

REPORTS OF CASES  
DETERMINED IN  
**THE SUPREME COURT**  
OF THE STATE OF CALIFORNIA

---

SEPTEMBER 21, 1972, TO MARCH 5, 1973

---

ROBERT E. FORMICHI  
*Reporter of Decisions*

---

**VOLUME 8-3d**

San Francisco  
BANCROFT-WHITNEY COMPANY  
1973

# In Memoriam

---

## HONORABLE RAYMOND E. PETERS

---

**Presiding Justice of the Court of Appeal, First District, Division One, 1939-1959;  
Associate Justice of the Supreme Court of the State of California, 1959-1973.**

---

The Supreme Court of California met in Bank in its courtroom, State Building, Los Angeles, California, January 8, 1973. Present: Chief Justice Wright, presiding; Associate Justices McComb, Tobriner, Mosk, Burke and Sullivan, and Gordon L. Files, Presiding Justice of the Court of Appeal, Second Appellate District, Division Four, sitting under assignment in advance of the calling of the calendar. Bishel, Clerk; Williams, Bailiff.

CHIEF JUSTICE WRIGHT: We meet this morning to pay tribute to the memory of Justice Raymond E. Peters who served with distinction as an Associate Justice of this court from March 26, 1959 until his death on January 2, 1973. Many members of the bench and bar join with us in expressing our great appreciation for his outstanding contributions to the administration of justice.

No man loved the law more than Justice Peters; few men through its application have rendered greater service to their fellow men. We of the bench and bar and, indeed, all of the citizens of this state are greatly in his debt. His published opinions, many of which have become landmark decisions, have become beacons for all of us who toil in the profession of the law; they will serve as an inspiration for future generations.

The memorial to Justice Peters on behalf of the bar will be presented by his Boalt Hall classmate and long-time friend, Mr. Herman Selvin.

Mr. Selvin:

In the press account that brought us first word of the death of Mr. Justice Peters, 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."

At the memorial services held the other day in Oakland, the Chief used this thought, as did Mr. Justice Tobriner too, for the theme of their tributes. And when I was asked to perform this sad duty and before I had heard or

read the comments of either the Chief or Mr. Justice Tobriner, I determined to adopt a similar theme.

Such unanimity of opinion coming from those judges who had worked with and alongside him in the never-ending struggle of the courts to deal with fractious humanity, and from an intimate friend for more than 50 years—tells its own tale. It makes clear the great impact Raymond Elmer Peters had upon the life of this state.

He started his judicial career when he became Chief Law Secretary of this court in 1930, continuing to be so for nine years, during which time, because of the illness of one of the justices, he did a great portion of the opinion and memorandum writing that otherwise would have been done by that justice. In 1939 by appointment of Governor Olson, he became Presiding Justice of the then District Court of Appeal, First District, Division One; and in 1959, by appointment of Governor Brown, a justice of this court.

While, no doubt, the great loves of his life were his family and the law, he found the time and the energy—notwithstanding the stupendous load of his judicial work, and the physical pain of which he was never really free—the time and the energy to exhibit, in the Chief's phrase, his "abiding concern for the welfare of his fellow man." He was for years a guiding light in the efforts of the Inter-Tribal Friendship Council to ameliorate the transition of the reservation Indian to the rigors and puzzling complexities of life in a large, industrialized city. The conditions under which those incarcerated in our jails were compelled to live attracted his interest—and for him, to be interested was to do. And, so, he bludgeoned and bullied through changes and reforms that made those conditions at least bearable; and he continued that interest by organizing and directing efforts to maintain rehabilitation by finding suitable employment for those released.

Many another good work was the beneficiary of that great energy and massive intellect—among them were: San Francisco Law School, of which he was a trustee; Alameda County Legal Aid Society (director); Franklin Hospital (trustee); Northern California Service League (president); American Friends Service Committee; Boalt Hall Alumni Association (president) and under whose presidency began the effort that came to fruition in the Earl Warren Law Center, without cost to the taxpayer. 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 in doing so.

But we need not look only at his later years to find that concern for his fellow man about which the Chief Justice spoke, for Ray, like the subject of one of John Donne's great Devotions, was always "involved in Mankind." Many a graduate of Ray's alma mater—Boalt Hall—success-

fully practicing today would not be that but for Ray. For, freely available to all were those impeccably prepared course summaries — ante-dating Witkin's (a classmate, incidentally) by several years; and, also, available was a welcome entry to those 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. That was time and effort freely and cheerfully given—given, because, to Ray, to give of himself seemed to be not merely a duty, but a way of life. Despite the many hours thus given to aiding others, he stood, upon graduation, along with another distinguished member of this court—the recently retired Chief Justice—at the head of his class.

Many times in discussing—more accurately, in debating with him—the true role of this court in granting or denying petitions for hearing—he has said to me, as I am sure he has said dozens of times in conferences of the court—“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 as good a technical lawyer as there was; but not for him were the sharp quillets of the law. Justice, not technical law, was his lodestone.

I shall leave it to those who worked with him to trace involvement with mankind into his opinions. This little I may venture: He lived a simple, but busy life. He lived it as he believed every man was entitled to live—in dignity, in freedom and in peace. That was his great and abiding faith—and because it was, we can say of him as Paul wrote to his son Timothy:

I Have Fought A Good Fight.  
I Have Finished My Course.  
I Have Kept The Faith.

CHIEF JUSTICE WRIGHT: Justice Mathew O. Tobriner will respond on behalf of the court.

Justice Tobriner:

During his years on the District Court of Appeal, First Appellate District, Division One, 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 428 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 (*Vogel v. County of Los Angeles* (1967) 68 Cal.2d 18 [64 Cal.Rptr. 409, 434 P.2d 961]), securing a right to be free of printed public exposure to rehabilitated persons (*Briscoe v. Reader's Digest Association, Inc.* (1971) 4 Cal.3d 529 [93 Cal.Rptr. 866, 483 P.2d 34]), or rescuing child welfare recipients from the unreasonable demands of government officials (*Ramos v. County of Madera* (1971) 4 Cal.3d 685 [94 Cal.Rptr. 421, 484 P.2d 93]), 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* (1969) 71 Cal.2d 954 [80 Cal.Rptr. 354, 458 P.2d 194]—the initial abortion decision—he gave substance to the constitutional right of a woman to control her own body; more recently his opinion in *Sailer Inn, Inc. v. Kirby* (1971) 5 Cal.3d 1 [95 Cal.Rptr. 329, 485 P.2d 529, 46 A.L.R.3d 351] 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 (*In re van Geldern* (1971) 5 Cal.3d 832 [97 Cal.Rptr. 698, 489 P.2d 578]); the state could not open and inspect private confidential correspondence between inmate and attorney. (*In re Jordan* (1972) 7 Cal.3d 930 [103 Cal.Rptr. 849, 500 P.2d 873].)

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 authorizing *Rowland v. Christian* (1968) 69 Cal.2d 108 [70 Cal.Rptr. 97, 443 P.2d 561, 32 A.L.R.3d 496], 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: "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." (69 Cal.2d at p. 118.) 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* (1962) 58 Cal.2d 683 [26 Cal.Rptr. 97, 376 P.2d 65] and *Klein v. Klein* (1962) 58 Cal.2d 692 [26 Cal.Rptr. 102, 376 P.2d 70] 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.* (1969) 70 Cal.2d 578 [75 Cal.Rptr. 652, 451 P.2d 84] and *Crisci v. Security Ins. Co.* (1967) 66 Cal.2d 425 [58 Cal. Rptr. 13, 426 P.2d 173]. 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* (1961) 56 Cal.2d 355 [15 Cal.Rptr. 90, 364 P.2d 266] is the most prominent. Similarly, Justice Peters' decisions in the regulation of public utilities served to protect the consumer and the public interest. (See, e.g., *City and County of San Francisco v. Public Utilities Com.* (1972) 6 Cal.3d 119 [98 Cal.Rptr. 286, 490 P.2d 798].)

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 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.

**CHIEF JUSTICE WRIGHT:** Thank you, Mr. Selvin and Justice Tobriner. It is ordered that this memorial be spread in full upon the minutes of the court and published in the California Official Reports and that a copy of these proceedings be sent to Mrs. Raymond E. Peters.