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## Raymond E. Peters

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# In Memoriam

Raymond E. Peters

*Matthew O. Tobriner\**

During his years on the District Court of Appeal, First Appellate District, Division 1, from 1939 to 1959, Justice Peters wrote approximately 900 opinions; during his years as associate justice of the supreme court, from 1959 to 1973, he wrote approximately 390 opinions. These decisions are the record of a justice, who, dedicated to the cause of the individual, saw in the individual's right of self-fulfillment, the hope of mankind. These opinions are the record of a justice, courageous and creative, who broke new ground, who often felt around him, in the words of Justice Holmes, "the black gulf of solitude" because he stood alone and because on an issue or principle he would not compromise.

His integrity permitted no compromise. Time and again he reminded us that ours was the court of last resort and ours was the duty to correct injustice. His opinions show that after a rugged, indefatigable examination of the facts of each case in search of the truth, he would turn to the law, and deliver sledgehammer blows in the cause of righteousness.

This valiant defender of the disadvantaged, the disenfranchised, and the minorities in all walks of life, left a legacy of enlightened decisions which erect a monument to his memory. The breadth of his concern for the disadvantaged is captured by the diversity of the legal settings in which he saw the need to solidify individual rights. Whether he was protecting political dissidents from the oppression of an overbroad loyalty oath,<sup>1</sup> securing a right to be free of printed public exposure

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\*Associate Justice, Supreme Court of California. This is a copy of Justice Tobriner's remarks at the memorial services for Justice Peters at the Supreme Court of California on January 8, 1973.

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

to rehabilitated persons,<sup>2</sup> or rescuing child welfare recipients from the unreasonable demands of government officials,<sup>3</sup> Justice Peters responded to a deep moral commitment which demanded that justice be accorded to each and every individual.

Throughout his three decades as an appellate court judge, Justice Peters' legal reasoning stood in the forefront of developing legal trends. In *People v. Belous*<sup>4</sup>—the initial abortion decision—he gave substance to the constitutional right of a woman to control her own body; more recently his opinion in *Sail'er Inn, Inc. v. Kirby*<sup>5</sup> emerged as the leading decision in the country prohibiting discrimination on the basis of sex.

In other fields Justice Peters' lead came initially in the form of cogent dissents that ultimately became majority decisions of this court and the United States Supreme Court. His constant opposition to capital punishment, perhaps the most familiar example, is one instance among many; his longstanding defense of prisoners' rights has only recently begun to be reflected in a growing trend of decisions recognizing that prisoners are not slaves of the state but human beings who possess at least minimum civil rights. Thus he held that the state could not seize a portion of the royalties from their writings;<sup>6</sup> the state could not open and inspect private confidential correspondence between inmate and attorney.<sup>7</sup>

Moreover, Justice Peters' concern was not limited to these rather "specialized" minority groups of welfare recipients, prisoners, political dissidents or the like, but instead he recognized the deeper truth that in many areas time-worn legal doctrines had made "disadvantaged minorities" of a great majority of the common people. His precedent-shattering decisions in the field of torts are perhaps the clearest illustration of this vision. Thus, for example, in authoring *Rowland v. Christian*,<sup>8</sup> the decision which abolished the traditional distinctions drawn as to the duty of care owed by a landowner to different persons on his property, Justice Peters recognized the injustice and unreality of a legal rule which left many negligently injured persons without legal recourse. He wrote:

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2. *Briscoe v. Reader's Digest Ass'n, Inc.*, 4 Cal. 3d 529, 483 P.2d 34, 93 Cal. Rptr. 866 (1971).

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

4. 71 Cal. 2d 954, 458 P.2d 194, 80 Cal. Rptr. 354 (1969).

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

6. *In re Van Geldren*, 5 Cal. 3d 832, 489 P.2d 578, 97 Cal. Rptr. 698 (1971).

7. *In re Jordan*, 7 Cal. 3d 930, 500 P.2d 873, 103 Cal. Rptr. 849 (1972).

8. 69 Cal. 2d 108, 443 P.2d 561, 70 Cal. Rptr. 97 (1968).

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 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.<sup>9</sup>

This concern for the sanctity of human life and limb, and the recognition of the individual hardship that could result from an uncompensated loss, is similarly evident in his earlier decisions in *Self v. Self*<sup>10</sup> and *Klein v. Klein*,<sup>11</sup> which signalled the end of interspousal immunity in California.

Landmark cases in the law of torts are Justice Peters' decisions in *Elmore v. American Motors Corp.*<sup>12</sup> and *Crisci v. Security Insurance Co.*<sup>13</sup> In the first he 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.

This emphasis on Justice Peters' defense of the underprivileged and those generally in need, of course, by no means exhausts his contributions to the jurisprudence of California. In no small measure, California's present discovery law is a product of Justice Peters' comprehensive interpretation of the discovery legislation in a series of cases of which *Greyhound Corp. v. Superior Court*<sup>14</sup> is the most prominent. Similarly, Justice Peters' decisions in the regulation of public utilities served to protect the consumer and the public interest.<sup>15</sup>

In sum, Justice Peters' decisions proclaim, in substance, the rights of the disadvantaged, the minorities, the powerless. Beneath these rulings lies the foundation stone of the right of the individual in our society to redress to the courts to seek and obtain justice.

Like another historic justice, Raymond Peters worked alone in the causes he vouchsafed. In the words of Mr. Justice Holmes: "Only when you have worked alone—when you have felt around you a black

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

10. 58 Cal. 2d 683, 376 P.2d 65, 26 Cal. Rptr. 97 (1962).

11. 58 Cal. 2d 692, 376 P.2d 70, 26 Cal. Rptr. 102 (1962).

12. 70 Cal. 2d 578, 451 P.2d 84, 75 Cal. Rptr. 652 (1969).

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

14. 56 Cal. 2d 355, 364 P.2d 266, 15 Cal. Rptr. 90 (1961).

15. *E.g.*, *City and County of San Francisco v. Public Util. Comm'n*, 6 Cal. 3d 119, 490 P.2d 798, 98 Cal. Rptr. 286 (1972).

gulf of solitude more isolating than that which surrounds the dying man, and in hope and despair have trusted to your own unshaken will—then only will you have achieved. Thus only can you gain the secret isolated joy of the thinker, who knows that, a hundred years after he is dead and forgotten, men who never heard of him will be moving to the measure of his thought—the subtle rapture of a postponed power, which the world knows not because it has not external trappings, but which to his prophetic vision is more real than that which commands an army.”

The monumental decisions of Justice Peters will endure a hundred years from now; men who never heard of him will be moving to the measure of his thought.