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Justice Sullivan: The Teacher

by

MARSHA N. COHEN*

Justice Raymond L. Sullivan is widely and properly lauded, in this volume and elsewhere,¹ for his influence on California law to which he contributed more than 300 opinions during 15 years on the California Supreme Court and the California Court of Appeal.² He is also remembered for his 31 years of providing excellent legal counsel as a private practitioner in San Francisco. While Justice Sullivan's prodigious skill as a teacher is less widely known, those of us who were fortunate to be taught by him—as his clerks or his students—remember and appreciate him primarily for his contribution to our own education.

While his clerks and judicial externs are the smallest group of Justice Sullivan's students,³ we undoubtedly received the greatest benefit from his teaching by virtue of having his personal tutelage for a significant period of time. While each clerk's experience was unique, I am confident that my own was not atypical. We each learned different substantive law, depending upon the cases that crossed our desks, but Justice Sullivan taught us all to write with improved clarity and precision. We were taught to address all the issues brought before the

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My fellow clerks David R. Lipson and John J. Vlahos were kind enough to contribute their thoughts to the writing of this piece. Kim Y. Arnone, Class of 1996, Hastings College of the Law, assisted with research.

1. Justice Sullivan was awarded the Bernard Witkin Medal for 1994 by the State Bar of California. The award, announced on September 24, 1994, is conferred on "persons who, through a career of extraordinary service, have made significant contributions to the quality of justice and legal scholarship in our state." See also Mathew O. Tobriner, *Justice Raymond L. Sullivan*, 65 CAL. L. REV. 227 (1977); *A Tribute to Mr. Justice Raymond L. Sullivan*, 10 U.S.F. L. REV. 605-779 (1976) (dedicating entire issue to Justice Sullivan's work).

2. See bibliography of Justice Sullivan's opinions contained in this Issue.

3. Records created by the clerks log 21 clerks and 32 judicial externs. Volume Presented to Raymond L. Sullivan on the Occasion of His 85th Birthday (Feb. 1992).

Court (and not those we wished were before the Court) and to know and respect the procedural law.

With the vigor and excitement of youth, we, clerks, would include in our research memoranda sweeping rules and statements about the important issues of the day on the Court's docket. But our ideas and words did not easily enter the canon of California law. Language broad in its scope would be met with questions: "is this issue raised by the parties?" "do we need to decide this now to resolve the case before the court?" If either answer was no, the Judge's blue pencil would delete the offending language and often substitute a narrower and more precise formulation. Although politically a liberal, and obviously willing to advance the law in pursuit of justice,⁴ Justice Sullivan acted in accordance with his understanding of, and respect for, the Court's proper role in our governmental system. His judicial decisions would respond only to the issues brought before the Court. If relevant to those issues, reflection on the meaning and importance of the Court's resolution—that is, policy—was in order, but otherwise he would let his broader views await another case.⁵

Often we, clerks, would plunge into the substantive issues raised by the parties, oblivious to the procedural niceties surrounding the case. As our year with the Judge wore on, we became considerably more attuned to the complexities of procedure—and learned to respect the rules that govern access to the courts even when we might wish they allowed a different result.

For me this lesson is underscored forever by a particularly poignant case, *Busick v. Workmen's Compensation Appeals Board*.⁶ The plaintiff, who had quit her job to go into competition with her former boss's trucking company, was shot by that former boss when she returned, at his request, to pick up her final paycheck. After shooting Busick, the former employer committed suicide. Plaintiff first filed for worker's compensation benefits and then brought a civil action against

4. His opinions in *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 revenues, violated the equal protection clause of the California Constitution), and in *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), are but two examples.

5. During my clerkship year, 1971-72, there were cases on the Court's docket concerning the death penalty, abortion, products liability, environmental impact requirements, and other important issues. The clerks, fresh from campuses where political fervor was high, unsurprisingly had many passionate views on these matters that they were eager to share with their judicial employers.

6. 7 Cal. 3d 967, 500 P.2d 1386, 104 Cal. Rptr. 42 (1972).

her employer's estate. The trial referee denied the worker's compensation claim, finding that Busick's injury did not arise out of and occur in the course of employment; a petition for reconsideration was later granted. Thereafter, the civil action went to trial, and a judgment of significant size was entered in Busick's favor; in the absence of an appeal, the judgment became final. The record was silent about whether the tort judgment had been satisfied.⁷

When Busick's worker's compensation claim came before the Supreme Court of California, the issue that it appeared to pose was whether the injury arose out of and occurred in the course of her employment. It was that issue upon which the judges were focused until oral argument, when Justice Sullivan inquired about the contention by the employer's insurer that Busick's successful tort judgment, with its implied finding that the injury did not arise out of the employment, was *res judicata*. Ultimately Busick's case was decided against her, 4-3, by an opinion written by Justice Sullivan, because of the *res judicata* effect of the tort judgment. Surely Justice Sullivan would concede that if, in fact, the tort judgment had not been satisfied the result was unfortunate for Mrs. Busick, whose injuries were severe and certainly unprovoked. However, the judicial system operates neither on assumptions nor on sympathy, however well-deserved. Litigants are entitled to one, but only one, full and fair determination of their claims. Busick's attorney, if concerned about a lack of assets to satisfy a tort judgment, could have stayed the civil action pending the final determination of the worker's compensation litigation. The rules protect all parties and the integrity of the judicial system; those rules deserve our respect, regardless of our sympathy for one party or another.

My professional life has been enriched in many ways by the lessons I learned in Justice Sullivan's chambers. Although he did not cure me of digression, he taught me the value of focus and precision in writing and elsewhere. His frequent questions (such as, "is this relevant to the outcome?") buzz in my ears when, at meetings of boards and advisory committees, I find myself asking whether a discussion is still focused on the problem before us. In essence, Justice Sullivan's overarching lesson was intellectual discipline. He imposed that discipline on himself and taught its value to those of us who worked with him.

7. My recollection is that the court clerks assumed that the judgment had not been satisfied.

To the great fortune of Hastings College of the Law, Justice Sullivan agreed to join our faculty after his retirement from the judiciary in 1977. He taught a much appreciated course in Appellate Process once or twice a year until he retired in the spring of 1993. Two sources of student commentary on Professor Sullivan's course at Hastings reveal the high regard in which he was held by his students. *Headnotes*, a student-published course guide, consistently gave his course rave reviews. "Simply put—He's wonderful! You'll never regret for one day that you took this course."⁸ "[A]lthough it's a lot of work, it's my favorite class ever so I don't mind doing all the work."⁹ "Often mentioned as either 'Hastings' hardest' or 'Hastings' best' class, Appellate Process is certainly not the former, though quite possibly the latter. . . . Almost universally revered and admired, Sullivan's classroom persona is larger than life. Initially seeming stern, cantankerous, and without emotion, Sullivan emerges as [a] warm, good-humored gentleman. You will never forget him. Ever."¹⁰

The Professor and Course Evaluation (PACE) reviews filled out in every Hastings classroom similarly demonstrate students' high opinion of Professor Sullivan. His average score from a classroom of students on "command of the subject matter" almost always was 5 on a scale of 1 to 5, and on "overall teaching ability" his averages regularly were 4.75 or higher, putting him at the very top of the Hastings faculty in this regard.¹¹ The optional student comments regularly expressed the same themes. From Spring 1993: "By far the best professor I've had at Hastings"; "Although by far his has been my most demanding class (ever) it has also been the course where I have learned the most"; "An absolute treasure."¹² Earlier classes of students regularly expressed the same views.¹³ While the words "excellent" and "knowledgeable" appeared frequently, so did references to Professor Sullivan's demanding student preparation and attention. Equally often students remarked about Professor Sullivan's sense of humor, his generosity in giving time to his students, and his being a nice person. Their great respect for him was frequently noted. It

8. HEADNOTES (1992).

9. HEADNOTES (1991-92).

10. HEADNOTES (1988).

11. PACE results, Spring 1990, Spring 1991, Spring 1992, and Spring 1993, Office of the Academic Dean, Hastings College of the Law.

12. PACE results, Spring 1993.

13. For example: Spring 1992: "masterful professor!" Spring 1991: "brilliant and generous," "evokes the students' interest," "invaluable in teaching attention to the issues and to detail"; Spring 1990: "a bittersweet pleasure—tons of work, but worth the effort."

came as no surprise when Professor Sullivan received the Outstanding Teacher Award in 1991.¹⁴

One student commented, "It gives me great pleasure to see you so obviously enjoying yourself teaching—we should all be so happy in our work."¹⁵ Justice Sullivan's joy in teaching did not develop first at Hastings. In fact, he enjoyed a little-known career as a law teacher before he became a lawyer. This foray into teaching almost developed into a career as a law professor.

During his third year of undergraduate education at St. Ignatius College (which became the University of San Francisco in 1930), Justice Sullivan simultaneously enrolled in the night program at St. Ignatius Law School.¹⁶ Two years later, his bachelor's degree completed and two years left to the night law program, Justice Sullivan accepted an offer to teach during the day at St. Ignatius High School (now known as St. Ignatius College Preparatory School).

So from 1928-30 he taught Latin, debate, public speaking, history, English, and mathematics while finishing law school. When he completed his law degree, in the midst of the Great Depression, he kept his high school teaching job while adding some legal research to his activities. He joined the faculty of the evening division of the University of San Francisco in 1930 and taught public speaking and speech and composition to college students until 1934. As successful in the classroom at St. Ignatius/USF as he would be later at Hastings, he was urged by a law school official to embark upon a master of laws program with the idea that he might join the law faculty. His first love was trial practice, but given the economic situation at the time, one had to consider seriously a position with a regular paycheck. But a job offer never materialized. The law school was reorganized, and a new dean appointed who, it appears, was not interested in the young Raymond Sullivan for his faculty.¹⁷ Justice Sullivan then happily embarked on a career as a litigator, lost to the world of education for 46 years.

It is not often that an excellent practitioner in any field is also an excellent teacher of his or her art. Justice Sullivan combined those

14. The graduating class votes for the recipient of the Outstanding Teacher Award, which is given on behalf of the class by the Board of Governors of the Hastings Alumni Association in recognition of the support and academic contributions of the faculty member during the class's three years at Hastings.

15. PACE results, Spring 1990.

16. According to Justice Sullivan, a student could add law studies to his undergraduate studies without paying an additional tuition.

17. Although I have the information, I shall not embarrass the heirs of that dean by recording his name for posterity.

skills. In the classroom and in his personal education of young lawyers, he effectively communicated broad legal concepts and narrow details. What those of us who had the opportunity to learn from Raymond Sullivan will never forget is the importance of applying our knowledge with care and caring as we use the craft of lawyering in the pursuit of justice.