[MS-0494.004.001.002]

Said procedures to suffer a certain consequence.

The law makes the road of life smoother so that life's journey may be pleasant, predictable and certain. So there is a tendency to promote the status changers play a very necessary and ~~idiomatic~~ dynamic role in shaping the substantive and procedural laws of this land.

I am reminded of the doctrines set forth by the cases of Eric v Tompkins and Swift v Tyson when I think of the role of lawyers in shaping our system of laws.

The Federal Courts which were established by Congress in the year 1789 were only to hear cases involving the law of the ~~Sea~~ Sea, cases where the United States was suing someone, cases where one of the parties was an alien and cases where the parties were citizens of different states. the latter being ~~These~~ ~~Thus~~ of ~~the~~ diversity cases which ~~provide for~~ are the majority of ~~the~~ cases ~~heard~~ heard in the federal courts. today ~~at this time~~ ~~there was~~ in 1789 ~~there~~ there was ~~no Federal law~~ no body of Federal law for

the Federal cts to apply

Why because Congress does not have

the power to legislate in

areas of Tort or Contract

law. That power was reserved unto the states

In 1842 the case of

Swift v Tyson was decided:

herein Tyson who was a

resident of the State

of Maine. 6 month gave a note for

payment on land ~~the note~~

~~was given~~ to Norton and Keith.

Tyson told his bank not

to honor the note because the

Sellers, Norton and Keith ~~misr~~

misrepresented the property.

Norton and Keith gave the

Note to Swift to pay a price obligation that they owned to Swift. Swift was from New York. Thereafter Swift sued Tyson on the Note in the Federal Court. re diversity

Under the New York rule — Tyson owed nothing to Swift ie swift should have inquired about the note before taking it thus and Norton & Keith's fraud was a defense.

Under the then English rule — Tyson had to pay ie the fraud of Norton and Keith was not a defense

Justice Joseph Story decided the the English rule was the correct rule.

The application of the doctrine and rule of Swift v Tyson meant that Federal Courts could make up their own law in ~~this sort of situation~~ diversity cases ~~involving citizens of different states.~~ The doctrine & rule was futher expanded to cover all kinds of contract and Personal Injury cases

This doctrine of Swift v Tyson prevailed for 96 years — Then in 1938 the Supreme Court decided Erie v Tompkins

In this case Tompkins was awarded $30,000 as a result of being injured by one of Erie's trains.

At the time of the ~~acc~~ accident Tompkins was alone a path on the Railroad property. Tompkins was ~~[illegible]~~ uninvited. as a train pass alone the path a swing door on one of the freight cars hit Tompkins and caused him injury.

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This case arose by way of appeal when in a Federal Dist Ct ~~A award~~ awarded Tompkins ~~was awarded~~ $30,000 as a result of walking along a path on Railroad property besides the tracks, uninvited, and a train came along and ~~he~~ Tompkins was hit by a swinging door ~~of~~ of a freight car

Under Pennsylvania law Tompkins was a trespasser on railroad property and thus can not recover.

~~Under the fed~~
Under the Federal

(12A)

"general common law"
the railroad was liable to
Tompkins

The Supreme ~~Court~~ Court revised ~~reversed~~
the award of $30,000 to ~~Tompkins~~ Tompkins
and in so doing ~~reversed~~ reversed
~~Problem~~ ~~Holding~~
Tyson v Swift. ~~Holding~~
Holding that
① Congress has no
power to declare substantive
rules of Common law
applicable ~~in~~ ~~state~~ states
whether they be local
in their nature or general
② and further there
is no clause in the
Constitution which
purports to confer such

a power upon the Federal ~~Courts~~ Courts

hence when cases arise under state law, the federal courts ~~to~~ are to apply the law of the state

~~The~~ The progation of the Erie v Thompkins doctrine ~~certainty~~ providing for certainty, smoothness and consistance in the law.

This rule is the result of the Tenacity ~~Tenacity~~ of many fine outstanding lawyer who on a daily basis provide the advocacy

necessary for better
rules of living, a smoother
path for all of us.

Just as there
were rough spots
in the road of
life with reference
to diversity suits
in the federal courts
from 1842 to 1938
we have other problems
that ~~[illegible]~~ us
today for example
~~[illegible]~~ jury selection
in the state courts
of California for criminal cases
involving death penalty
Chief Justice Lucas
has addressed two problems
~~[illegible]~~ and ~~[illegible]~~ he has a ~~[illegible]~~
~~[illegible]~~ concept as I understand
it.

~~I'll make something to say about Pike bargain a little later on:~~

That means two prospectively ~~prospectively~~ we will not ~~don't~~ need ~~nor do we~~ to use full scale ~~jury~~ procedure in every case but only in a small ~~part~~ number or percentage of cases.

~~that are filed~~

However I'm going to submitt to you that burdensome and cumbersome ordeal of jury selection in death cases state Court in outrageous

(18) I understand the position

Next

of the defense bar and I emphasis in their cause, however the means that is presently being used does not satisfy the ends.

The purpose is for the defendant and the people to obtain a fair and impartial jury ~~with an adequate opportunity to be tried by the defendant peers.~~

I call your attention the Federal System of jury selection. ~~Both~~ they are those of us who are presently sitting who did

In the Federal Court

~~For my~~ During my tenture of 8 years the longest time required to select a jury has been 2 days - most of the time it will take ½ day

78148

Now Bear in mind that many of us who serve as Federal Judges ~~were~~ are former trial lawyers and we have an appreciation for voire examination by Lawyers.

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trial work and there is
we have
an appreciation for
voire examination by ~~attorneys~~ the
lawyers involved in the
case.

For ~~example~~ example
these are the same ~~point~~ of
a) In Smith cases
a
calling the

The judge will do
a great amount of voire
and then allow the
lawyer an opportunity
to voire

for example

In large - ~~case~~ important -
and ~~long~~ case broad judicate
is given to the lawyer.

(20)

~~for~~ to Vodre

for cases that are not so important ~~re penalty~~ ~~re civil or criminal in~~ not as great than more than tendency to dilatory ~~Vodire~~

The Vodire is limited

I further submit to you that ~~Reasonable~~ Reasonable I mean ~~Reasonable~~ Reasonable I emphasis Reasonable Vodire is appropriate ~~appropriate~~ in any case.

Now I add to this discussion that when asked by the court if the Lawyers care to vodire in 90% of

(21)

cases in Federal ~~of~~ ~~Court~~ ~~the~~ lawyers decline.

Also Beer in ~~mind~~ mind that there is one case in the 9th circuit where in the only question asked of the jury ~~was~~ was whether there was any person on the jury who could not be fair and impartial. — That my friend was the only missing voire question re general qualification.

It goes without saying that many lawyer - probably some of you will be challenging, and conveying you respective views on this issue. -

And I assure you each ~~with~~ side will have merit, quality and sincerety on thier side

B2P

In the Federal Court

and we presently

circuit trying the ~~the~~

Superior Courts decision

~~Question to be answered~~

~~by the Supreme~~ ~~Ct~~

~~Court~~ as to whether or Not

the ~~Sen~~ Sentencing Guide

Lines are Constitutional.

What are the Sentencing

Guild Lines

legistion was passed by

Congress and effective Nov 1, 1987

(1) to Create Parity or Uniformity ~~of~~

in Punishment for Federal Crimes

(2) Provide for mandatory

~~of~~ Sentencing with ~~reference~~

to terms prescribed.

The effect of Said Guide lines is to remove much of the a Judge's discretion in sentencing.

Views of the Federal Judiciary varies as to this law

Some District Court Judges have declared them Unconstitutional based on the theory that the new laws was passed in violation of Separation of Power doctrine

Other Federal Dist Court Judges are very offended because of the general exclusion of discretion in sentencing

Many judges and Defense lawyer feel that the law is ~~they provide~~ ~~too harsh~~ penalities ~~which are~~ too harsh, ~~all they were not wanted out as developed~~ and not ~~to well is~~ well though the for example Mules in drug case many will have to be given minum 5 year

~~Immediately~~

~~Immediately~~

When ~~they were~~ the law ~~was~~ in its ~~their~~ infancy lawyers ~~were~~ busy challenging ~~its~~ its passage and offering suggestions to make it better

Immediately upon there passage and effective date of the law

~~There were Constitu~~

Constitutal challeges were filed

~~to the Guide lines.~~

As we all pause

for a moment this

evening and reflect on

the pass

Think

~~Thinking~~ of ~~those~~

great lawyers - Judges

and the great minds which

reflect the wisdom

~~for~~ of the Jurisprudence

of which are all so

~~that~~ we ~~attach~~ proud.

We Salute them all

Advocates who Won and who loss

~~Winners~~ - ~~Losser~~ - and those who

(pl) made the decisions How

Can we not be proud of

Then came the segregation

~~which latter~~

Those who were enslaved

and those who were the

enslavers

Our country was established

in 1776, the courts in 1789

and in 1954 came the Brown

v Bd of Education

Sumarch in ~~[illegible]~~ between

the years of 1776 to 1954

were rules of law that

proved ~~[illegible]~~

(1) Segregate but equal
facilities for different groups
a) education
b) housing
c) accomodation
etc

(2) The Jim Crow laws

15d

I submitt that at this time, this moment in time lets thank ~~back~~ of those in the legal profession both lawyers and Judges, those great minds who have been willing to sacifice, use their ~~industry~~ industry, their ~~the~~ assets, their wisdom which reflex in our jurisprudence. ~~of which~~ We do not agree with ~~all~~ ~~we are all so proud~~. all of the arguments advanced nor all the decisions. ~~cant~~ ~~we~~ always ~~so far~~ ~~do~~ ~~we agree with~~.

But they are all to the saluted.

2. Many time when the rules of law are applied ~~at~~ They provide for the status Quo

And sometimes and are not and can't be satisfied with the Satus' Quo

And it is in these cases when lawyers become Irritants, challenger, avocates of what the rules of life and the law is and what it should be

(Tu)

the heritage we all share.

As we look to the future

There are numerous issues to be decided such as

(1) ~~Vodire~~ Will Vodire in death cases be limited

(2) Will liability of banks and lending institutions be curtailed

(3) What position ~~will~~ will Supreme Ct take on Abortion, Voting rights

(4) private right to sue in civil Right cases

(4) The elimination of Drugs

~~Those are but a few~~

Those are but a few around you ~~this evening~~

~~Look about you~~ One can look around you this evening, one or more ~~more~~ of you may well

be the lawyer
who will be a advocate
for one of major
issues to be decided
in the near or distance
future or perhaps you
may well be called on to
be the judge on the
decision with reference one
of this issues.

~~There is no Question~~

I submitt to you
that there is

(58)