 2d 108, 443 P.2d 561, 70 Cal. Rptr. 97 (1968).

2. *Id.* at 118, 443 P.2d at 568, 70 Cal. Rptr. at 104.

3. *Self v. Self*, 58 Cal. 2d 683, 376 P.2d 65, 26 Cal. Rptr. 97 (1962) and *Klein*

*Elmore v. American Motors*⁴ and *Crisci v. Security Insurance Co.*⁵ are landmark cases in torts. In the first, Justice Peters held that an automobile with a defectively connected drive shaft constituted a substantial hazard on the highway, not only to the driver and passengers of the car, but also to a bystander whose car was hit by the defective vehicle. In *Crisci* he ruled that an insured person could recover against his insurance company for mental distress caused by the carrier's wrongful failure reasonably to settle a claim.

These tort cases typify the boldness, the resourcefulness, of Justice Peters. The same qualities were reflected in other fields of the law: his protection of political dissidents from the loyalty oath,⁶ his immunization of rehabilitated persons from subsequent printed exposure,⁷ his rescue of child welfare recipients from arbitrary governmental demands,⁸ and his enforcement of the teacher's first amendment right to circulate petitions and discuss public questions on school grounds during the lunch hour.⁹

A staunch defender of the rights of women, Justice Peters wrote the court's initial abortion decision.¹⁰ More recently his opinion in *Sail'er Inn, Inc. v. Kirby*¹¹ became one of the leading decisions in the nation prohibiting discrimination on the basis of sex.

In the criminal law, Justice Peters' cases upholding the protection of the fourth amendment against unreasonable searches and seizures and his cases on the sixth amendment right to counsel are too numerous to record. One that particularly stands out is *People v. Tenorio*¹² which held that the judge was not required to obtain the district attorney's consent before striking a prior conviction for purposes of sentencing. Of course, Justice Peters was a long-time and uncompromising foe of capital punishment, and he lived to see his views in this regard largely vindicated by the California and the United States Supreme Courts.

v. Klein, 58 Cal. 2d 692, 376 P.2d 70, 26 Cal. Rptr. 102 (1962), which signaled the end of interspousal immunity in California.

4. 70 Cal. 2d 578, 451 P.2d 84, 75 Cal. Rptr. 652 (1969).

5. 66 Cal. 2d 425, 426 P.2d 173, 58 Cal. Rptr. 13 (1967).

6. Vogel v. County of Los Angeles, 68 Cal. 2d 18, 434 P.2d 961, 64 Cal. Rptr. 409 (1967).

7. Briscoe v. Readers Digest Assoc., 4 Cal. 3d 529, 483 P.2d 34, 93 Cal. Rptr. 866 (1971).

8. Ramos v. County of Madera, 4 Cal. 3d 685, 484 P.2d 93, 94 Cal. Rptr. 421 (1971).

9. Los Angeles Teachers Union v. Los Angeles Bd. of Education, 71 Cal. 2d 551, 455 P.2d 827, 78 Cal. Rptr. 723 (1969).

10. People v. Belous, 71 Cal. 2d 954, 458 P.2d 194, 80 Cal. Rptr. 354 (1969).

11. 5 Cal. 3d 1, 485 P.2d 529, 95 Cal. Rptr. 329 (1971).

12. 3 Cal. 3d 89, 473 P.2d 993, 89 Cal. Rptr. 249 (1970).

But, most important of all, Ray Peters was a liberal who saw in the individual's right of self-fulfillment the hope of mankind. His humanity reached to the defendant in the dock, the prisoner in the cell, the parolee guarding his fragile freedom, the child exploited in the field, the bystander injured by the defective car, the broken-limbed and the sick of mind, and the worker on the job who suffered injury. The list is endless. The great heart encompassed them all, and over the space of more than thirty years he wrote into the decisions the rights of the disadvantaged, the poor and the oppressed.

We have suffered a loss that is hard to bear.

But then I remember, how, despite illness and physical incapacity, Justice Peters would, with dauntless determination, carry on, writing his memorable opinions, ruling on matters in conference with courage and decisiveness. I remember how, often, I said to him, "Ray, how can you take it—the pain—the disability? Yet you never complain! You are my hero."

Hero he was and forever shall be.

His record in the law is in the grand, heroic tradition.

*Frank Bray**

For 17 years I had the privilege of serving on the First Division of the First District, California Court of Appeal, with Raymond E. Peters, who during that time was the Presiding Justice. Ray was one of the most kindly men I have ever met. The intimate relationship that exists between the members of a three-man court not only gave me a clear insight into his character and judicial competency but was to me a constant joy and delight. His cleanness of thought, instant grasp of the most complicated and intricate legal problems, his analytical ability, and his unusually high sense of fairness and justice revealed a judicial mind and temperament seldom equalled.

In all discussions with the members of his court he was always courteous, never became angry when there was disagreement with his opinions or he disagreed with ours.

He believed that counsel were entitled to expect promptness by the court, and in the whole 17 years there was never once when the court was not opened at the scheduled hour and not even one minute later. I recall one day when, due to my bus being delayed by a wreck on the bridge, I did not arrive in court until 10 minutes after 10:00. He opened the court exactly on time without waiting for me, getting a stipulation from counsel that I might participate in the case whose discussion I was missing.

Ray always felt that the action of all courts, and particularly the Courts of Appeal, should so operate as to prove to the people that they could be depended upon to protect the individual from any type of oppression by his government or any other source and that life, liberty, protection of property and the pursuit of happiness were safe and assured as long as the judges recognized their high responsibility and acted with integrity, courage, wisdom and devotion to justice. His actions as a member of the judiciary fully demonstrated that he was that kind of judge.

* Presiding Justice (Retired) First District, First Division, California Court of Appeal.

*Robert W. Kenny**

The United Nations Conference on International Organization filled San Francisco to the brim. It was F.D.R.'s idea to see that every important leader of opinion in the country had a part in making of the peace. No one was to be slighted—Woodrow Wilson's errors were not to be repeated.

The stars of the conclave were of course the greats like President Truman, Stettinus, and Molotov. But there were hundreds of lesser notables, all important figures in their own countries and continents.

But when the Conference opened on April 25, 1945, F.D.R. was dead and a thirty-day blackout on social activities had been imposed.

After each day's session, the delegates found time on their hands. The F.D.R. mourning period meant that organized socializing was taboo.

The sight of all these socially undirected delegates was too much for a warm, happy soul like Ray Peters. "These people are dying for a party," said Ray. "Let's arrange a banquet for them to be held just as soon as the Roosevelt mourning period is over."

It was a brilliant and timely notion. San Francisco, the city that knows how, only had to be shown how. Ray, always gregarious, was the ideal man to get it going. Unity was everywhere. Everyone who was an U.N.C.I.O. delegate and also a lawyer was invited to the banquet. And they all accepted. The San Francisco Bar Association and the National Lawyers Guild joined in sponsoring the party.

Ray Peters arranged a glittering speakers list. Chief Justice Phil Gibson was master of ceremonies. The speakers included Paul Boncour of France, Contreras La Barca of Chile and, as speaker of the evening, Chief Circuit Judge John J. Parker. When Justice Parker at last came on, six speakers had preceded him and it was midnight. Peters' party had been so successful that there were but few listeners left other than a handful of somnolent guests and some pretty impatient waiters and bus boys.

* Judge Kenny, former Attorney General of California, is a Superior Court judge in Los Angeles.

*Herman F. Selvin**

Others have already praised the scholarly and judicial accomplishments of Ray Peters.¹ Those of us who have been Pete's friends since law school days, and even longer, are fully aware and appreciative of those accomplishments. But we also knew another side of him—a side that his growling mien and acerbic comments from the Bench concealed so well. For he was, in fact, a gentle, kind and understanding human being who savored the delights of companionship with his friends.

In the press account that brought us first word of his death, the Chief Justice was quoted as saying:

His opinions eloquently speak of his continuing concern for the underprivileged, who are the poor, the weak and the despised. Few judges have expressed more clearly an abiding concern for the welfare of his fellow man.

It was not just "the underprivileged . . . the poor, the weak and the despised" for whom he felt an abiding concern, but all mankind. As John Donne wrote, he was "involved in mankind" to such an extent that everyman's death diminished him. Certainly, Ray was such a man. And, so, his death has certainly diminished all of us—not merely because he was a great judge, but because he was a fine human being.

Ray had a long and intimate concern for the American Indian, evidenced by his association with the Inter-Tribal Friendship Council. One day, in a talk before a Bar Association, I ad libbed a critical comment about judges who solicited lawyers for contributions to their favorite charity. Nothing that was serious in my remarks got any press notice, but that one ad-lib comment received large headlines in the legal press. A few days later I dropped into Ray's chambers, to find him reading one of the Los Angeles papers that had head-lined my comment. "I've just been reading your opinion of judges who solicit for charity," was his greeting to me. "Do you mean to say," he continued, "that if I were to write you and ask you to join the Inter-Tribal Friendship Council, that I would be violating judicial ethics?" "That," I replied, "was exactly what I had in mind." "Well," he said, "suppose Marion (his wife) were to write and ask you to join. What would you do?" "That's different," I said, "Marion is not a judge, so I guess

* Mr. Selvin, a classmate of Justice Peters at Boalt, is a past president of the Los Angeles County Bar Association. He is a member of the firm of Kaplan, Livingston, Goodwin, Berkowitz and Selvin in Beverly Hills.

1. See, e.g., 57 CALIF. L. REV. 563 (1969), *passim*.

I'd consider it." A letter from Marion was on my desk when I got home. Need I add that I've been a member ever since.

During the first Los Angeles session of the supreme court after his appointment, he called me and asked when we could go to lunch. I suggested Tuesday, and he agreed, but then something occurred to me and I questioned whether we really should meet publicly Tuesday. "Why not?" he growled. "Because," I said, "if you had looked at tomorrow's calendar you would have seen I'm on it." "What difference does that make?" "Why," I answered, "some people might draw an erroneous inference." "Look," he said, "I don't give a damn about anybody who thinks I can be bought for the price of a lunch." "Does that mean," I asked, "that I'm to pay for the lunch?" "That's probably the only time in this case you'll be right", was his retort.

But the account was later squared. I had a date for dinner at his home in Berkeley on the same day an opinion written by him was filed. His holding was adverse to the position I had taken in the case. He opened the door when I rang that evening. His first words, even before any hello, were "I suppose you think the opinion I filed this morning was all wrong." "Ray," I countered, "that's the only thing you've ever said in or about that case that's right." "Ah, to hell with it," he said, "come in and have a drink."

The Indians were not his only concern. Many other good works benefited from his interest and indefatigable energy, including the University of San Francisco Law School, of which he was a trustee; Alameda County Legal Aid Society (Director); Franklin Hospital (trustee); Northern California Service League (President); and the American Friends Service Committee. He was President of the Boalt Hall Alumni Association, and the Warren Law Center is in large part the outgrowth of an idea he suggested and worked for during his tenure. Also classifiable among his good works are the training, the counsel and the friendly push ahead he gave his many law clerks. They revered him—and they were not alone.

Many a graduate of Boalt Hall, successfully practicing today, owes much to Ray. For, freely available to all who were his classmates, were those impeccably prepared course summaries, and, too, a welcome entry to the weekly seminars at which those who attended were told, with the clarity of prose that was later to grace the California Reports, what it was they should have learned in the week just passed. Despite the many hours thus given to aiding others, he stood, upon graduation, at the head of his class—along with retired Chief Justice Roger Traynor.

I have heard him say, in explanation of the philosophy he carried into the conferences of the court on the question whether to hear or not

to hear, "this is a Court of *Justice*; we can't turn down a case involving a miscarriage of justice simply because there is in it no great or publicly important question of law."

He was fully skilled in the use of the technical aspects of the law. But for him, the guiding star was not the black letter law, but justice.

Many people who never knew Ray personally will miss him as a great judge. Those of us who knew him will miss him as well as one who, in the words of the Psalmist, was "mine own familiar friend."

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