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Essay

JAMES DUKE CAMERON

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INTRODUCTION

Born in California sixty-six years ago, James Duke Cameron was brought to Phoenix at the age of six months. He lived in a home so poor that the kitchen had a dirt floor and a wood stove; cooking in August was almost unbearable. He lived in Chandler, Willcox, Phoenix, Yuma and Tucson, where he graduated from high school. After two years in the infantry, he got his undergraduate degree from the University of California at Berkeley and his law degree from the University of Arizona. A further earned degree was a Masters from the Program for Sitting Judges at the University of Virginia School of Law, a program he had helped to create.

No state judge in Arizona's history has come close to equaling his national reach and effect during his twenty-six years as an Arizona appellate judge. In the course of those years, simply as voluntary additions to his duties here, he served for three years on the Advisory Committee of the National Institute of Justice. He was Chairman of the Appellate Judges' Conference of the Judicial Administration Division of the American Bar Association. The Conference is the major bar-related organization of the judges of the country, but is only one of the activities of the ABA's Judicial Administration Division. He also became chairman of that entire Division and, continuing his bench-bar

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service, served for three years as a member of the Board of Governors of the American Bar Association.

Justice Cameron was Chairman of the Conference of Chief Justices of the United States. By appointment of the President and consent of the Senate he has served on the Board of Directors of the State Justice Institute, a program he helped to create, from 1986 to the present time. This body distributes federal funds to aid state judicial systems. His interest in education has been warm and constant. For seven years he served on the Board of Directors of the National Judicial College at Reno, Nevada, the principal educational program in America for trial judges. He does not shrink from undertaking programs which may take several years to come to fruition; the best of these was the creation of the special graduate program for appellate court judges at the University of Virginia School of Law. He was a major architect of that program and, to prove his good faith, became a student himself, as well as chairman of its advisory committee for the University of Virginia; his LL.M. degree from the University of Virginia is a consequence.

The justice has been a member and director of the American Judicature Society and has received its highest honor, the Herbert Lincoln Harley Award for judicial administration. He has been co-chairman of a joint ABA committee on professional discipline. He is a member of the Institute of Judicial Administration and the American Law Institute. He has published widely. In twenty-six years he has written one thousand opinions, been Chief Justice of Arizona, and before that practiced law and was a trial judge.

His was not an easy childhood. Cameron's mother earned what she could as a chambermaid at the Arizona Biltmore. After moving to Tucson, she started making home brew for a very select group of veterans at the V.A. hospital. The young Cameron came home from school and helped cap the bottles.

Eight different elementary schools and four different high schools, some more than once, were coupled with an upbringing on the fairgrounds and a carnival lot where his father was a concessionaire. After his service in the infantry, the family had progressed enough financially to allow him to attend Berkeley, and from there to the University of Arizona College of Law.[1]

In 1954, Cameron began ten years of law practice in Yuma. He was an activist in the community there, as well as a good Republican. A great satisfaction of those days was his service as chairman of the Yuma City-County Library; one year it won the Dorothy Canfield Fisher Award as the best small library in the United States. Cameron did all the professional and politically qualifying things. He was President of the Yuma County Bar Association, Director of the United Fund, a member of the Salvation Army Advisory Board, and was active in leadership of both the Boy Scouts and the DeMolay. In 1961,

1. Frank X. Gordon, Jr., Chief Justice of Arizona during Cameron's last years on the supreme court, was a classmate at the University of Arizona College of Law. Cameron had been on the supreme court for ten years when Gordon came to it. In 1990, when both men were within a year of ending their service on the court, Gordon reminisced about their days together in law school and on the court, "Your broad understanding of our legal and judicial system and your calm counsel were of great help in my making the transition from a trial to an appellate judge." Letter from Frank Gordon to James Cameron (Jan. 15, 1990).

he was appointed by Governor Paul Fannin to the Superior Court bench, but lost the following election. However, the service was long enough to teach him that he had a taste for judging.

After the election defeat, Governor Fannin appointed Cameron to the State Board of Public Welfare, where he served three years, one of them as chairman. Cameron still thinks of those years as a time of accomplishment. For example, the Board in that period reversed the earlier rule that foster home parents could not adopt their foster children; Cameron got the rule changed to give foster parents outright preference for adoption, especially in the case of the hard-to-adopt children. When the staff resisted the change, the Board gave it a new director. Cameron also pushed rule changes so that where handicapped children were adopted, the State Department of Public Welfare would continue their medical benefits.

When the State Court of Appeals was created in 1964, Division One was constitutionally planned to allow two judges for Maricopa County and one for the combination of Apache, Navajo, Coconino, Yavapai, Mohave and Yuma Counties. Cameron decided to run for the latter. When he announced his candidacy for the new State Court of Appeals — this was before merit selection — he had to resign from the Welfare Board. Governor Fannin, however, left the spot vacant in case Cameron should lose. Cameron saw this as the Governor's limited regard for Cameron's capacities as a politician.

But the Governor need not have worried. Cameron, in those pre-merit selection days, won the Republican primary against Sam MacCaluso of Prescott. The general election was more of a fight; his opponent was a sitting judge, Don Udall of Holbrook. Udall carried all the eastern counties. However, Yuma voted 9,000 to 3,000 for its own, carrying Cameron to a comfortable victory.

As a member of the first court of appeals, Cameron was in at the creation. The inventive tasks ranged from matters small to large. As the smallest, indicative of his preference for simple prose, he changed the language in mandates the supreme court handed down after the decision of cases from "In the Year of Our Lord 1933" to simply "1933." As Judge Henry Stevens, perhaps the most colorful member of the original court of appeals, told Cameron as Stevens recalled a number of procedures adopted by that court at Cameron's suggestions, "You had a great understanding of the problems of the practicing bar."[2]

At the other end of the scale was the matter of relations with the supreme court and the establishment of appropriate independence for the Court of Appeals. There came a day when the supreme court summoned the Court of Appeals to appear before it in closed session to tell the Court of Appeals judges what they could and could not do. Judge Henry Stevens was Chief Judge of the Court of Appeals at the time, and in the course of discussion, Chief Justice Fred Struckmeyer reminded members of the Court of Appeals that the supreme court had the power to regulate the internal workings of the Court of Appeals. Judge Stevens replied, "That's all right, Fred, but put it in writing and sign it first." There was no writing and the courts of appeals largely went their own way.

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2. Undated note in Cameron files.

It was at the Court of Appeals that Cameron began the practice which he followed ever since; he mixed his Court of Appeals work with outside activities. To guide the lawyers dealing with the new court, he published a book, *Arizona Appellate Forms and Procedures*.[3] He also taught every summer for two weeks at the New York University Seminar for Appellate Judges, a practice he continued until he himself became a student in 1980 in the first class of the masters program for judges at the University of Virginia.

In 1970, Cameron, who had previously been elected only from six relatively small counties, decided to run statewide for the supreme court, seeking the position vacated by retiring Justice Ernest McFarland. His opponent was Judge Charles Hardy, then of the Maricopa County Superior Court. By 1970, the Arizona courts had already become so large and the electorate was so new that the voters, at least before a campaign, could not realistically know their judges. A Maricopa County poll showed that Hardy had a name recognition of two percent and Cameron a name recognition of one percent. As Cameron recollects the campaign, "I'm not sure who won. Admittedly, I got on the supreme court, but Charlie became a federal district judge. It was a clean campaign and we are good friends."

Cameron became the last person to have been elected to the Arizona Supreme Court. All justices since have been chosen by merit selection. He was also the first person to serve both as a trial judge, an appellate court judge, and a supreme court justice, a distinction now shared with Justice Robert Corcoran. Cameron, although he proved that he could win elections, strongly supported merit selection; he thought it a poor thing when judicial candidates had to act the politician and go from law firm to law firm to solicit money.

During his chief justiceship, Cameron presided over the Merit Selection Commission and, as one who served under him as a bar representative on the Appellate Court Commission, I can report that he set an admirable style. As chairman, he moved the business along but never made an effort to dominate the proceedings even though his position would have allowed this. The chief justice had only one vote in those commissions, and then only in case of a tie. Cameron answered questions when he was asked but pushed no points of view.[4]

In 1974, the Arizona Supreme Court chose Cameron as its first chief justice (the youngest chief justice in the country) for a five-year term; previously the rotation had been annual. The five-year term gave a chief justice the opportunity to plan a program, and Cameron's first act was to order an audit of all the cases pending in all the courts in Arizona. With the order for the audit was permission to dismiss dormant cases. The audit, which went forward on a two-county-a-year basis, permitted not merely the dropping from the dockets

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3. J. CAMERON, APPELLATE FORMS AND PROCEDURES (1968).

4. When Sandra Day O'Connor, formerly the Majority Leader of the Arizona Senate and then a superior court judge in Maricopa County, came before the Commission for consideration for the State Court of Appeals, she was asked her views on the merit selection process, of which earlier she had been one of the sponsors. She replied in substance, "For me personally, I would be as well-off without it. I have shown that I can win elections and if this were an elective office, I could make a very good run for it. However, for the state as a whole and for the courts as a whole, it is much better to choose this way than by an election process where there are so many judges that the people cannot reasonably know whom they are voting for." Chief Justice Cameron, then presiding, agreed.

of much dead wood, but by developing current facts, permitted planning for the court system for the future.

A major development during the chief justiceship was the creation of a new set of Rules of Criminal Procedure. A critical problem was the procedures for post-conviction relief, i.e. the procedures whereby particularly indigent persons, who, in relatively rare cases, may have been stampeded into jail for want of the ability to make a defense, later wished to assert their positions. The problem was acutely difficult because of the desire for fairness on the one hand, and the necessity to avoid endless reconsideration of old matters on the other. In the Cameron period, procedures were developed which have generally been regarded as fair.[5]

Cameron's greatest disappointment as an aftermath of his work as chief justice was what he regarded as the failure to adequately implement the speedy trial rule. In his view, a disputed criminal case ought to be able to move from indictment or information through trial and through the appellate process in nine months or less.

In 1979, when Cameron finished his five-year stint as chief justice, the *Arizona Republic* reported that his achievements had been "monumental." He had been, the *Republic* reported, "the first chief justice in our history to be a truly major national figure in the legal system."[6] Florida Supreme Court Justice Ben F. Overton, who had worked with Cameron in the American Bar Association, said, "His endeavors and contributions to make the system work better are almost unmatched."[7] Lawrence W. l'Anson, Chief Justice of Virginia, told the *Arizona Bar Journal*, "[He] is one of the most efficient individuals I have ever had contact with. He goes after a problem and stays with it until the end."[8] Washington Chief Justice Robert F. Utter also spoke of his "energy to see things through."[9] "Justice Solid," the *Republic* called him.[10]

Cameron's endless activities with bar groups made him especially sensitive to bar needs and bar realities. For a small illustration, prior to his chief justiceship, it was the custom of the supreme court to call all cases of the day for the same time each morning, and then sort them out and send the lawyers away who would not be needed until later in the day. With the pressures of time this was a burden for the lawyers and with the pressure of hourly rates it was a needless expense for their clients. Cameron inaugurated the practice of setting every case for a precise day and a precise time. He also inaugurated the

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5. Justice William Holohan dissented from the promulgation of these rules. Throughout their joint service, Cameron and Holohan, both good Republicans, showed a ready facility for disagreeing with each other. In my own 35 years of practice in the supreme court, I have observed many strong differences but have never seen a politically partisan ruling. Both Cameron and Holohan are conservative Republicans. As their differences illustrate, disagreements, which are inevitable, are not dictated by party lines. Cameron had very pleasant relations with Justice Stanley Feldman, his most liberal colleague, as is commemorated in a warm letter of tribute (Letter from Stanley Feldman to James Cameron (Jan. 19, 1990)). Justice Moeller was similarly kind. Letter from James Moeller to James Cameron (Feb. 4, 1990).

6. Waters, *Chief Justice: A Solid Case for Cameron*, Arizona Republic, Dec. 30, 1979, at A7, col. 1.

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

practice of holding one session of the supreme court each year at each of the two state law schools, and began the custom of making a "State of the Judiciary" speech every year at the State Bar convention.

Cameron's esteem for the bar and the bar's esteem for Cameron is mutual. In 1991, the Arizona Bar gave its James A. Walsh Outstanding Jurist Award to Cameron. This award, named for the great Tucson federal district judge, is the highest award of the Arizona Bar.

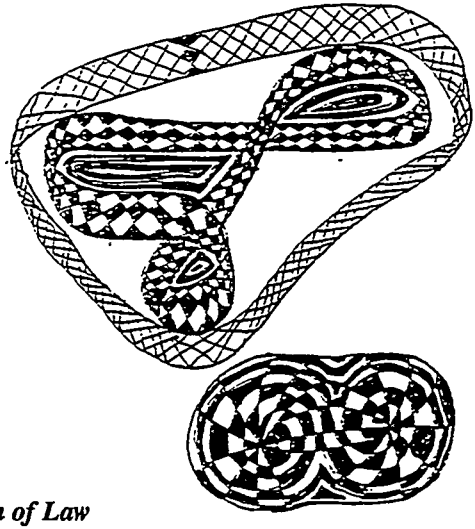
During Cameron's tenure as Chief Justice of Arizona, he became Chairman of the Conference of Chief Justices of the United States. During that year he started the process to create a State Justice Institute which would provide funds for state courts to make up, at least in a small way, for the impact on those courts of federal laws and rules. For example, Congress passed a national automobile speed limit which had to be enforced in state courts. Cameron's activity resulted in the creation of what is now called the State Justice Institute Board, of which, as noted in the catalog of activities at the beginning of this essay, Cameron has been a member from its inception. This body distributes some $12 million a year to aid state courts, a relative pittance but enough to spark worthwhile projects. For illustration, a recent grant will facilitate simplification and standardization of domestic relations practice around the country. During the court years he also gave close attention to national establishment of codes of lawyer conduct. The most important of these is the Model Rules for Procedure for Lawyer Discipline Committees, a heavily used work.

In 1985 Cameron was under consideration by President Reagan for the United States Court of Appeals. Senator Barry Goldwater, of course, actively supported the most prominent Republican judge in Arizona. Indicative of Cameron's nonpartisan status, Senator Dennis DeConcini wrote the President and the Attorney General that Cameron was well worthy of the appointment.[11]

THE JUDICIAL WORK

In twenty-six years of appellate judging, there were a good many opinions. Published and unpublished, the number may come to a thousand. No one has counted; it is a big bibliography. The bar sometimes wondered what judges are doing during oral argument when they have heard cases by the thousands, when the subject matter ranges from the interesting to the downright boring, and when oral presentations range from top notch to the amateur hour. Cameron doodled. Following is a genuine sample illustrating the circularity of some arguments as well as of some doodles. The sample also illustrates that art lost little when Cameron chose law.

11. Letter from Sen. Barry Goldwater to Orme Lewis, a prominent Republican (Feb. 13, 1985); Letter from Sen. Dennis DeConcini to President Ronald Reagan (Mar. 28, 1985).



A. The Growth of Law

Whether by almost invisible accretion or giant steps, the law grows. Part of Cameron's stamp from the beginning to the end of his career has been a willingness to let it grow; Cameron may be personally conservative, but he is no intellectual stick-in-the-mud and has shown dynamism enough on his own account. Yet he is no judicial legislator; his growth, like Cardozo's, is great but within the framework of the law.

A good illustration is *Fernandez v. Romo*.[12] The issue was whether the doctrine of interspousal tort immunity in automobile accident cases should be abolished. Justice Cameron, for the court, examined and analyzed the full reasons that had traditionally been set forth for retaining that doctrine and rejected each in turn. Some thirty-three states had already abrogated or limited this principle, and Cameron, in a concise and analytical opinion, concluded that the "time has come to abrogate the doctrine of interspousal tort immunity."[13]

Cameron is very nondiscriminatory as to women, and he has not an ounce of old-boy's sympathy for sexual harassment. An illustration of a long legal step is *Ford v. Revlon, Inc.*.[14] Here, a woman employee had been consistently assaulted, accosted and harassed by her supervisor. The corporation had procedures for hearing employee complaints and dealing with problems of this kind. She followed the proper steps and the corporation did nothing. She was driven to serious illness and mental disturbance; this may have been the cause of an attempted suicide. It was, in any case, the cause of a lawsuit. The central question was whether this kind of employee injury was compensable only within the workman's compensation system or whether there could be an independent action. The Cameron opinion breaks new ground in holding that the non-action of the corporation amounted to an intentional tort of inflicting emotional distress.[15] The opinion continues to echo in Arizona law.

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12. 132 Ariz. 447, 646 P.2d 878 (1982).
13. *Id.* at 452, 646 P.2d at 883.
14. 153 Ariz. 38, 734 P.2d 580 (1987).
15. *Id.* at 44, 734 P.2d at 586.

So does *O.S. Stapley Co. v. Miller*,[16] in which Cameron, still at the Court of Appeals, had to decide whether the State Supreme Court, which had not yet determined the point, would adopt the doctrine of strict liability in products liability cases. This began the Arizona practice of holding that a "manufacturer is strictly liable in tort when an article he places on the market, knowing that it is to be used without inspection for defects, proves to have a defect that causes injury to a human being."[17]

Cameron has been no casual over-ruler; he has the thorough-going respect for *stare decisis*. Nonetheless, if he had a strong conviction that the law should be changed, then it was changed. In *Solomon v. Findley*,[18] Cameron dealt with a problem of a marriage dissolution agreement in which one of the parties agreed to support a minor child for education even after the child had become of age. The issue was whether this was a contract which the other spouse could enforce. The supreme court had followed a wandering path in this matter, deciding one way in 1968 and a different way in 1978. In this instance, Cameron's opinion overrules the intervening case.

A case of great importance in the ever developing Arizona is *Spur Industries v. Del E. Webb Development Co.*,[19] one of the half-dozen most far-reaching of the Cameron opinions. Spur operated a feedlot with several thousand head of cattle in an area northwest of Phoenix and in the path of expanding Sun City. Del Webb, the Sun City developer, brought a nuisance action against the feedlot. Without doubt the feedlot was a nuisance, but, equally without doubt, Del Webb had "come to" the nuisance. An injunction in these circumstances is essentially an act of private eminent domain, and a constant problem in the law of nuisance is to determine when someone who is subject to a nuisance should be allowed to shut it down, and thus, in effect, take someone else's property.

Cameron, facing the question of the extraordinary expansion in this dynamic state, held that Del Webb could shut down the feedlot but would have to pay for it. His opinion said:

> It does not seem harsh to require a developer, who has taken advantage of the lesser land values in a rural area as well as the availability of large tracts of land on which to build and develop a new town or city in the area, to indemnify those who are forced to leave as a result.
>
> Having brought people to the nuisance to the foreseeable detriment of Spur, Webb must indemnify Spur for a reasonable amount of the cost of moving or shutting down. It should be noted that this relief to Spur is limited to a case wherein a developer has, with foreseeability, brought into a previously agricultural or industrial area the population which makes necessary the granting

16. 6 Ariz. App. 122, 430 P.2d 701 (1967), *vacated*, 103 Ariz. 556, 447 P.2d. 701.(1968).
17. *Id.* at 127, 430 P.2d at 706 (quoting Greenman v. Yuba Power Products, Inc., 59 Cal.2d 57, 62, 27 Cal. Rptr. 697, 700, 377 P.2d 897, 900 (1962)).
18. 167 Ariz. 409, 808 P.2d 294 (1991).
19. 108 Ariz. 178, 494 P.2d 700 (1972).

> of an injunction against a lawful business and for which the business has no adequate relief.[20]

This is the most nationally known Cameron opinion, widely used in the casebooks.

What, to many surely, is the most important Cameron opinion in the common law universe is *Linthicum v. Nationwide Life Insurance*.[21] This is the opinion which put a cap on the burgeoning field of punitive damages. The plaintiff claimed that an insurance company had breached its insurance contract in bad faith and the trial court gave both compensatory and punitive damages. The Cameron opinion establishes that bad faith does not automatically justify punitive damages. The case establishes the Arizona rule as to what is the "something more" required over and above the mere commission of a tort to justify such an award. Cameron examined the various phrases which had been used in earlier opinions and found them so lacking in clarity as to be little more than "semantic jousting" by opposing attorneys. The court found that "[t]he type of tortious conduct justifying punitive damages should be only those limited classes of consciously malicious or outrageous acts of misconduct where punishment and deterrence is both paramount and likely to be achieved."[22] Although Cameron found that Nationwide followed a tough claims policy, it was not "aggravated, outrageous, oppressive or fraudulent."[23]

B. Some Constitutional Questions

Constitutional issues crop up in corners of Cameron's work; a sampling can begin with *Roofing Wholesale Co. v. Palmer*.[24] The Arizona Supreme Court is the court of last resort only in 99.9% of the cases. In the remainder, there can be review by the United States Supreme Court or, if not review, at least guidance from United States Supreme Court decisions which the Arizona Supreme Court is obliged to follow. Cameron has had his share of adventures with the higher court and with constitutional law.

As a dutiful judge of the almost highest court, Cameron ungrudgingly follows authority, but wishes to be sure that it is authority. That was the question in *Roofing Wholesale*. The United States Supreme Court, by a four to three decision, had held prejudgment garnishment procedures similar to those in Arizona statutes to be unconstitutional as to wages.[25] The issue in *Roofing Wholesale* was whether these same principles applied to a contract claim for

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20. *Id.* at 186, 494 P.2d at 708.
21. 150 Ariz. 326, 723 P.2d 675 (1986).
22. *Id.* at 331, 723 P.2d at 680.
23. *Id.* at 333, 723 P.2d at 682.

Two cases of some color I put aside because I was personally involved. In Corrigan v. City of Scottsdale, 149 Ariz. 538, 720 P.2d 513 (1986), *cert. denied*, 479 U.S. 986 (1986), the court held that the operation of an invalid zoning ordinance amounted to a "taking" and that the landowner was entitled to money damages for a temporary taking of property by reason of such an invalid ordinance. In Arizona Bd. of Regents v. Phoenix Newspapers, Inc., 167 Ariz. 254, 806 P.2d 348 (1991), the issue was whether under the Public Records Law the Arizona Board of Regents was required to publicize the names and person under consideration for the presidency of one of the state universities. In the spirit of decorum, my only comment on these two opinions is the lawyer's traditional, "win some, lose some."

24. 108 Ariz. 508, 502 P.2d 1327 (1972).
25. Sniadach v. Family Fin. Corp., 395 U.S. 337 (1969).

money damages. Justice Cameron, for a majority of three, recognized that this statute was unconstitutional in a wage case. Perhaps the United States Supreme Court would have declared the Arizona statute unconstitutional in a non-wage case, but on the other hand, there was not a majority of that Court because two justices did not participate and three dissented.

The Cameron opinion extensively reviews the law as to the authority of a plurality opinion. He recognized that the United States Constitution was the supreme law of the land and that his court was bound to follow United States Supreme Court decisions. He continued, "We do not believe, however, that it is unreasonable to ask that before we are required to declare unconstitutional statutes enacted by our legislature with the resulting chaos to an important part of our commercial and contract law, that the United States Supreme Court speak with at least a majority voice on the subject."[26] Two justices of the Arizona court dissented; Chief Justice Hays concurred especially to note that "many times in the recent past [the United States Supreme Court] has failed to realize the burdens of uncertainty they have cast upon the state courts."[27]

Four years later the same question came back to the Arizona Supreme Court.[28] By this time, intervening United States Supreme Court decisions had made clear that a majority of the Justices regarded a statute such as that of Arizona as unconstitutional. Justice Cameron, writing for a unanimous Arizona court, recognized that the Arizona statute was unconstitutional.

On *Miranda*, Cameron has not pushed to expand the doctrine but has certainly followed it. In *State v. Beaty*,[29] where the defendant, while in jail, had voluntarily made incriminating statements to a prison psychiatrist in the presence of others after a group therapy session, the Cameron opinion found *Miranda* irrelevant since the doctor had not questioned the defendant; "where the statements are entirely spontaneous, and are not solicited by questions or acts reasonably likely to elicit a confession, *Miranda* warnings are not a prerequisite for admissibility."[30] In *State v. Fulminante*,[31] where the defendant, in prison, confessed to a police informant in the prison his guilt of a murder totally unrelated to the reason for his incarceration, Cameron again found *Miranda* inapplicable.

Fulminante is significant in the Cameron canon for a larger adventure with the United States Supreme Court. A major question was whether the confession was coerced, not by the informant but by general pressure within the prison. Fulminante was charged with having murdered his eleven year-old stepdaughter, an offense not popular within the prison population. There was at least some talk of violence being done to Fulminante by his fellow prisoners. The informant told Fulminante that he would help him if Fulminante would tell him the truth. The unusually comprehensive Cameron opinion for the full

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26. 108 Ariz. at 512, 502 P.2d at 1331.
27. *Id.* (Hays, C.J., concurring). The opinions of the United States Supreme Court continue to be chaotic, and the prayer of Justice Hays goes unanswered.
28. First Recreation Corp. v. Amoroso, 113 Ariz. 572, 558 P.2d 917 (1976).
29. 158 Ariz. 232, 762 P.2d 519 (1988), *cert. denied sub nom.* Beaty v. Arizona, 491 U.S. 910 (1989).
30. *Id.* at 241, 762 P.2d at 528.
31. 161 Ariz. 237, 778 P.2d 602 (1988), *aff'd sub nom.* Arizona v. Fulminante, 111 S. Ct. 1246 (1991).

court held that this confession to the informant was coerced and was inadmissible.[32] However, later, when he was out of prison, the defendant made an even more explicit confession to the same informant's companion, Donna. The court held that the admission of the first confession, though wrong, was harmless error in view of the second which was properly admissible.[33]

That was not the end of the story. On motion for reconsideration, the Arizona court reluctantly held, with voluminous citations, that admission of a coerced confession could not be harmless error.[34] This time Justice Cameron dissented. Eighteen years before, Cameron had written an article on *When Harmless Error Isn't Harmless*,[35] and he was still full of that subject.

Cameron, in a very comprehensive and highly analytical dissent, read the cases differently; he concluded that various types of coerced confessions called for different rules as to harmless error. He found that in certain circumstances, "admission of the incriminating statement will constitute reversible error"[36] and, trimming a little on his first majority opinion, concluded that this "was at most, a confession obtained surreptitiously through an informant."[37] He reviewed all the horrid evidence and concluded that, "[t]he evidence, taken together, established defendant's guilt beyond a reasonable doubt without the use of defendant's [first] confession."[38]

The United States Supreme Court had even more trouble than the Arizona Supreme Court in resolving this case. Five Justices agreed that the confession was coerced; four, on an independent evaluation of the record, concluded that there was nothing coerced about it.[39] A majority agreed with Cameron that the harmless error analysis could be applied to coerced confessions. That left the question of whether, taking a harmless error approach, the error of admitting the first confession was harmless. A majority of the Justices concluded that it was not and that without the first confession the jury might very well not have believed the second confession to Donna.[40] Hence, it affirmed the conclusion of the second majority opinion in Arizona that the conviction could not stand but for wholly different reasons.[41]

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32. *Id.* at 244, 778 P.2d at 609.
33. *Id.* at 246, 778 P.2d at 611.
34. *Id.* at 262, 778 P.2d at 627 (supplemental opinion).
35. Cameron & Osborn, *When Harmless Error Isn't Harmless*, 1971 Ariz. St. L.J. 23.
36. *Fulminante*, 161 Ariz. at 267, 778 P.2d at 632 (supplemental opinion, Cameron, J., dissenting).
37. *Id.* at 268, 778 P.2d at 633.
38. *Id.*
39. Arizona v. Fulminante, 111 S. Ct. 1246 (1991).
40. *Id.* at 1258-59.
41. The separate opinion of United States Supreme Court Justice Kennedy is singularly responsible. Kennedy believed that the first confession was not coerced and that it was properly admitted. However, since a majority of the Court saw that matter differently, and "in the interest of providing a clear mandate to the Arizona Supreme Court," Kennedy accepted the conclusion that the confession was coerced and was inadmissible. *Id.* at 1267 (Kennedy, J., concurring). On that basis, he concluded that its admission was not harmless error and so he concurred in the judgment to affirm the ruling of the Arizona Supreme Court. Without Justice Kennedy's sacrifice of his personal view, the Arizona Supreme Court would have been in a dreadful quandary as to what to do with this defendant.

The first trip of a Cameron opinion to the United States Supreme Court for review was *State v. Bonelli Cattle Co.*.[42] This was a Colorado River accretion case. In 1912 when Arizona was admitted to the Union, the river was west of the land involved in the case. Over the years it moved to the east, its new bed covering the land in dispute. In 1959, the Bureau of Reclamation rechanneled the river so that a good deal of the land which had been covered by the river, after the river moved, became dry land. The issue was whether the land thus freed of water belonged to the individual who had once owned it or to the State of Arizona.

In an elegant, short opinion dealing with very difficult matters with very great clarity, Justice Cameron, then on the State Court of Appeals, ruled that the beds of navigable rivers belong to the several states. There was a presumption that the eastward movement had been by accretion and therefore title to the State remained in the moving bed of the river. He found that once the river was moved, title to the land in question reverted to the original owner.[43]

This was an opinion not built to last. The Arizona Supreme Court reversed in *State v. Bonelli Cattle Co.*.[44] The supreme court found that title moved with the bed of the river and thus remained in the State; that the sudden movement of the river by the Bureau of Reclamation, thus bringing to the surface what had been State land, left it still State land. The United States Supreme Court in *Bonelli Cattle Co. v. Arizona*[45] reversed the Arizona Supreme Court and reaffirmed the conclusion reached by Justice Cameron at the Court of Appeals. It would be pleasant to be able to report that Justice Cameron's reasoning was persuasive in Washington, but the fact is that the United State Supreme Court cut loose on independent ground, simply holding that as a matter of policy there was no good reason for giving this land to the State which benefitted enough through the channelization; giving it land as well would be a plain windfall. It is not a part of Justice Cameron's legal personality to make so bold a ruling.

C. Criminal Law

Under Arizona's jurisdictional law as it existed for a long time, the State Supreme Court was a kind of a court of criminal appeals and an inordinate number of criminal cases have come before Justice Cameron. As has been suggested, he was no expansionist of *Miranda*. He also had no trouble upholding the death penalty. A comprehensive illustrative death sentence opinion is *State v. Beaty*.[46] The Arizona death sentence statute itemizes certain "aggravating" and "mitigating" circumstances. Cameron found that:

> The statute takes the human element out of the imposition of the death penalty and in doing so supports the constitutionality of the

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42. 11 Ariz. App. 412, 464 P.2d 999 (1970), *vacated*, 107 Ariz. 465, 489 P.2d 699 (1971).
43. *Id.* at 419, 464 P.2d at 1006.
44. 107 Ariz. 465, 489 P.2d 699 (1971), *rev'd sub nom.* Bonelli Cattle Co. v. Arizona, 414 U.S. 313 (1973).
45. 414 U.S. 313.
46. 158 Ariz. 232, 762 P.2d 519.

> statute. Under the statute, a defendant will stand the same chance of receiving the death penalty from a judge who does not philosophically believe in the death penalty as from a judge who does. By taking the human factor out of the sentencing process the death penalty is then reserved for those who are above the norm of first-degree murderers or whose crimes are above the norm of first-degree murderers, as the legislature intended.[47]

The large remaining issue in that case was whether the death sentence was "proportional," which is to say whether the sentence of death was excessive or disproportionate in relation to other cases, considering both the crime and this category of defendant. The opinion was clearly documented for possible review in the United States Supreme Court. The case must have been a law clerk's nightmare, for it analyzed all the cases in which death sentences have been upheld in similar circumstances and those in which they had been reduced to life imprisonment both in Arizona and in other jurisdictions. The opinion finds that where children were either sexually assaulted or cruelly beaten during the perpetration of a crime, there had been uniform imposition of the death sentence and hence there was no disproportionality.[48]

Cameron has been "tough enough on crime" to satisfy those who wish such a standard, as illustrated by his assent in the three to two case of *State v. Ault*.[49] This was a case in which muddy footprints had been left at the scene of the crime. The defendant was taken to jail but without a formal arrest. The police then, without a search warrant, searched his home and found muddy shoes of the suspicious size. The issue was whether a search warrant was required; none was obtained until after the discovery. The majority opinion held that the shoes were not admissible since the police had no permission to enter, the defendant was not under arrest, there were no special circumstances, and there had been no search warrant.[50] Justice Cameron dissented, relying on the "inevitable discovery" exception to the illegal seizure limitations of the fourth amendment.

The defendant's first name was Gary. The dissenting opinion begins, "I, however, can find no explanation why the policy reasons in support of the inevitable discovery doctrine should magically disappear at the door of 'King Gary's Castle.'"[51] The dissent argues that the discovery was inevitable since the defendant never returned to his house and his roommate was gone throughout the relevant period. The dissent then analyzed numerous cases which appear to authorize inevitable discovery in a home. The consequence was a supplemental opinion by the majority in response to a petition for rehearing which abandoned fourth amendment analysis (which would have been reviewable by the United States Supreme Court) and instead rested exclusively on article II, sec-

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47. *Id.* at 247, 762 P.2d at 534.
48. *Id.* at 248, 762 P.2d at 534. Cameron's most comprehensive discussion of the criteria for criminal punishment is State v. Gretzler, 135 Ariz. 42, 659 P.2d 1 (1983), *cert. denied sub nom.* Gretzler v. Arizona, 461 U.S. 971 (1983). Here, he analyzes the "acceptable goals of punishment." This is an analysis from which criminal law classes could profit.
49. 150 Ariz. 459, 724 P.2d 545 (1986).
50. *Id.* at 463-64, 724 P.2d at 549-50.

tion 8 of the Arizona Constitution, which provides that no person shall have "his home invaded, without authority of law."

Cameron's criminal law opinions are also shown to have been meticulously fair in the most extreme circumstances; this was no hanging judge. An illustration is *State v. Bailey*,[52] a murder conviction in which Justice Cameron wrote the opinion reversing conviction because of prosecutorial misconduct. The defendant, in a drugged condition, had unquestionably murdered his companion; he claimed self-defense and drug-induced hallucinations making him not guilty by reason of insanity.

The structure of the opinion is unusual; it begins with three pages of various quotations from the transcript so that the reader could evaluate the prosecutor's conduct. The balance is crisply disposed of. The prosecutor had referred to blood in a particular place and there was no evidence in the record of that blood. The opinion says, "The prosecutor's reference to blood on the rock was clearly improper. An attorney may not refer to evidence which is not in the record or 'testify' regarding matters not in evidence."[53] Another comment was equally speedily disposed of as completely unfounded and improper. The prosecutor had suggested to the jury that the chief witness for the defense, a pathologist, had been dismissed for incompetence from a previous position, and there was absolutely no evidence of this. The opinion said that, "a prosecutor may not insinuate that an expert is unethical or incompetent without properly admitted evidence to support it. Unfair attacks on the veracity of a witness are of particular concern when the target is a key witness."[54] A witness should not be "insulted and abused," Cameron said. Since there was no question but that the defendant had killed the victim, the matter was remanded for a new trial to determine whether the result should be a conviction for first-degree or second-degree murder.

Another illustration of Cameron's insistence on fair play is *State v. Holsinger*,[55] a first-degree murder conviction in which the Cameron opinion found a whole series of reversible errors. For example, the prosecutor had asked a question which assumed that the defendant "had a long criminal record." The opinion finds that "the question was both improper and highly prejudicial," and could not be erased from the minds of the jury with an instruction.[56] The opinion finds other instances of plain unfairness and rebukes them all.

The most spectacular cases in which Cameron came down on the side of the defendants were the *Poland* group.[57] The Poland brothers had obtained police paraphernalia and a device to make their vehicle look like a police car. They pulled over a Purolator van containing something over $300,000 in cash,

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51. *Id.* at 468, 724 P.2d 554.
52. 132 Ariz. 472, 647 P.2d 170 (1982).
53. *Id.* at 477-78, 647 P.2d at 175-76.
54. *Id.* at 479, 647 P.2d at 177.
55. 124 Ariz. 18, 601 P.2d 1054 (1979).
56. *Id.* at 21, 601 P.2d at 1057.
57. *See* State v. Poland (*Poland I*), 132 Ariz. 269, 645 P.2d 784 (1982); State v. Patrick Gene Poland (*Poland II*), 144 Ariz. 388, 698 P.2d 183 (1985), *aff'd sub nom.* Poland v. Arizona, 476 U.S. 147 (1986); State v. Michael Kent Poland (*Poland III*), 144 Ariz. 412, 698 P.2d 207 (1985), *aff'd sub nom.* Poland v. Arizona, 476 U.S. 147 (1986).

murdered the guards, disposed of their bodies in Lake Mead, and made off with the money. In *Poland I*, a key issue was jury misconduct. The Poland brothers had previously been convicted in federal court for kidnapping and robbery in connection with this very same matter. A very deliberate decision had been made by the state court not to give this information to the jury. Nonetheless, there was clear testimony from jurors that this subject was discussed in the jury room, including the sentences the defendants had received. The Cameron opinion remanded the matter for a new trial because "[t]he knowledge that another jury considered the same evidence against defendants and found them guilty was bound to have influence on the jury."[58]

The cases came back as *Poland II* and *Poland III* after the defendants had been separately retried and convicted.

The sharpest difference between the majority and the Cameron dissent in the second Poland case was whether, because the trial court gave the death penalty and the supreme court reversed, it would be double jeopardy to give the death penalty in the second trial. The difference among the justices was whether they had previously reversed the death penalty or whether their earlier holding had been more limited. The Cameron opinion held that the death penalty was appropriate the second time.[59]

D. Life in the Chambers, Clerks, and Style

While a resume lists accomplishments and judicial opinions reflect ideology, the quality and number of one's friends reveal the true nature of the man. The future will judge Duke Cameron by his works, but the present judges by his personality. For all his accomplishments, one fact is clear, Justice Cameron is a man with many friends. His easy style, his consideration for the feelings and opinions of others, and his general interest in those around him have endeared him to the young and old, the conservative and the liberal, the lawyer and the nonlawyer alike. He has always answered every letter and returned every telephone call.

He was unpretentious even from the start of his judicial career. During the election in 1964, he met Shirley Speck, who was working at the Republican headquarters, and after he had won the election for the Court of Appeals, asked her to be his secretary. She said "Judge, I've never worked as a secretary before," and he said "Well, I've never been an appellate judge before either, so we'll learn it together."[60]

In his early days on the Court of Appeals, there were three judges, three secretaries and three law clerks who all had coffee in the morning. As the Court of Appeals grew, this fell by the wayside, but Cameron continued the tradition in a modified way by placing the coffee maker in the room with his clerks. It was always the law clerks' duty to make sure that there was coffee, and the clerks and Justice Cameron took turns replenishing the supply. Justice Cameron would amble into the chambers, pour his coffee and stop to chat for a

58. *Poland I*, 132 Ariz. at 285, 645 P.2d at 800.

59. *Poland II*, 144 Ariz. at 407, 698 P.2d at 202. *Poland III*, 144 Ariz. at 416, 698 P.2d at 211. It seems to me that the dissent had the better of this argument.

60. Telephone interview with Shirley Speck, Cameron's secretary for 20 years (Oct. 9, 1991).

moment. The coffee pourings were considerably more frequent in the morning, however, and this allowed for daily contacts with him. He was never too busy to tell a story or a joke, or to chuckle about the latest Benson cartoon in the *Arizona Republic*.

A small town person at heart, Cameron had a special fondness for Yuma and kept his contacts there. For several years, he even rode in the Yuma rodeo parade.

Life in the chambers was placid. A big adventure occurred the day a mouse was caught nibbling on the justice's popcorn.[61] Another adventure with wildlife occurred in 1988 when bees nested in one of the walls of his chambers.

Most of the law clerks came as strangers, but they did not stay that way. Cameron took a special interest in his clerks and liked unusual resume items. One former law clerk, in addition to her other qualifications, had won second place in a Betty Crocker cook-off contest. Another's hobby was bee-keeping. Justice Cameron's years on the court spanned such a period of time that he was able to have a man and his two children, a son and daughter, all clerk for him. He was intrigued that one clerk was from Sunburst, Montana, the town that was namesake of the "Sunburst Doctrine" established by the United States Supreme Court.[62]

One clerk, David J. Hossler, gained his first acquaintance with Cameron as a boy in Yuma when Cameron practiced there. In a street game of baseball, the youthful Hossler sent a ball through the Camerons' front window. He paid for the window by mowing the Cameron lawn. Almost twenty years later, he became a law clerk.

Cameron had easy relations with the clerks. He liked and respected them. In the Court of Appeals days, he was the leader in having the law clerks included in the actual conference with the judges as they decided cases; he found that their ideas were worth having. A tradition that he started in recent years was to have annual law clerk reunions. It was important to Cameron that his law clerks, who numbered over fifty, keep in touch and have the opportunity to meet at least once a year.

Cameron officiated at several weddings, and thoroughly enjoyed the ability that the law gave him to perform such ceremonies. Dressed in the traditional black judicial robe, and usually with navy and tan saddle shoes, Cameron married many a happy couple.

At the supreme court, the two clerks normally did first drafts of Justice Cameron's opinions, one writing and the other checking. Many times he wrote his own first draft. The clerks' draft thus went to the justice, who made his own modifications. Frequently, the clerks would include more than was necessary; his revisions went both to substance and to style, particularly for brevity. There were lively discussions with the clerks, to whom he always listened.

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61. Letter from Anna M. Unterberger, former Cameron clerk, to Justice Cameron (June 5, 1991).

62. Great Northern Ry. v. Sunburst Oil & Refining Co., 287 U.S. 358, 364 (1932) (United States Constitution does not prevent a state, in defining limits of adherence to precedent, from choosing between retroactiveness or prospectiveness of judicial decisions).

These discussions with the clerks were vigorous and friendly. Where the issue was whether a passenger who stayed in the car was an accomplice of the driver who wildly assaulted and injured a gas station attendant, the discussion was particularly spirited. Cameron finally told the clerks the justice had 51% of the votes in the chambers and that the passenger was an accomplice, and so the opinion declared.

There were lighter moments when, for example, a week before Christmas one year, Cameron came into his office to find his entire desk wreathed in sliver garland lined with blinking Christmas lights, a stocking had been hung from his bookcase and a life-sized Santa Claus put on the door of the judicial biffy. The clerks that year never knew if Cameron minded the extensive decoration or not, but he did not make them take it down. His only complaint was that the blinking lights interfered with his radio which he always kept tuned to a radio station specializing in golden oldies and big band tunes.

Cameron loved football and was a loyal U. of A. fan.[63] His secretary for twenty years, Shirley, was an avid A.S.U. fan[64] and discussions regarding Frank Kush, the football coach at A.S.U., became so spirited that they agreed to stop the discussion. He was not, however, a fan of all sports and those he did not like he compared to as exciting as watching bowling on television.

As for his work ethic, he took his role as a public servant very seriously. He demanded that someone always be in the chambers to answer the telephone. He usually worked through lunch and always put in a full day. He made sure that the office was staffed the day after Thanksgiving and on Christmas Eve day because these were not official state holidays. As a public servant, Cameron felt that the public should have someone to serve them even during the holidays.

The question is whether, over a twenty-five year span, with a shifting army of law clerks, any definable style shows in the Cameron work. The answer is yes. As a signature of his opinions, his favorite beginning was "The facts necessary for determination of this matter are as follows." He also insisted that his clerks use the military date and thus March 25, 19XX becomes 25 March 19XX.

Dissents and concurrences, both extremely rare, are very strong; clearly Cameron gave them full focus. *Green v. Osborne*[65] was a dissent that earned him a political cartoon in the *Arizona Republic*[66] during the political turmoil of the Mecham Administration. The majority held that because Governor Mecham was no longer in office, there was no need for a recall election. Cameron disagreed, arguing that the State Constitution still required one.

Large v. Superior Court illustrates a strong concurrence in compact style.[67] The defendant was in a state mental institution where he, against his will, was forcefully treated with psychotropic drugs, drugs which can have

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63. University of Arizona, Tucson.
64. Arizona State University, Tempe.
65. 157 Ariz. 363, 758 P.2d 138 (1988).
66. The cartoon showed each of the justices with a beehive hairdo (a characteristic of Rose Mofford, who was in line for the governorship) except for Cameron. Arizona Republic, April 13, 1988, at A8, col. 3.
67. 148 Ariz. 229, 714 P.2d 399 (1986) (The opinion is mislabeled a dissent in the official reports.).

horrid side effects. The court held that such drugs could not be given solely for purposes of restraining, but only in emergencies or for purposes of medical treatment and not simply to keep prisoners manageable.

The Cameron concurrence would go farther. He believed that the right of privacy gave the individual the privilege to decide for himself whether to submit to serious and potentially harmful treatment. He rested on the Arizona right to privacy constitutional provision which he found assures "the right to bodily integrity and personal security."[68] He reiterated the view of the Oklahoma Supreme Court that "the basic premise of the right to privacy is the freedom to decide whether we prefer to be helped, or to be left alone."[69] He found it "shockingly repugnant to a free society" even to think "that the State may be able to forcibly administer dangerous, mind-altering drugs to a mentally competent person."[70] The dissent is a triumphant illustration of compacting legal materials into two concise pages.

Cameron never plays the hidden ball game; the reader can appraise the facts for himself. An illustration given earlier of a detailed layout of the conduct of a prosecuting attorney is *State v. Bailey*.[71] Cameron sometimes writes vivid prose, as when he upheld the death penalty for the murderer of a child. "Surely the process of holding the victim against her will, clamping a hand over her mouth to muffle her screams, thus causing her to vomit, reflects the terror and horror that must have been present in the victim's mind. We find the presence of cruelty."[72] The other elements for the death penalty required that the conduct be heinous or depraved, and Cameron had no trouble finding these circumstances where the "defendant senselessly killed a helpless victim, and as reprehensible as this may be, sexually assaulted her either contemporaneously or shortly after her death."[73]

Although Cameron occasionally writes opinions of substantial length, he is never windy and can be very concise. An illustration of a compact opinion on a subject not free from difficulty is *State v. Burr*,[74] a matter in which the Sheriff of Pima County was discharged with numerous outstanding counts of misconduct in office. The issue was whether the case should be regarded as a civil matter, in which case the statute of limitations was longer, or a criminal matter, in which case the statute was shorter. The matter was of first impression in Arizona, but had been decided variously in three other states. The Cameron opinion finds a California case which holds that such proceedings are of a criminal nature most persuasive and so held, concluding that the statute had run.[75] This problem, not free from difficulty, is adequately analyzed and disposed of in two pages.

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68. *Id.* at 240, 714 P.2d at 410.
69. *Id.* at 241, 714 P.2d at 411.
70. *Id.*
71. 132 Ariz. 472, 647 P.2d 170 (1982).
72. State v. Beaty, 158 Ariz. 232, 242, 762 P.2d 519, 529.
73. *Id.* at 243, 762 P.2d at 530.
74. 12 Ariz. App. 72, 467 P.2d 784 (1970). The companion case of State v. Felix, 12 Ariz. App. 75, 467 P.2d 787 (1970), was disposed of summarily at the same time.
75. 12 Ariz. App. at 74-75, 467 P.2d at 786-87.

Another illustration of crispness is *State v. Snyder*.[76] Here, a driver was arrested because he appeared to resemble someone in a federal bulletin and was taken to prison; his car was left on the road. The police then searched the car without a warrant and found marijuana. The court held that the fact of resemblance may have warranted an arrest, but it was not enough for a search without a warrant.[77] Cameron does not make the little deals into big deals.

Another illustration of this quality of brevity is *State v. McNair*,[78] an armed robbery case with eight issues. There is nothing of consequence in the substance here; the case is cited because it is a triumph of simple clarity and conciseness. This is the accomplice case mentioned earlier; it is the usual matter of the driver who says he was innocent, he was simply doing the driving. A jury could conclude otherwise and that basically ends the case. However, the punishment was challenged and the opinion answers that:

> As to the gravity of the offense this was a violent and senseless crime. The victim was seriously hurt, could have lost his eyesight, at least in one eye, and might have been more seriously injured. There was no provocation on the part of the victim and physical violence was not necessary to accomplish the theft, which could have been accomplished by mere threats. We believe the crime was sufficiently grave to warrant severe punishment.[79]

To sum it up, the opinions are thorough. Where extensive research is warranted, it is there. The opinions are short or long, as the situation warrants; they are never overblown. The prose is never ponderous, and it is on occasion vivid.

E. The Courthouse

The Arizona Courts Building occupies a city block and is Cameron's most visible accomplishment for the court system. The building, dedicated in 1990 by former Chief Justice Burger in a ceremony in which Chief Justice Gordon graciously and appropriately gave the full credit to Cameron, will be the home of the Supreme Court and Division One of the Court of Appeals until far into the next century. The individual chambers of the supreme court justices — seven of them for the day, if ever, when the court is expanded — are well appointed and comfortable but not ostentatious. For the first time, the fifteen judges of the appellate division are all well grouped on one floor, and there are two Court of Appeals courtrooms with a television monitor to send the lawyers to the appropriate spot. There are the suitable administrative offices and a comprehensive library with space to grow.[80]

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76. 12 Ariz. App. 103, 467 P.2d 943 (1970).
77. *Id.* at 105, 467 P.2d at 945.
78. 141 Ariz. 475, 687 P.2d 1230 (1984).
79. *Id.* at 483-84, 687 P.2d at 1238-39.
80. Cameron, appointed by an earlier chief justice to be chairman of the appropriate committee, spent ten years getting the courthouse done, struggling against enormous obstacles. From the beginning, Cameron had created a bar committee of three, Ron Carmichael (Republican), and myself (Democrat), plus our chairman, Elias M. Romley. The committee served to give bar views on details of the building and, as is obvious from its careful composition, for lobbying purposes.

The problems of space, architecture, and plans were all difficult; the planning phase was particularly so because of internal bureaucratic struggles within the State government concerning public buildings. The greatest difficulties of all were with finance, particularly in a down-turning economy. Anyone who had the sense to know when to quit would have given up on that building. Since quitting is not a Cameron skill, he was still on the job working on art for the corridors when the building was done. The bar committee faithfully trailed him up and down the stairs before the elevators were working and is aware that he had a finger on every detail of a courthouse which carefully avoids opulence but which should be thoroughly workable and comfortable for decades to come.

CAMERON PUBLICATIONS

The cases come to Cameron and the docket controls what he writes. The publications flow from Cameron and in every instance represent an act of his choice and a reflection of his concerns. He has been a working judge, an administering judge and a teaching judge, but he has also been a writing judge; and the articles leave the most vivid track of what really interested him.

With all regard for the freedom of choice writing gave him, Cameron never strayed far from his judicial administration interests. If he wrote any poetry, it is not recorded. The list of his publications is attached as an appendix and it is voluminous. He wrote in the areas of judicial administration, criminal law, and lawyer discipline.

A perpetual area of interest is professional discipline for lawyers and judges. In 1979, he was co-chairman of the ABA's Committee on Professional Discipline, resulting in a small book in which he had a material hand. In 1986 he was the co-chairman of another ABA committee, well staffed and well operated, on professional sanctions, which resulted in another publication.[81] He wrote his own article on the inherent power of a state's highest court to discipline the judiciary. While he recognized the powers of the legislature to control bad judicial behavior by impeachment, he also believed that "the separation of powers doctrine implies that each branch of government has inherent power to 'keep its own house in order,'" at least unless the impeachment power was regarded as exclusionary.[82]

There are a trio of articles on appellate court administration, one on the relationship of the chief justice and the court administrator, another on the use of central staff, and a third on the internal operating procedures of the Arizona Supreme Court.[83] In these articles we are not at the level of casual talk. Cameron derided selection by acquaintance:

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81. See his individual article on lawyer sanctions: Cameron, *Standards for Imposing Lawyer Sanctions—A Long Overdue Document*, 19 ARIZ. ST. L.J. 91 (1987).

82. Cameron, *The Inherent Power of a State's Highest Court to Discipline the Judiciary*, 54 CHI.-KENT L. REV. 45, 49 (1977).

83. Cameron, Zimmerman & Dowling, *The Chief Justice and the Court Administrator: The Evolving Relationship*, 113 F.R.D. 442 (1987); Cameron, *The Central Staff: A New Solution to an Old Problem*, 23 UCLA L. REV. 465 (1976); Cameron, *Internal Operating Procedures of the Arizona Supreme Court*, 17 ARIZ. L. REV. 643 (1975).

> In the good old days of court administration — about fifteen years ago — the chief justices of each state would stand up at their annual meeting and introduce their staff directors. "My administrator," one would say, "is a man in whom I have had great trust ever since we were roommates at Yale." Another chief justice would observe that his administrator had been an outstanding state senator until he had been beaten for re-election. A third would introduce, "My cousin...."
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> The good old days of court administration are not that old, and they certainly were not that good....[84]

Cameron dug into exactly what the qualifications of a court administrator were and what they ought to be. He analyzed the duties and then addressed, very candidly, the conflicts which can arise between a chief justice and his court administrator. The result is a highly analytic study based on a considerable survey which would help any chief justice in the running of his court.

Every phase of appellate court administration interests Cameron; he wrote on the merit selection method of choosing judges,[85] but his interests transcended even important mechanics. He believed that the state's highest court should be more "activist" in the field of judicial administration than in the field of judicial decision. On judicial law-making, in the choice between the standpatters of *stare decisis* and the "continually new content" of the law activists, Cameron reflected the heart of his being, that "[t]he truth, as usual lies somewhere in the middle."[86] He rejected the concept of "static and brittle" law and supported change "to meet the needs of a changing society."[87]

Cameron's own judicial work clearly reflects this point of view. He accepted what he described as Professor Karl Llewelyn's "law of leeways," the constant reshaping of the law which holds "the degree of movement down to the degree which need truly presses."[88] When law was to change, he believed that it should change responsibly in the true meaning of that term, with full accounting for all of the rules and policies of earlier cases. He invariably applied this approach himself. He recognized not only that courts should not legislate but that they were incompetent to do so. "[L]egislatures are better suited to enacting laws."[89]

Inevitably his thinking took him to the administrative consequences of judicial activism. In the criminal law-constitutional area, for example, United States Supreme Court decisions increased the number of appeals in Arizona fifty-fold. Cameron was careful to stress that this was not necessarily bad, but it required contemplation. On the administrative side, Cameron was for

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84. Cameron, Zimmerman & Dowling, *supra* note 83, at 450 (quoting Footlick, *How Well Can the Courts be Managed*, 60 JUDICATURE 78 (1976)).

85. Cameron, *Merit Selection in Arizona—The First Two Years*, 1976 ARIZ. ST. L.J. 425.

86. *The Place for Judicial Activism on the Part of a State's Highest Court*, 4 HASTINGS CONST. L.Q. 279, 280 (1977).

87. *Id.*

88. *Id.* at 281 (quoting K. LLEWELYN, THE BRAMBLE BUSH 156 (1960)).

89. *Id.* at 283.

unlimited judicial power. "The court has inherent power to do whatever is necessary for it to function as a court."[90]

The most "from-the-heart" essay Cameron ever wrote was his critique of the hearings on Chief Justice Rose Bird of the California Supreme Court. The piece is a triumph of principle over personality, for Cameron's sympathy for Bird either personally or as a court administrator was zero. Nonetheless, he regarded the hearings as a model of how not to handle the problem of judicial discipline. He felt so strongly that he examined all the evidence and procedures himself, with no law clerk help, and published his conclusions in a major California law review.[91]

This article is as close to the raw or real James Duke Cameron as it is possible to get. The issue, put concisely, was whether Chief Justice Bird of the California Supreme Court held back two decisions because their publication prior to election day might have adversely affected her personally at the polls. Cameron's piece is highly analytical, focusing especially on whether the hearing should have been open to the public, whether the internal deliberative processes of the court should have been the subject of an investigation, and whether a judge in such a situation should have a publicly financed defense.[92]

The article is sixteen pages long. The facts are laid out. Without a wasted word, Cameron discusses those facts. He believed that the inquiry into the deliberative processes of the court was wholly improper:

> An appellate court speaks through its opinions, which are published and are equally available to all who wish to learn the court's view of the law in a particular fact situation. To require justices of an appellate court to submit to questioning about subjective reasons for their decisions and written opinions can only weaken the force of the opinions themselves. The integrity and effectiveness of the opinions of an appellate court will be unnecessarily weakened if the deliberative and reasoning processes of the justices can be subject to after-the-fact examination.[93]

Cameron blasted the commission which made the inquiry and concluded, "I have confidence that this damage will not be permanent, but it is tragic that it had to happen at all."[94]

From time to time, Cameron wrote on criminal law subjects. He emphatically and vigorously attacked the exclusionary rule, the term applied to the exclusion of evidence obtained in violation of the fourth amendment. He minced no words, denounced the "diversion of courts from finding the truth, encouraging perjury, making trial and appellate judges appear hypocritical."[95] Other criminal law pieces were less impassioned, such as a comment on whether the English system of representing criminals can properly be imported

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90. *Id.* at 285.
91. Cameron, *The California Supreme Court Hearings—A Tragedy That Should and Could Have Been Avoided*, 8 HASTINGS CONST. L.Q. 11 (1980).
92. *Id.* at 12.
93. *Id.* at 23.
94. *Id.* at 27.
95. Cameron & Lustiger, *The Exclusionary Rule: A Cost-Benefit Analysis*, 101 F.R.D. 109, 159 (1984).

into the United States.[96] One of his rare pieces with a joint author, Jones Osborn II, his law clerk is on harmless error.[97]

Perhaps the largest national topic which has interested Cameron, one which has, with the passage of time, petered out of national attention, is whether there should be a national court of appeals to relieve the United States Supreme Court. Particularly in the criminal field, a defendant with a federal constitutional question to raise in his defense can, after affirmance of his conviction in the state courts, petition to the United States Supreme Court for review. The practicalities, which permit the United States Supreme Court to take only an infinitesimal number of the cases presented to it for review, makes this usually a vain remedy. Hence, as a practical matter, the defendant may seek review by habeas corpus proceedings in the lower federal courts. Cameron fully accepts the established law that the United States Supreme Court can overrule a state court, but he resents acutely being overruled by a district judge.

Cameron felt so strongly on this subject that he wrote on it for the American Bar Association Journal, did a scholarly article for a law review, and appeared as a witness before the United States Senate Judiciary Committee. He outspokenly argued that any fact questions which arose after the decision of the national court of appeals should be decided by the state courts and not by the federal district courts. As he put it in summary, the goals should be to take "jurisdiction of habeas corpus decisions by state prisoners away from the federal district courts and giv[e] it to the National Court of State Appeals."[98] He was unrestrainedly blunt in his testimony to the Senate, "[t]he federal courts are guilty of delay and inconsistency in applying federal law to the states, to the detriment of state judicial systems and to a degree not needed to insure minimum federal standards of justice to our citizens in the state courts."[99]

The Cameron federal court of appeals is not going to happen. However, other federal legislation pending at this writing will quite possibly achieve the same result by limiting review.[100]

What the collective writings show is that beneath the placid Cameron exterior is a man of passionate convictions about the legal system and how it ought to work. That, on top of all the other duties, he should so regularly take to the law review stump reflects a man who wants to make the legal system better and will exert his last ounce of energy in the effort, according to his lights, to do just that.

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96. Cameron, *The English Barrister System and the American Criminal Law: A Proposal for Experimentation*, 23 ARIZ. L. REV. 991 (1981).

97. Cameron & Osborn, *supra* note 35.

98. Cameron, *Federal Review, Finality of State Court Decisions, and a Proposal for a National Court of Appeals—A State Judge's Solution to a Continuing Problem*, 1981 B.Y.U. L. REV. 545, 572.

99. Cameron, Remarks before the Subcomm. on Courts of the Senate Judiciary Comm. 3 (Nov. 16, 1981) (unpublished speech regarding S.1529, a Bill to Establish a National Court of Appeals).

100. A statement by John P. Frank opposing such legislation has been distributed to all members of the House of Representatives by the chairman of the Subcommittee on Constitutional Rights of the House Judiciary Committee.

CONCLUSION

Justice Cameron puts down his judicial work thirty years after he began as a state trial judge; he leaves his monuments. The first is the bedrock work of his decisions in our courts. The second is the masters program at the University of Virginia; it may not live in the form in which it was created, but its alumni bring strength to courts across the country and it firmly establishes on the judicial agenda of the country the use of sophisticated training of judges to equip them not only to read statutes and authorities, but to perceive the function of judging in the whole of society. Third are the ABA standards on lawyer discipline. Like the cases, this work will grow and change with time; today it is both an operating guide throughout the country in concrete cases and, at the same time, the foundation for impending new developments. Fourth is the State Justice Institute; again, he was involved at both the creation and the execution of the program and will continue in this capacity after he leaves the court. Finally, the most tangible monument of all, the Arizona State Courts Building which will house much of the judicial system of Arizona until deep into the twenty-first century.

Cameron has really been interested in trying to make the legal system work better and has been indefatigable in his efforts. He perceives the usefulness of rules both to move things along more quickly and to avoid expense by answering questions in advance. He stimulated both the rules of evidence and the criminal rules.

In manner, the justice is the world's most unassuming fellow. He is companionable and easy, the very essence of the Arizona type. He has moved up in life from abject poverty as a child and lives in simple, unassuming style without pretense, and with much warmth from his many friends.

As head of the Merit Selection Commission of the State, without a vote, he was a model of democratic leadership. He never pushed, he was always ready to answer questions if asked — but everything ran on time.

Cameron has never put down one job without taking up another. He wants a period at Oxford in England, a university from which he has profited and which he has enjoyed in the past, to recharge the batteries and do some thinking. He will return to writing and, in some form, to administration. He will continue to be a mover and shaker for years to come.

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