

Preventive Tax Policy: Chief Justice Roger J. Traynor's Tax Philosophy

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Roger J. Traynor was appointed to the Supreme Court of California in 1940 and served as its Chief Justice from 1964 to 1970. He is best known today for his judicial innovations in the fields of conflict of laws, product liability, and civil procedure.¹ His decisions on miscegenation, divorce, police searches and product liability were ahead of his time, and led California's legal system into the future. His most significant opinions included rejecting the legal prohibition of inter-

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¹ Adrian A. Kragen, *In Memoriam: Roger J. Traynor: Chief Justice Traynor and the Law of Taxation*, 5 HASTINGS L.J. 801, 802 (1984).

racial marriages, adopting no-fault divorce, restricting police searches and applying a strict standard of liability in product defect cases.²

However, few would trace Roger J. Traynor's roots to the field of tax law, where he developed, through academic, administrative, and judicial service, valuable principles that still prevail today. At the University of California, Berkeley, Traynor discovered his passion for tax law and inspired his students to take this path in their professional careers. As an administrator, Traynor served California's tax system tremendously by shaping some of today's most important local tax acts, which were adopted by other states and countries. Later, Traynor became an expert consultant to the Treasury Department and participated in drafting major federal tax legislation. As a Supreme Court judge, Traynor wrote decisions in the field of taxation that remain good law and provide guidance for complicated issues including, for example, computing estate tax marital deductions and the earnings and profits of corporations. What was most unlikely, however, was that Traynor would partner with Stanley Surrey, our nation's foremost authority on federal tax law and the leading proponent of tax reform during his life.³

As a Harvard law dean and tax professor once said, Stanley S. Surrey was a "*True Public Servant*."⁴ In 1933 he joined the New Deal administration and established himself as a highly ranked legal counsel at the Treasury Department.⁵ In 1951, he joined the Harvard Law School faculty, where he remained an active member for 30 years⁶ while continuing to serve as a consultant to the United States

² BEN FIELD, *ACTIVISM IN PURSUIT OF PUBLIC INTEREST: THE JURISPRUDENCE OF CHIEF JUSTICE ROGER J. TRAYNOR*, xiv (2003).

³ The Townsend Harris Medal at: http://www.cuny.cuny.edu/townsend_harris/awards/s_z.htm

⁴ Erwin N. Griswold, *In Memoriam: Stanley S. Surrey*, 98 HARV. L. REV. 329, 331 (1984).

⁵ Surrey worked in the National Recovery Administration in Washington from 1933 to 1935 and at the National Labor Relations Board from 1935 to 1937. In those positions, Surrey found a meaningful outlet to improving government policies. On the influence of the New Deal on Surrey from his brother, *see* Walter Sterling Surrey, *STANLEY S. SURREY 1910-1984*, HARVARD UNIVERSITY (1984), A MEMORIAL SERVICE HELD OCT. 3, 1984 AT MEMORIAL CHURCH, HARVARD UNIVERSITY.

⁶ At Harvard, even as professor emeritus, Surrey continued to participate in many projects, such as the Income Tax Project of the American Law Institute. He