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Some Reflections About Justice Sullivan

by
JOSEPH R. GRODIN*

When I think of Ray Sullivan, several images come to mind, more or less simultaneously.

I see a person learned in the law, steeped in its history and tradition, with a respect for its processes bordering on devotion. Both on the Court of Appeal and in the Supreme Court, Ray left a legacy of concern for the workings of the law—how things came to be done the way they are done, and why. If other justices tended to be impatient with historical or procedural matters, regarding them as complex if not arcane, Ray provided the counterbalance. Distinctions between law and equity, prohibition and mandamus, stays and affirmative orders might cause others to yawn, but for Ray they were the stuff that law was made of, the fabric that helped hold things together and keep them from unraveling. When I was appointed to District One, Division One of the Court of Appeal, the legend of Justice Sullivan lingered; and when I came to the Supreme Court several years after Ray had retired, research attorneys would talk about procedural questions in terms of how Justice Sullivan would have answered them. And by then, of course, Ray was imparting his interest and excitement about such matters to law students in his popular course on Appellate Process.

At the same time, and not at all inconsistently, I see a judge deeply concerned about the substance of the law, about the law's impact upon people's lives, about the law's relationship to justice in a changing world, and about the responsibility of courts to continuously shape and mold those legal principles that are within the proper scope of judicial authority. I see a judge with the courage to make the choices that a judge is expected to make. Was the rule barring tort recovery for the plaintiff's contributory negligence a defective rule by

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modern lights? Then, as the rule was court-created, courts had responsibility for changing it.¹ Was the rule's codification in the Field Code of 1872 a bar to judicial modification? Only if the Field Code is read as freezing normal common-law development, and that premise, counter to the entire common-law tradition, was not one that Justice Sullivan was willing to accept.² Did the practice of deriving local school funds primarily from property taxes result in gross inequality of funding, with property-poor districts bearing the brunt? Then, given the fundamentality of education, the practice violated the equal protection principle.³ Was the contrary view of the United States Supreme Court an obstacle to that conclusion? Under the federal Constitution, of course, but under the independent principles of the California Constitution, the answer was no.⁴ Ray recognized, as not all judges do, that the law is infused with moral principles, and that moral choice is therefore unavoidable.

Finally, when I think of Ray Sullivan there comes to mind an image of a face that shines—a radiance that bespeaks of kindness, of compassion, of inner peace, and of philosophy grand enough to encompass effortlessly both substance and procedure, tradition and change. He is a person in whose presence one feels both calm and inspired. He is a man for all seasons.

1. *Li v. Yellow Cab Co.*, 13 Cal. 3d 804, 532 P.2d 1226, 119 Cal. Rptr. 858 (1975) (substituting a system of comparative negligence for contributory negligence).

2. *Id.* at 821-22, 532 P.2d at 1238-39, 119 Cal. Rptr. at 871.

3. *Serrano v. Priest*, 18 Cal. 3d 728, 557 P.2d 929, 135 Cal. Rptr. 345 (1976) (holding that California's school financing system, which was primarily based upon local property tax revenue, violated the equal protection clause of the California Constitution).

4. *Id.* at 764-68, 557 P.2d at 950-52, 135 Cal. Rptr. at 366-68.