San Joaquin College of Law

DICTA

VOLUME 3, NO. 3 SAN JOAQUIN COLLEGE OF LAW, FRESNO, CALIFORNIA FEBRUARY, 1975

SJCL TO HAVE DAY DIVISION IN 1975

FROM THE DEAN'S DESK

The Committee of Bar Examiners of the State Bar of California has approved a program for a full time day law school at San Joaquin. Your administration has, for the past year, been studying the possibilities of inaugurating a day program to compliment its night program already in existence. We feel that many students who can study full time and, for the most part, need not work while attending law school, would benefit from such a program.

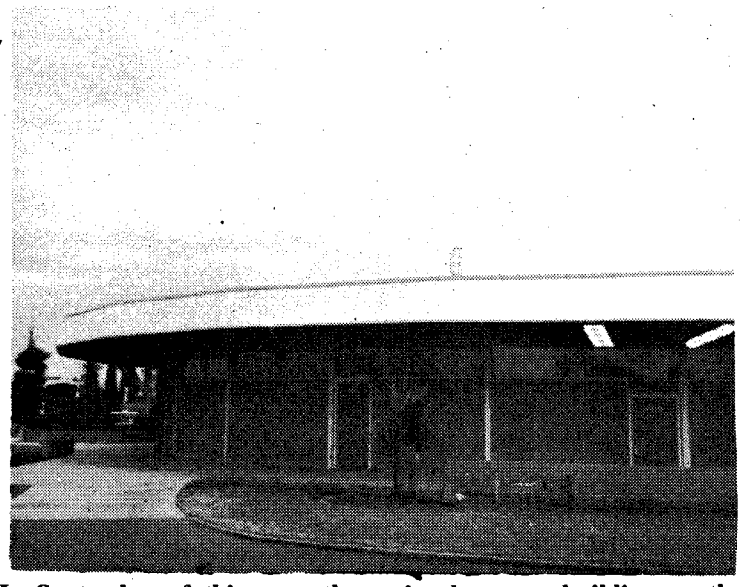
We further feel that many students who can devote their full time to study prefer a three year day program to a four year night program. As San Joaquin has not had a day program in operation, we feel that many students who would otherwise attend our law school choose to study elsewhere.

We also feel that the present demand for law study will draw students from other areas throughout the country who, because of limited enrollment in other schools, are unable to matriculate elsewhere. Statistics show that a good number of very qualified law students are unable to attend day law school because of the limited facilities available.

At present our day program envisions six hours of classroom time per week between 8:00 A.M. and 1:00 P.M., and a minimum of six additional hours between 3:00 P.M. and 6:00 P.M. This schedule is based on the limited classroom space available at Pacific College during the day time. It is planned that the same instructors will teach both the day and the night curriculums, and we are striving to hold to this policy, unless exceptional circumstances prevent doing so. Naturally, the day program will not be inaugurated unless a minimum number of students are available.

Your administration has long wanted a day program at the law school. We feel that the time has come for the law school to be a complete school, in the sense that both types of curriculum are offered to the student. It is the beginning of a move toward eventual ABA accreditation. Naturally, the number of students we obtain for the day program and the success of this curriculum will determine how soon we can advance to ABA approval. As many details have yet to be

See Day Division page 4



In September of this year, the main classroom building on the Pacific College campus, sometimes called the Carousel of Progress and at other times The Big Run Around, will become the home of the new full time day division of SJCL.

EMPLOYMENT PICTURE

We all know, or at least have heard intimations, that the job market for law school graduates isn't particularly promising. When I was in San Francisco a few weeks ago, I thought I would get some first hand information on that subject at one of the law schools in the area.

The sign on Boalt Hall's placement center door reminded me that it was useless to attempt to hussle a job here. "Placement Center Services for Boalt Hall Students Only," it read. But I did hope, at least, to find out generally if law students and recent graduates are finding jobs. After introducing myself, and plainly renouncing any intention of pleading for names, addresses, and phone numbers, the young woman in charge confirmed the rumors about the tight job market. However, jobs do seem to be more plentiful in "places like Modesto" since law students living in the Bay Area (and presumably other metropolitan areas) are often reluctant to leave after graduation, which results in a glut of lawyers roaming urban centers.

Exact figures measuring the success of the placement efforts at this particular office are not available, I was told, because of the failure of students and graduates to report when a job is accepted.

See Employment page 4

NOTES FROM THE WOODWORK

C.J. Sullivan, C.S.R.

Greetings once more from the underworld—in the classical sense, of course—as this courtroom shade again throws out a few helpful hints from below the Bench on the care and consideration of the Record, for whatever you want to make of them.

One of the things discussed last episode was how to get the witness to give an intelligible answer. I know you'd much rather learn how to get the witness to give an intelligent answer, but I can't help you there. (If you've given up on the efficacy of prayer, I don't even know where to refer you for that.) I would like to throw in a few pointers on asking intelligible questions, though.

Attorneys have been known to assume an almost papal infallibility on any subject you'd care to mention, but they don't realize that, unlike the lesser clergy, they also get into bad habits. One of the worst, as far as clarity is concerned, is asking a negative question and following up immediately with a positive clause.

"You didn't go out that night, is that right?" The witness then answers, "Yes." Now, is that, "Yes, that's right," or "Yes, I did go out"? Sometimes the witness will answer, "No." But it's the same problem. Does he mean "No, I didn't go out," or "No, that isn't right"? If it's an important Yes or No, it may become subject to various interpretations later on.

As a general rule, you might avoid negative questions altogether. It adds a little variety to the interrogation, but it can put the meaning of the answer in doubt, unless the witness goes on to explain. If you say, "You weren't there?" and the response is, "No, I wasn't," that's fine. But just "No" could be taken to mean, "No, you're wrong, I was there." Perhaps that's stretching things a little, but when

See Woodwork page 4

Banquet April 4TH

The SJCL Student Association will hold its annual banquet April 4 at 7:00 P.M. at Pardinis at Piccadilly Square.

Judge Hollis Best, Presiding Superior Court Judge of Fresno County, will speak on the California Shield law, Evidence Code Section 1070. Association and administration awards will be presented.

The main course will be Brochetts of Beef with other goodies. The cost will be $6.00 per person; Association members will receive $3.00 off of their total bill.

Spouses, friends, and dates are invited. See you there.

Et Cetera

By Peter Champion

During the Depression many people went to great lengths to reduce their tax burdens; the Axton-Fisher Tobacco Company went almost a foot! Late in 1933 the company marketed a package of five cigarettes 285mm in length or four times the normal 2 3/4 inch regular cigarette length. The cigarettes were named for the 1933 "Preakness" winner by four lengths-"HEAD PLAY".

Besides the novelty of the length, there was a real tax advantage in the type of packaging. The Revenue Act of February 26, 1926, C.27, Section 400 (a), 44 STAT 9-131, set the rate of tax on cigarettes as follows, ". . ., the following taxes, to be paid by the manufacturor or importor thereof-. . . On cigarettes . . . weighing not than three pounds per thousand, $3 per thousand (Class A Cigarettes); Weighing more than three pounds per thousand, $7.20 per thousand (Class B Cigarettes)."

The device which enabled the company to take advantage of the Act was rouletting the package so the consumer could readily separate the package into four equal packages of 2 3/4 inches providing him with twenty Class A cigarettes for which the manufacturer had legally paid the tax on only five Class B cigarettes, a savings of 40% on their taxes.

Congress soon took note of the loss in revenue and amended Section 400 by the Revenue Act of May 10, 1934, C.277, Section 610,48 STAT 768, with this revision to the Class B rate, "(cigarettes) weighing more than three pounds per thousand, $7.20 per thousand, EXCEPT THAT IF MORE THAN 6½ INCHES IN LENGTH THEY SHALL BE TAXABLE AT THE RATE PROVIDED IN THE PRECEDING PARAGRAPH (Class A rate), COUNTING EACH 2 3/4 INCHES (OR FRACTION THEREOF) OF THE LENGTH OF EACH AS ONE CIGARETTE."

The 6½ inch length was made applicable to not only cigarettes but also Cigarette Papers and Cigarette Tubes.

One might say that Congress snuffed out the loophole.

Editorial

Students have cast their "ballots" and it appears that a minority of this year's student body want a student association. Unfortunately what the majority of students want is not clear. It is obvious that they do not want to part with the last $10.00 bill in their pockets.

Do most students want the Association to fold because they believe there is no need for it or, as some have indicated, because they receive all the benefits anyway? Do students want an association to represent their interests, but believe the price too high considering the benefits to be obtained? Would an association without fees, or lower fees on a mandatory basis be as, or more, effective as the current model?

With these questions in mind, the Association Board, and students in general, should consider whether the Association should continue to exist in its present form, or to exist at all. Representing majority interests at the whim of a minority of students can only weaken the Association's position in the future—when dealing with the members of the administration, and financially, when attempting to carry out other Association sponsored functions.

Perhaps the answer is to lower fees and hopefully obtain student approval to make them mandatory, or dispense with them entirely. The DICTA and other services provided by the Association may have to be eliminated, but so be it if that is what it takes to get the support of the majority of student members.

LET'S TRY TO LISTEN

by
Marshall Hodgkins

One of the first things that a student of law learns is the very difficult art of listening. Unlike college where the student could tune out and off when the teacher quit talking and a student made a comment, in law school he must keep his ears open from the moment the class begins until the last word is said which closes off the class. No longer are the student's comments not worthy of the listener's attention. The twist to an application of the law in a given fact situation that a teacher may not explain is often answered or at least brought to mind by the student's comment.

It is with the above premise in mine (i.e. - listening in law is essential) that we arrive at the problem area, often referred to as "Point—Counter-point". If one person states, be it in class or out of class, that he stands for a certain position and the other person states that he disagrees it would seem logical that if both are to ever agree they must do at least two things. First, they must agree on a narrowly defined issue and second they must both understand the other's position in relation to that issue. If these two things are not accomplished there is no hope, whatsoever, of reaching an agreement. If the positions can be accurately defined to the satisfaction and understanding of the other they will be closer to a solution. While it would be fanciful for one to assume that given the above two ingredients all conflicts and differences of opinion could be solved, (because there will always be differences of opinion—depending upon the different interests being guarded), it could be admitted that alot more conflicts could be avoided. The lack of achievement of these two ingredients causes a breakdown in communication at a very early stage in the discussion. Its consequences are either "skirting" the issue or failure to understand the merits or fallacies in the other person's position. Those differences of opinion that are capable of solution are left unsolved; usually because of a failure to listen.

Since it would be an act in futility to attempt to point out all of the other reasons why the above two ingredients can not be achieved in discussions, no attempt will be made. However, the reasons that often stick out like a sore thumb are false pride and pressure from other individuals. Pride (in the sense that one refuses to admit he is wrong when he knows he is) and pressure from other individuals (not really sticking up for one's own opinion) are not sound reasons, even in a discussion that is purely academic.

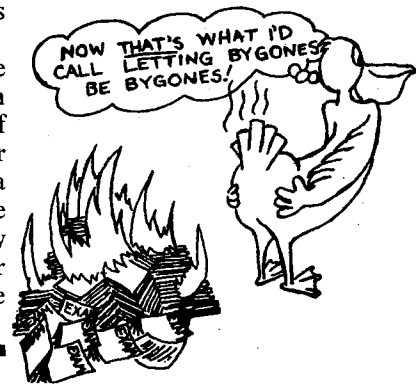
When one considers the serious differences of opinion that are not capable of solution, it seems rather ridiculous to end up in a stalemate in those that are capable of solutions simply because one or the other refused to listen for some irrelevant reason.

THE BLUE BOOK HASSLE

An article in a recent edition of the *Hastings Law News* described the opening of the sacred "Bluebook Room" to the students so they could retrieve their old exams (by secret numbers of course!). Evidently a law from heaven prohibited the return of exams to their writers until the room could not hold any more.

However, students at San Joaquin should not get their hopes up. The students at Hastings who were fortunate enough to find their exams found little more than what they had turned in at exam time. Judging by the few exams this writer has had returned, a return of all exams at San Joaquin would not be of much assistance to students.

Evidently law school instructors and administrators view exams only as evaluating devices for school grading purposes with little or no need for students to have a method of review of their academic abilities.



LETTER FROM BOB

Students:

There is a problem that has developed in the classrooms of our school that has been of great concern to me lately, so much, that I felt I must say something about it.

In the past three plus years I have been at S.J.C.L. there have been a few students in our class that tend to monopolize the class time by continually asking questions concerning the material being covered and/or related matters. This was not much of a problem in the first two years because, in the first year, the instructors were able to control the number of questions being asked, and in the second year the class was so small that the questions did not seem a problem.

This year, however, the third and fourth year classes are combined, and between the perpetual question-askers in the two classes, the situation has become completely ridiculous. It is true that a certain amount of questioning is necessary for the class as a whole to understand the material being covered, but what has developed in our class is that some individuals just plain carry on a private little debate with the instructors for three full hours each class night almost completely stagnating progress through the substantive material, and at times getting off on some quite unrelated subject matters.

The effect of all this is that some classes in the first half of this year, have been completely unable to cover the subject matter that they should have. Some people might think that this is fine since that means that there is that much less that we are required to know for our tests, etc, but for myself, I plan to use this information someday and I feel that whenever we are not able to complete subject matter I am being deprived of part of my very expensive education.

What seems to bother me most is the complete disregard of some students for anyone else in the class but themselves. I have talked to some individuals in private about unnecessary questions and I always seemed to be met with hostile replies that its none of my business. Well, it is my business and the business of every student in this school.

Some people or should I say person, when we were discussing this problem came back with the lame reply that he paid his tuition and he was going to ask as many questions as he damn well pleases. Well, others have paid good money to go to this school too, and a little more consideration for fellow students seems to be in order to me.

The cause of many questions seems to be the simple fact that the students asking them are just too lazy to find out the answers for themselves, or do not take any time to think about what they are asking, or attempting to understand the area for themselves.

I have not written this letter simply to blast my fellow students. My purpose is to make some students aware of the problem and to pose some suggestions.

For the most part, many of the questions that are asked involve problems that are unique to individual students in the understanding of an area of the law. All questions of this type should be raised outside of class time. Other questions relating to general subject areas being covered in the classroom should be held, of course with many common sense exceptions, until the area being covered is covered completely. All that is needed is for the student to write down the question and upon the completion of the area if the question is still not answered ask it at that time. Most of the questions asked in class would have answered themselves if the inquiring student would simply refrain for a few minutes from asking the question.

Also, I feel that the instructors could help in this area by having students hold their questions until we have completed an area of discussion. This technique was used by our first year instructors and seemed to work very well for everyone's benefit. The instructors should also have any questions of personal misunderstanding or unrelated subject matter deferred until non-class hours.

This letter is an expression of my personal opinion, and my opinion only. It does not represent any group or class of students other than myself. Also, this is not directed at any one individual nor is it my intent to embarass or harass any student of this school. I am sure that at times I have also been guilty of the very things I complain of here. I simply feel that there is a problem that should be corrected and that each of us as students should have more feeling and concern for the other students around us, and try to break out of our self-centered worlds enough to cooperate with others in our class.

I personally invite any students who think that I am out of line in writing this letter or who do not agree with what I say to approach me personally and express their opinions. I would appreciate however, that they express their opinions verbally only and not in any physical manner. I know that this is a selfish request and may even be unreasonable but it would be appreciated.

I thank the editor of this newspaper for entertaining this letter and allowing me to communicate my thoughts in this manner. I hope that it will stir some thought and the result will be positive for all concerned.

—Bob Williams

DICTA STAFF

Editor ..... R.L. "Chip" Putnam
Staff Writers ..... Kathy Hart
Gary S. Austin
Bruce Owdom

HEADSTART

by, Gary S. Austin

The arguments pro and con of attending a night law school, as opposed to a three-year day school, have gone on for quite some time. On one side are those who contend, and admittingly somewhat convincingly, that only the full time day schools at which a student can devote his constant and uninterupted attention properly prepare the student both scholastically and competently to enter the highly complex maze of legalistic pursuits.

On the other side are those who contend that a law school's true function and purpose is not to divulge and ingrain intricate aspects of all the law or even to make one a semi-expert in any one field of law, but rather, and more importantly, to train the student in how to "think like a lawyer" with the attendant abilities of legal writing and legal research which does not necessarily take a three year day school to teach.

Whichever side of the argumentative quagmire you may be on, your choice of San Joaquin College of Law has certainly baited your bias somewhat to the side of the latter. However, notwithstanding the factors surrounding your decision to attend here, you should be aware of some of its more advantageous and perplexing ramifications.

To begin, you've probably noticed in very short order some of the obvious remunerative consequences of attending smaller classes; closer relations with instructors; ability to remain in Fresno if you lived here previously; ability to have held on to pre-school work for those who had jobs before entering, and the ability for those who didn't to eventually do so in order to meet rising costs derived from both in and out of school sources.

But the more poignant inquiry comes in the reciprocal of these advantages. It requires one to turn from the immediacy of circumstance and look distant down the road; ie, to the question of whether, on a matter of creditials alone, we will as SJCL students be capable of competing with day students from institutions of longer standing and more celebrated repute. The answer may at first seem weighted to the negative, but on closer inspection of our operant situation a quite logical turn of the tables occurs.

A well known weapon in the fight for an employed status is practical experience in one's field of pursuit, and only four-year night students are sufficiently situated to exploit thoroughly this avenue. This is why the article title *"Headstart"* was chosen by the author. It is, of course, a borrowed descriptive, but it does have the effect of aquainting the reader at a glance with the instant import of attaining legal training "in the real world" before plunging into the job market 4 years from now.

Realizing it is not feasible for some night students to do, it is an essential for those who can. The advent of greater numbers of law school graduates each year, the economy on the downswing, and the opening of many new law schools is abundant supportive evidence for this position.

Knowing where the doors are and how to use them is the best job insurance policy one can obtain. Though the work one gets may only be part time at first and not for much money, opportunity is what you make it and conceivably the sky is the limit.

This is partly why Mr. Perez's first year legal writing class should be taken quite seriously. It is one thing not to know the law on a certain point—granted, no competent lawyer portends to know all the law—but not to know where to go in order to find it, is, to say the very least, unexcusable.

The first year law classes will impress the neophite with the basic skill and ability to think in a lawyer like fashion. Then, the remainder of one's law school years will be spent in refining and focusing these skills.

However it is only in the arena of competition where one is finally delivered a directionality and comprehension to his (her) law school experience. In the final analysis it is the proof of the punch, which when successfully encountered, leaves the student of evening education Legally capable and economically desireable while the day school student remains wanting.

Association Board members took a break at their last meeting for the above picture. Starting at the left, they are: Chuck Brewer, Marshal Hodgkins, Larry Donaldson, Gary Austin, Jim Mele, Tim Magill, and Mac Stewart.

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Future Events

March	Association Elections
	Vista and Peace Corp. Interviewers on Campus
March 24-28	Spring Vacation
April	Annual Banquet

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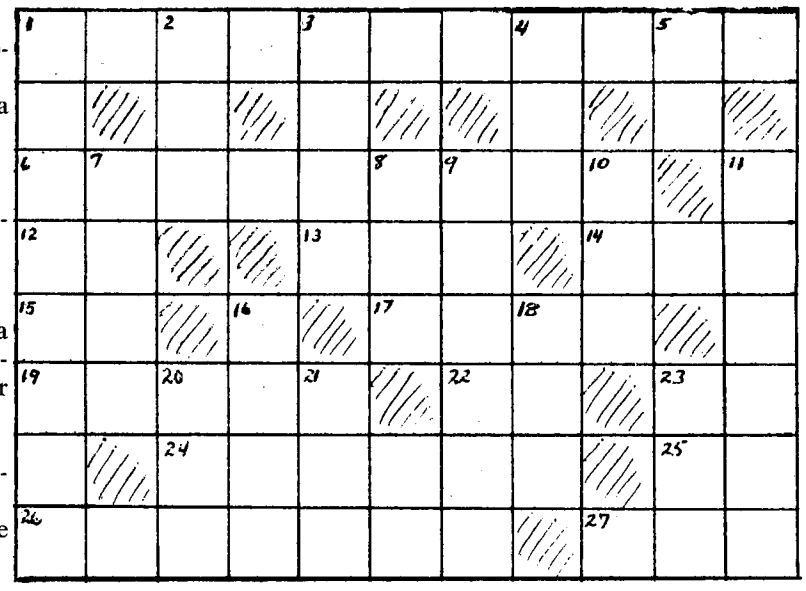
Property Law Crossword

by Kathy Hart



Across:

1 Estate "for the life of another" (French)
6 Future interest created in a transferee
12 Suffix (e.g., 1 down)
13 Batman and Robin
14 Editors of the Restatements (abbr.)
15 Exclamation
17 Double
19 the life estate to which a married woman was entitled on the death of her husband
22 Latin word for and
23 A well-known railroad (abbr.)
24 Flowers named after the Greek word for star
25 Elevated train
26 The life estate to which a man was entitled upon the death of his wife
27 An estate of inheritance

Down:

1 Type of tenancy recurring at fixed intervals
2 Opposite of in personam
3 Null
4 Able was I _____ I saw Elba.
5 Freudian subconscious
7 Reverberation
8 A Cashew or a pecan
9 the money, goods or land that a woman gives to her husband at marriage
10 An ex-boxer is sometimes called an also _____
11 Type of fee
16 present, immediate right; opposite of contingent
18 possessive pronoun
20 State of seige
21 Right to entry (abbr.)
23 Look at

EMPLOYMENT

And although between 150-200 firms conduct interviews at the school each year, I was cautioned that these firms interview at as many as a dozen other schools around the country. An interview thus doesn't always mean a job. To make matters worse, the current economic malaise has reduced the number of openings in firms that interview at all.

Because of the bleak employment outlook, the function of a job placement office interested me. The lady I talked to told me that the Boalt placement center was opened about twelve years ago and is now staffed by two people—the director and herself. Though the operation was not as expensive as I had expected, the woman continued by telling me that until two years ago the office had solicited jobs but the poor results didn't justify the time and expense required.

After terminating the solicitation approach, the placement center assumed the role of liaison between students and prospective employers, that is, simply passing on basic information to interested students provided by interested offices and firms.

Let's consider the figures of the Department of Labor. At the present time there are 106,000 students in law school, and there were 36,000 attorneys just admitted to the Bar. It is estimated that there will be 16,500 jobs for attorneys each year through 1985. In view of these figures, SJCL and the Student Association might begin to think about placement services that it could provide to aid graduates and students looking for jobs. For example, many students may need help in writing a resume and learning what to say and do once you get past the receptionist's desk (or especially if they don't).

—Bruce A. Owdom

DAY DIVISION

worked out, more specificity of details can not be given to you at this time. However, no student who is now enrolled at San Joaquin should contemplate transferring to the day program as he would gain nothing and, in fact, would probably lose time in so doing.

A recruitment program will probably be instituted in order that we may have as large a beginning class on our proposed starting date of September of 1975 as possible.

The general qualifications for a day student are the same as those for the night student, except that a day student may not work more than 16 hours per week, in order to be qualified for the full time program.

The administration seeks any suggestions you may have with regard to the day program and welcomes any assistance you may also give with regard to the recruitment of available students. The more successful our day program, the sooner our school can qualify for ABA approval, grants from various foundations and alike. With this exciting prospect in mind we hope that the students and the administration will work together to implement and successfully carry forward this new program at San Joaquin.

TO CLEAN OR NOT TO CLEAN

by R.L. "Chip" Putnam

A common part of any rental agreement is the clause providing for some kind of deposit or cleaning fee, listed as refundable or non-refundable. Quite often, as most renters soon find out, fees paid in conjunction with such agreements are gobbled up when the tenant vacates, even if the premises have been cleaned thoroughly.

In 1971 the California Legislature provided renters with some protection from this type of forteiture by enacting *Civil Code* Section 1950.5. This section provides in part that: (a) "Any payment or deposit of money the primary function of which is to secure the performance of a rental agreement or any part of such an agreement . . . shall be governed by the provisions of this section," and, (c) "The landlord may claim . . . only such amounts as are reasonably necessary to remedy tenant defaults in the payment of rent, to repair damages to the premises . . ., or to clean such premises . . ., if the payment or deposit is made for any or all of those specific purposes." Any excess must be returned to the tenant no later than two weeks after termination of the tenancy.

The statute apparently applies even though the landlord has labeled the deposit or fee non-refundable. *Bauman v Islay Investments* (1930) 30 C.A. 3d 752. In the Bauman case, a class action was brought, on behalf of past and present tenants in defendant's apartment buildings, to secure the return of "cleaning fees" collected by the defendants. The court on appeal held that even though the fee was clearly designated as non-refundable, the rental agreement did not meet requirements for a waiver of the provisions of *Civil Code* Section 1950.5(c).

The waiver would not be "legally effective unless it appears that the party executing it had been fully informed of the existence of the right, its meaning, the effect of the 'waiver' presented to him, and his full understanding of the explanation." *Bauman,* supra, p. 754.

Absent a proper waiver, tenants may now have more clout when attempting to have deposits returned when they have taken the time and effort to care for the rental premises. Bad faith retention by a landlord of such deposits, in violation of the Code, may subject the landlord to damages not to exceed two hundred dollars, in addition to any actual damages. *Civil Code* Section 1950.5(f).

Woodwork

has obscurity deterred an attorney in seeing to it that justice and his side prevail?

Moving on now, we come to a strange dichotomy. That word is not strictly Legalese, but it is loved no less by lawyers and belongs in the pettifogging Pantheon of Great Words, along with contraproductive, contraindicate, parameter, criteria (which, for the noncognoscenti, is a plural noun) — but I'm being discursive, digressive-wise.

The surprising split is that whenever the witness is on the stand and describes a measurement as "About so big," or "From here to that table," Counsel never fail to discuss with the Court and each other and agree on the approximate inches or feet. But when the witness is at the blackboard or in front of a diagram, and says, "I was here, and I moved here," Counsel surprisingly often never clear up for the Record just where "here" is, and even compound the error with questions such as, "After you got to that point that you are indicating with your finger, where did you go?" Naturally, the witness replies, "Over here." The route has been shown satisfactorily to the jury, and the witness is told he can resume the stand. And it is clear to the jury and the Court and Counsel, but not on the Record, which, like Ms. Justice, is blind. You gotta' spell it out.

Maybe that situation will be resolved some day when everything is videotaped, and the legal world will turn a deaf ear to the dump reporter's concern over the blind Record. However, that is outside this particular scope, and also lets flow a cornucopia of contentions, a plethora of plaints, a Pandora's box of — see, that's the trouble with Legalese, it's not only affectacious, it's infectious. En garde!

CROSSWORD ANSWERS

ACROSS	DOWN
1. Pur Autre Vie	1. Periodic
6. Remainder	2. Rem
12. IC	3. Void
13. Duo	4. Efe
14. ALI	5. ID
15. OH	7. Echo
17. Twin	8. Nut
19. Dower	9. Dowery
22. ET	10. Ran
23. SP	11. Simple
24. Asters	16. Vest
25. EL	18. Its
26. Curtesy	20. War
27. Fee	21. RTE
	23. See