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Arthur H. Sherry—A Tribute

Adrian A. Kragen†

It is not a difficult task to write about Arthur Sherry, but it is difficult to express adequately all of the values he represents as a lawyer, a teacher, a colleague, a citizen, and a friend. Making all the laudatory statements necessary to convey the full picture might give the impression of a second Winston Churchill, with all the greatness but all the pomposity, and Art is definitely not pompous. Rather, Art is the true intellectual. He is human, tolerant, friendly, and he has a broad interest in everything that happens in the world around him.

One might say that Art is a prime example of the "local boy makes good" concept. He was born in Berkeley and had all of his schooling in the East Bay, ending with his graduation from Boalt in 1932. Moreover, his nationwide reputation is primarily based on the work he did while associated with San Francisco Bay Area organizations.

Upon his graduation from Boalt, Art was appointed Deputy District Attorney of Alameda County under Earl Warren. He achieved a reputation as an excellent trial lawyer who was compassionate, thoughtful, and creative. In addition, he did a superlative job as the representative of the District Attorney’s Association at the California Legislature. After some years with the District Attorney, he joined the office of then Attorney General Edmund G. Brown as Deputy Attorney General in charge of the Law Enforcement Division. He also became a member of the Special Study Commission on Organized Crime. Art was regarded as the top criminal prosecution attorney in the state, and when special problems occurred in California counties he was frequently requested to act as special prosecutor. In that capacity he added to his reputation for fairness, thorough preparation, and superior trial tactics.

In 1953 Boalt needed an outstanding person to succeed Warren Olney, who was leaving for Washington to become Administrator of the

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Federal Courts. Art was the unanimous choice of the faculty, and we were fortunate enough to persuade him to join the Boalt Hall faculty. Although I had known Art when we were students at Boalt and later when we were engaged in lobbying at Sacramento, my close relationship with him really commenced when he became a member of the faculty. I had not until then comprehended the breadth of his interests and knowledge. He had always been a dedicated student of all phases of the law and an avid reader of anything related to it. I soon found, however, that Art had a very broad interest in any area of worthwhile consideration and was a voracious reader of what are generally known as “good” books. He was interested in a biography of Churchill, Pliny’s letters, a history of the Civil War, or any other work which gave him some insight into past, present, or future events. Whenever I needed some information, I found that Art was likely to have read something about the area and able either to provide an answer or to indicate where it could be found.

But I soon found that his interests were not exclusively intellectual. He was, and is, an avid and very proficient gardener, a connoisseur of food, wine, and martinis, and a follower of both college and professional sports. When I wanted to know who pitched the first game in the 1954 World Series, the title of the best article on the hearsay rule, or the most reasonably priced good California red wine, my first source was, and is, Art. Shortly after he joined the Boalt faculty, it became apparent to all that Art was a superb colleague by all the criteria by which such relationships could be judged. That impression has been constantly enhanced in the years that followed.

Art has made very substantial contributions to the law school, the university, the San Francisco Bay Area, the state and the nation. Soon after his appointment to the law school faculty, he assumed the position of Executive Director of the American Bar Association Survey of the Administration of Criminal Justice in the United States. This survey, which continued over a number of years, resulted in a multi-volume report which has been the basis for substantial reform in criminal law administration. As a member of the Boalt faculty, he initiated and chaired the Institute at Boalt Hall for District and Prosecuting Attorneys, which was an important factor in upgrading the quality of criminal law as practiced by prosecuting attorneys. He was co-chairman of the Institute for California Judges, which was the precursor of both the very successful College for California Trial Judges, held annually at Boalt Hall, and of the National College for Judges. He headed the Penal Code Division project of the California Legislature which, despite the legislative decision to terminate the project, has been the major source of forward-looking changes presently proposed for the California Penal Code. In addition, Art has served on numerous federal, state and local
committees concerned with criminal law and law enforcement. He has been a guiding force in advances in criminal and evidence law and in the emergence of more realistic attitudes of law enforcement officials toward the handling of victimless crimes.

His writings have had a substantial impact on the law. His article, *Vagrants, Rogues and Vagabonds—Old Concepts in Need of Revision*, 1 has been the major impetus throughout the states for amendments in the law relating to vagrancy that eliminated the ancient concepts as to vagrants but at the same time retained the basic elements necessary to adequate law enforcement. Another of his articles 2 has been extremely important in many jurisdictions in producing a more liberal view of the necessity for secrecy of grand jury minutes. In addition to his published writings, Art has had a very important part in shaping the law of crimes and evidence through his contributions at symposia and other functions sponsored by law schools, bar associations, and civic groups.

Art has taught criminal law and evidence in the law school and also has regularly taught in the School of Criminology. He has inspired a large number of criminology students to undertake the study of law. A survey of Art's former students at Boalt would reveal that a substantial number have specialized in the areas in which they have had the benefit of his teaching. A number are judges, district attorneys, public defenders and leading trial lawyers. His influence on the law from this source may well equal or exceed the direct contribution from his writings and participation in legal projects, and I am certain this is a source of great gratification to him.

As I have indicated, Art has been a tremendous colleague and a real credit to Boalt Hall and the organizations he has served. In retirement he continues to contribute to the progress of the law as a professor at Hastings College of the Law and continues for his colleagues and friends to be a broad-gauge person whom we all respect and love.

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1. 48 Calif. L. Rev. 557 (1960).
In January, 1950, I assumed the office of Attorney General of the state of California after having served as District Attorney of San Francisco for 7 years. The first task of a new Attorney General is to select the few exempt appointees he is allowed. Most members of the Attorney General's office are career persons with civil service status and tenure. A new Attorney General can hire only five people from the outside, but these five happen to be the most important in the Attorney General's office. For the position of Chief Assistant, Criminal Division, I wanted to bring in not only the most capable person, but a person who would symbolize my determination to have strong law enforcement in the state. I also wanted someone whose experience, training, and temperament could produce outstanding results. I searched the state from one end to the other and discussed the selection with the chiefs of police, district attorneys, and judges. After a full and complete search, Arthur Sherry was my choice.

He was well prepared for the position. Governor Earl Warren, in an effort to mitigate the criminal situation in the state, had appointed several crime commissions. Probably the most important and the one that attracted the most attention was concerned with organized crime in California, of which Arthur Sherry, then a young Assistant District Attorney from Alameda County, was in charge. For a period of 3 years this crime commission had quietly, efficiently, intelligently, and without fanfare fought organized crime in the state. Arthur Sherry had done a magnificent job.

I never regretted his appointment. During the 8 years I was Attorney General, he was not only the Chief of the Criminal Division, but was one of my closest advisors. Whenever he felt there was an important issue in the office, criminal or otherwise, he would come in in a quiet but very persuasive way and urge me to take a position that seemed to him to be sound and just.

Arthur Sherry, acting as Chief of the Criminal Division, supervised all important criminal prosecutions in the state from 1950 to 1958. The prime responsibility for law enforcement in a county is the District Attorney; but, in addition to cases involving intercounty crimes, there are sometimes cases where a District Attorney feels disqualified. In those cases, Arthur Sherry could be counted upon to move in and exercise magnificent discretion and good judgment.

I have met many people in my private and public life as District Attorney, Attorney General, and Governor, but I have never met a finer,
more intelligent human being than Arthur Sherry. I feel his advice to me was primarily responsible for my re-election as Attorney General in 1954 and my election as Governor in 1958. After I became Governor, I offered him a judgeship on several occasions, but he had decided to teach. Despite urgings and personal conversations, he declined the offers. He was one of the few people offered a judgeship who would not accept.

* * *

Lincoln N. Mintz†

Those coming to study law at Boalt Hall after June, 1975, will miss the teaching of Arthur Sherry. He has gone across the Bay to the famed "65 Club" at Hastings, and our loss is very much their gain. It was my good fortune to embark upon my journey through the mysterious passages of legal thought and doctrine at a time when Art Sherry was holding forth at Boalt.

Many fine teachers have preceded Art Sherry, have taught with him, and will follow him at the law school. Each will undoubtedly make his own contribution to the professional and personal growth of the students with whom he comes in contact. The frenetic pace of the "paper chase" will not be slowed nor the quality of the education diminished by the absence on the faculty of one man. Just as each of us who studied with Art had little understanding of what we had missed in those preceding him—the Captain Kidds and the Barbara Armstrongs—so will those who come after have little if any realization of what they are missing. His many gifts and achievements will linger, however, a permanent commemorative to him. Some will remain unchanged, and most will blend into the foundation of legal study which will, naturally, persist and continue to grow in spite of his leaving the old stand.

But let the record reflect these facts:

It was my good fortune to encounter the teacher, the personality, and the man, Arthur Sherry. If my contemporaries and I, those who came before us and those who succeeded us under his wing, are better today than before we came to the law, then assuredly his efforts had something to do with it.

The contributions Art has made to his campus and his community

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are truly beyond number. His enrichment of an already fine campus is a quantity beyond measurement. His dedicated public service while a member of the faculty, in the academic, political, and legislative lives of this state and its people, is told in the journals and minutes compiled through the years. It has been my pleasure to know but two of Art's many facets, one by reputation and one firsthand. The reputation is outstanding, and undoubtedly deserved; the personal experience has been warm and rewarding.

The years of a trial lawyer's practice are spent in learning and absorbing a tradition—a history, if you will—a background upon which we all build. Not enough can be said about the knowledge gained over coffee or the growth sought and occasionally achieved through social exchange with other lawyers. And one name that arises in Alameda County whenever the past greats of the trial bar are called to mind is that of Arthur Sherry. To this day, many years after he departed from the active criminal trial scene in this busy county, Art Sherry's name rings out as an example of the trial lawyer's trial lawyer, the prosecutor's prosecutor. His reputation for courtroom effectiveness is awesome, as awesome and imposing, perhaps, as was his own singularly dignified presence within the courtrooms where he practiced his art.

The reputation speaks of thoroughness, perseverance, flair, and that great intangible, an instinct for the jugular. Art Sherry was, in the vernacular, the stopper of what was surely an outstanding staff. He was "the top gun," and, I am told, a win over him was well-deserved and hard fought. His many important cases, in Alameda County and elsewhere, are chronicled in the files and reported decisions. He was often called upon to travel through the state to pursue the interest of justice whenever it was most sorely tested.

Art brought to teaching his knowledge, his experience, and his dedication. The determination which had to be the hallmark of the trial work of one whose reputation has survived for so long and on such a grand scale was transmuted into a zeal for teaching, striking a responsive chord in so many of his students.

The relationship between a student and his teacher at the law school level would be fodder for a pen far more prolific and articulate than mine. It is a matter of strange and specific chemistry. Fine minds, student and teacher alike, abound in a place such as Boalt. And hopefully each student encounters someone, fellow student or faculty member, with whom there is profound intellectual and professional rapport. I was fortunate enough to encounter Art Sherry.

Art taught courses in many areas. When I met him, he was concentrating in criminal law and procedure and in evidence. He opened for me the study of evidence, a highly demanding task. In his
presentations, in his preparation, and in the pacing of our studies within
the framework provided by the time available to the task, Art provided
vehicles for learning. By his bearing and his stature, he saw to it that
we would know, perhaps even sense, the being of a trial lawyer. And
by his instinct for the jugular, he created many an uncomfortable
moment for our occasionally meandering minds. By his experience, he
illuminated for all of us the vagaries of the field of law which, for the
trial lawyer, transcends all others. Evidence, as a subject of study,
always has been and always will be of pervasive relevance.

The cornerstone of the trial lawyer's professional life must rest
upon the base of evidence, and Art knew this; he transmitted this to us.
He carried into his role as a teacher that which he had learned, that
which he had done as a trial lawyer. When I had the personal good
fortune of learning from Art in the criminal justice area, I realized that
experience and knowledge such as possessed by this man were assets to
be gathered, even at high cost, and to be both cherished and shared, just
as he cherished and shared that which he had gained over the course of
many years. He shared with me, as he did with all of his students. His
knowledge of the administration of the criminal law as it in fact works,
and not merely as it may appear on the surface or as it may have been
designed to work in theory, was and remains without equal.

It seems appropriate that an edition of this review devoted to a
commentary on the term of our supreme court should be dedicated to
this man. So much is happening in those fields where he has contribut-
ed the most, and from which he has learned the most, that such a review
touches on all aspects of the career and the professional life of Art.

It is very difficult for a law student, while in the throes of formal
education, to readily evaluate the contributions of any one mentor. But
reflection clearly reveals Arthur Sherry as an outstanding teacher, and,
to my greatest delight, as a valued friend. I am most pleased that I
came to the study of the law where I did and when I did, at a time when
I didn't miss him.