Roger Traynor as a Judge

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When one turns to thoughts about judicial law-making during the past fifteen years, he might well at the outset give attention to the area of torts for some outstanding examples. If he does so, he will discover that much of tort law has been rewritten to meet the needs of the vast changes that have been produced in social conditions brought about by a variety of factors, including technology, urbanization, and an increasing population. Roger Traynor, as an Associate Justice and then as Chief Justice of the California Supreme Court, has been one of those in the vanguard of this movement. Many judges are content to apply old rules in a mechanical and repetitious manner, even to entirely new situations, and to espouse the notion of judicial abstention in favor of the legislature, even when change is deemed to be for the public interest. A few judges, without the same reverence for stare decisis, are not so hesitant about making new law to meet new conditions. Roger Traynor is an outstanding example of such a judge. He has not been averse to bringing about wholesale and abrupt change in the basic law by judicial decisions when feasible. Nor has he been reluctant to alter some or make exceptions to a general doctrine in a given area when abrupt changes would produce too much uncertainty or too much confusion unless accomplished through the legislative process, which is more suitable for constructing the details of an entirely new approach.

It has been my privilege to review in another connection Roger Traynor's impact on the law of torts, both in clarifying existing law by way of illuminating the factors involved as well as in bringing about abrupt and radical change.1 It is enough to say here that his espousal of the notion that neither fault nor privity of contract should be required as a prerequisite to recovery for those who are victimized by defective and dangerous products was a great impetus to the development of strict liability of manufacturers and other sellers of defective and dangerous products.2 And, his dissenting opinion in Knight v. Kaiser Co.,3 involving...

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* Dean, The University of Texas School of Law.
4. 48 Cal. 2d 778, 785, 312 P. 2d 1089, 1093 (1957). His dissenting opinion here...
the intricacies of tort law related to the occupier of land, probably presages the ultimate abrogation of the complex set of rules pertaining to the duty of an occupier of land to invitees, licensees, adults and infant trespassers.

I would conclude this brief salute to Roger Traynor's genius as a judge with his own words:

"Judicial lawmaking requires not only the usual rigorous objectivity, but the fortitude to abandon formula and construct anew. . . . Time and again . . . judges must marshal their resources for the relentless, lonely task ahead as they review the record of the case and become aware that no magic words could do it justice."

presaged the later California Supreme Court decision overruling prior California decisions distinguishing between the duty of an occupier of land to trespassers, licensees and invitees. Rowland v. Christian, 69 Cal. 2d 108, 443 P. 2d 561, 70 Cal. Rptr. 97 (1968).