SAN JOAQUIN COLLEGE OF LAW

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dicta

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Soon To Appear at Your Local Theater

FRESHMAN ORIENTATION '76

Produced and directed by
Marshall Hodgkins

Color by Technicolor

Rating: PG

Moviegoers who saw Paper Chase a few years back will instantly recognize the theme of Freshman Orientation '76 as Fear and Trembling/First Year Lawschool. The action takes place one balmy evening in California's Central Valley, on August 26, 1976, at Pacific College's carrousel-shaped Pilgrim Marpeck Center. (Alert viewers will note that the carrousel is a perfect metaphor for the human condition in general and for the study of law in particular: it goes round and round and round.)

The action begins with a large assortment of lawschool students, their spouses, and an occasional child, who are seen milling about outside, exchanging name tags and pleasantries. Abruptly they are whisked into a large classroom and seated. The outside doors are shut. Marshall Hodgkins, playing student body president, takes command of the show. Hodgkins, who played a strong supporting role in the film *San Joaquin College Student Government 1973-1976,* proves his prowess by delivering such Shakespearean soliloquies as: To Study or Not to Study: That is the Question; Here's an Outline for Remembrance; and That the Law Could Smile and Smile and Be A Villain.

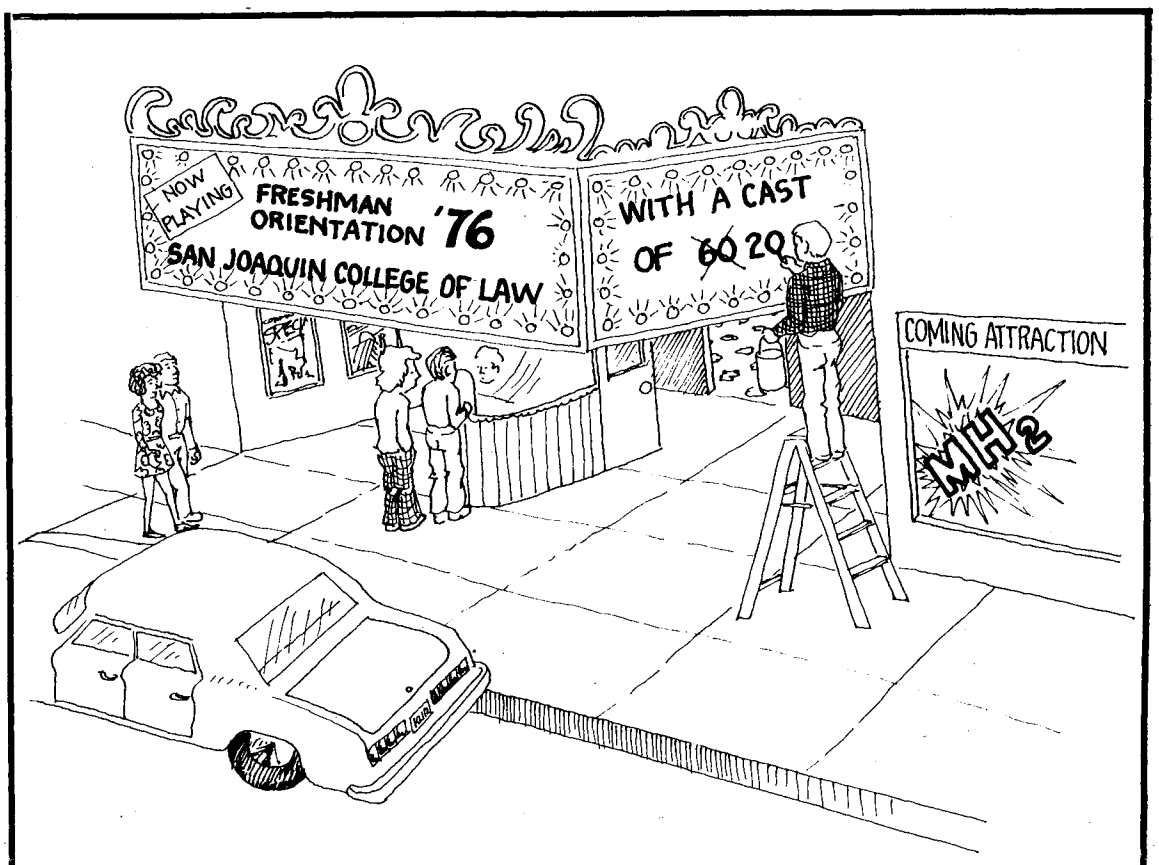
Hodgkins is followed by Vice President John Suhr (pronounced as in the French "biensur," not as in the word "sewer"), who quotes Norman Mailer and shuffles his sandals ingenuously. Suhr's debut is temporarily interrupted by Peter Champion's cameo performance as Richard Nixon. Wearing a Nixon mask, Champion bursts open the outside door, gives the Nixon victory salute, asks if this is the class on Professional Responsibility, and disappears. Hardly anyone laughs.

Other performances are given by Kay Tuttle, second year student, who explains the procedure for writing briefs and reading cases. Samples of briefs are distributed to the audience, reminding older viewers of the way 3-D movie glasses were given out in the Fifties. Kathy Hart, recovering from foot surgery and appearing in the role of *Dicta* editor, makes her cinematic debut in orthopedic plaster, crutches, and what look like apres ski boots. (Some said she was miscast.) Roger Vehrs, 1976 San Joaquin College of Law alumnus and gentlemen farmer (looking more farmer than gentleman), lurks suspiciously in the background snapping photos of the event.

As one speaker after another talks to the seated law students and their families, you can see an almost palpable panic spread across the student's faces. Where are they going to find the time to brief the cases, make the outlines, practice exam writing, and be prepared for class? The movie ends with the students led like inmates for punch, coffee, cookies, and fresh air. Though the film ends on a light note, experienced moviegoers will recognize the punch and cookie festivities as a thin, superficial coverup for the violence and terror embedded in the minds of the students and certain to errupt at the slightest provocation.

Freshman Orientation '76 is sure to be talked about this season. There is scuttlebut that *Orientation '76* will follow the lead of MH (Mary Hartman, Mary Hartman) and be serialized as MH2 (Marshall Hodgkins, Marshall Hodgkins). There is also talk of a bubblegum musical, with the Partridge Family singing Brief Me, Baby, the Case Method Rock, and All I Wanna Do Is Scream.

—K. H.



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FRESNO'S FRAMPTON AND FITCH SPEAK AT STATE BAR SEMINAR

As part of the State Bar Convention, the California Trial Lawyer's Association (CTLA) on Saturday, September 18 held a seminar entitled "New Frontiers in Torts." Two Fresno attorneys — John Fitch and Mary Louise Frampton — capped the day-long event speaking respectively on "Recent Developments in Family Law" and "Sex Discrimination Litigation."

In his thirty-minute presentation, Fitch reviewed a spate of 1975 and 1976 decisions which have complicated the life of an attorney practicing family law. Starting with *Judd,* an appellate decision holding a nonresident defendant cannot be compelled to pay spousal and child support unless *in personam* jurisdiction is obtained, Fitch proceeded to *In re Marriage of Brown,* a landmark 1976 decision holding that pension rights, whether or not vested, comprise an asset subject to community property division.

Fitch's commentary centered not so much on *Brown* itself — with which his audience was doubtless familiar — but with the implications of Brown. If contingent retirement benefits are subject to equal division, he argued, then attorneys must look more carefully at life insurance policy and social security benefits.

Much of Fitch's speech was devoted to what he called "grey areas" of the law; for example, Who is liable for debts incurred after separation? Civil Code Section 5118 provides that the earnings of a spouse while living separate and apart from the other spouse are that spouse's separate propert, but the statutes are unclear about liability for debt. He also discussed the problem of determining tax consequences in property divisions so as to achieve the equal division contemplated by Section 4800 of the Civil Code. "It used to be easy," he explained, "to add up assests on one side of the ledger and to total up the debts on the other side, and subtract." It's a nightmare now, he seemed to be saying.

Following Fitch on the agenda, Frampton traced the progress of sex discrimination litigation over the past few years. "The old female stereotypes," she said, "are no longer supportable" and have been discarded by the judiciary. By "old stereotypes" she meant such shibboleths as women being overly emotional, weak, and subject to periodic indisposition. Litigation now is riveted on issues springing from biological differences: pregnancy and retirement benefits.

Reviewing case law, Franpton mentioned *Cleveland Board of Education V. LaFleur,* which held mandatory pregnancy leaves to create an irrebutable presumption violative of due process rights. In contrast to mandatory pregnancy leaves, disability benefits for pregnancy have not been fully resolved. To be sure, the U.S. Supreme Court in the 1974 *Aiello* case upheld the exclusion of pregnancy as a covered benefit under California's state disability insurance, reasoning that such exclusion served a legitimate state interest.

Frampton quoted verbatim from — and the audience quite obviously relished it — the *Aiello* case in which a spurious distinction is made between "pregnant women" and "nonpregnant persons." She went on to talk about *Gilbert v. General Electric,* an attack on disability policies excluding pregnancy. Based not on unsuccessful equal protection arguments but on Title VII of the Civil Rights Act of 1964, the case will be heard next term by the Supreme Court. The case is significant, Frampton maintained, for if Gilbert prevails, fifty percent of the companies in America will have to change disability policies to cover pregnancy.

In the next few years, she predicted, sex discrimination litigation will focus on retirement benefits. Because women live longer than men do, the same amounts contributed by an employer to retirement programs will result in lower monthly retirement payments to women. To equalize such disparity, private employers would have to contribute greater amounts for female employees than for male employees; this way monthly benefits equal to men's would be received for the longer period women live after retiring.

The Equal Employment Opportunity Commission (EEOC), which implements regulations under Title VII, has ruled that equal benefits are required and that different benefits based on sex are impermissible. Consequently, an employer has to make, higher benefit payments for women, with the result that some employers may be discouraged from hiring the more costly woman. The retirement issue presents a legal conundrum: to equalize benefits between the sexes, unequal payments must be made.

Fitch and Frampton are to be commended for their fine contributions to the State Bar Seminar. Their speeches were well delivered and well-received.

Editorial

Clinical Programs at SJCL:
The High Cost of Giving

The first clinical program established at the lawschool was the juvenile justice class offered through the public defender's office. Working 8 hours per week for 14 weeks, a student was not required to pay tuition fees for the two units of non-graded (pass-fail) credit. The arrangement seemed fair all around: the student didn't pay, because he was volunteering his time and there was no cost to the lawschool beyond the minimal clerical time of noting the credits in the record. No overhead, no classrooms, and no lecturers were required.

Last year things changed. The school started charging its regular $67.00 per credit unit for the juvenile justice course. Other clinical programs were added. In December '75 Dean Eymann aranged with the Fifth District Court of Appeals for an internship program, for which fees were also charged. In Spring '76 Mr. Wanger set up a clinical program with the U.S. Attorney's Office, also at $67.00 per credit unit.

Members of the administration have repeatedly explained — and we are now persuaded of the fact — that $67.00 per credit unit is comparable to or less than that of other private lawschools in California. The rub is that for clinical programs no faculty salaries are involved, nor are there utilities, heat, light, and rent to be paid. For the juvenile justice course, the County of Fresno absorbs overhead and supervisory costs; for the appellate court clerkship, the State of California pays; and for the U.S. Attorney's Office, the Federal Government.

There is no doubt that a student gains invaluable experience by participating in clinical programs. Our point is simply that such participation is costly. Eight or more hours per week for 14 weeks results in 112 or more hours of time without remuneration. A student must forego other employment, or must take time off regular job in order to take the course, and unlike regular studying, the internships cannot be performed at odd hours. Even at a low $3.00 per hour equivalent, the volunteered time amounts to $336.00 in services. Add in the $134.00 cost of tuition and you have an expensive program . . .

For the student, that is. For the administration, nothing could be cheaper. Moreover, the better the students work out, the more the agencies will want additional students, and the more those sweet tuition dollars will swell the school's coffers. The arrangement sounds like the devil's definition of labor: "One of the processes by which A acquires property for B" (Ambrose Bierce, *The Devil's Dictionary).*

We know how valuable the clinical programs are. There is no doubt that the students would be shortchanged without them. The problem is that they are shortchanged with them as well.

Day School Saga

by Kay Tuttle

The Day School at SJCL has had some problems getting competent teachers available to teach during the day. The reasons for this are varied. Some law firms in town feel that if the attorneys in their firm have the time to teach, then that time should be put into the firm. Other firms believe they would be losing money if they allowed their attorneys to teach three hours a week during office hours; and still other attorneys can't teach during the day because of their trial schedules.

The Administration said that they tried all summer to find a qualified teacher to teach Busines Organizations during the day but were unable to get one. Since the school could not find one, Mr. Russell, who taught the class last year at night, volunteered to teach it on Saturday mornings. Mr. Russell could not teach the class during the day because he feels his clients need him during office hours.

In order to hold Business Organizations on Saturday, the Administration had to ask the State Bar Committee for a waiver because the Bar Committee requires Day Schools to hold classes during certain hours of the week. The Bar Committee wrote the administration a letter indicating that they did not approve of classes being held at times other than those specified for a day school but since SJCL was a temporary day school, they granted the waiver anyway.

Because the majority of students in the day school were opposed to the Saturday classes, Marianne Bluhm, the class representative, and this reporter went to see Mr. Loomis to protest the Saturday class and to discuss alternatives to it. At that meeting, it was determined that the only real workable alternative was to hold the Business Organizations class on Monday night instead of Saturday.

Mr. Loomis was to present the requested change to the Administration for their approval. The Administration discussed the matter but decided not to approve it because they did not want to ask the Bar Committee's permission again to switch the class.

Marianne Bluhm then called the Bar Committee to see if they would be opposed to the school changing the Saturday scheduled class to Monday night. Mr. McCloskey, who wrote the letter to the Administration granting the waiver, stated that if the school would contact them about the change, they would probably not object.

Dean Eyman was informed of Mr. McCloske's opinion, and therefore, said the day school could hold their Business Organizations class on Monday night if the majority of the students wanted to change. Since most of the students preferred Monday evenings to Saturday mornings, the class will be held Monday nights at 6:30 p.m. in the library.

New Instructors at SJCL:
Lawrence Viau and John Missirlian

by Elizabeth Davis

Lawrence Viau

Mr. Lawrence Viau, SJCL's new Administrative Law instructor, notes that public law has grown rapidly in the past twenty-five years and should be seriously considered as a career by law students. He points to the growing number of legal positions in federal, state, and local government and adds that private firms often need legal staff to deal with government agencies.

To support this view, Mr. Viau cites the City of Fresno, which in 1950 has one half-time attorney on its staff and today has seven fulltime attorneys. Fresno County had one County Counsel in 1950, and today has eleven attorneys in the County Counsel's office. Both an increasing number of governmental programs and an increase in public interest litigation have contributed substantially to this expansion in the administrative and public law fields.

Mr. Viau, a resident of Fresno County for most of his life, graduated from Selma High School. He received a B.A. in political science from the University of California at Berkeley. After serving as a naval officer in World War II Mr. Viau attended Hastings, receiving his J.D. in 1949. Following six years in private law practice, Mr. Viau had his first experience with public law when he joined the legal staff of the East Bay Municipal Utility District in 1956. He then served over three years as associate counsel for California Western States Insurance Co. in Sacramento.

From 1960-65, Mr. Viau worked in public law on the County Counsel staff of Sacramento County, in which position he handled condemnation actions, property acquisition for such projects as the international airport there, and contract litigation.

In 1965 he became a member of a Fresno firm, where his primary responsibility was to write the drainage fee ordinance for the newl formed Fresno Metropolitan Flood Control District (FMFCD). Mr. Viau served as assistant secretary and general counsel for the FMFCD until 1975. He is presently with the firm of Wild, Christenson, Carter and Hamlin.

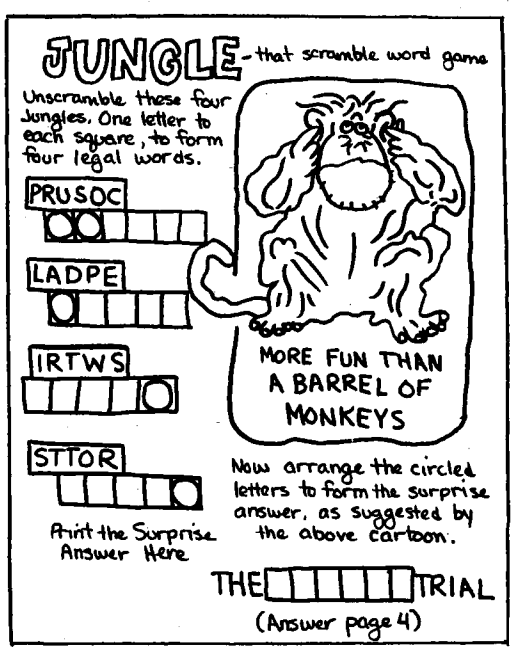
John Missirlian

The Keys to the Law Library are found in the course being taught this year by SJCL's new instructor Mr. John Mssirlian. The stated goal of Mr. Missirlian is to make each student who goes through his legal research class as competent a researcher as possible. Too many attorneys, he says, either do not know how to do thorough research, or delegate it to others.

Mr. Missirlian taught legal research during summer session and is teaching it this year in addition to legal ethics and Moot Court. He also taught legal research in his thirdyear at law school.

Enthusiastic about his teaching responsibilities, Missirlian recognizes the past achievements of SJCL and looks to even more in the furture. Beginning law students, he feels, need more of an orientation to the philosophy of the law before getting into the subject matter of specific courses. He also would like to see closer ties with attorneys in the area and will seek to develop such ties in his Moot Court class competition. Mr. Missirlian also supports SJCL's efforts to attract minority students.

A Fresno resident for most of his life, Mr. Missirlian graduated from UCLA, majoring in philosophy. He received his J.D. from Southwestern School of Law in 1975. He has worked with the Fresno County Public Defender's Office and is resently associated with J.V. Henry and Dan Knox in general law practice.



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Guest Speaker Series

Justice Mosk Talks, Quips, and Teaches

On the evening of September 20, California Supreme Court Justice Stanley Mosk spoke to a standing room only crowd of students and attorneys at the Pacific College campus. Hosted by the San Joaquin College of Law Student Association as part of the school's Guest Speaker Series, Justice Mosk spent the first half of his presentation discussing trends in the law and explaining the internal working arrangements of the California Supreme Court. The remainder of the hour-long talk consisted of answers to assorted audience questions.

The California Supreme Court, Mosk explained, is 126 years old, originating with three members, growing to five, and then to its present size of seven members. Unlike certain appeals to the United States Supreme Court, a California Supreme Court hearing is not a matter of right, but of discretion. Former Justice Roger Traynor, Mosk confided, used to quip that the court's wounds were all self-inflicted.

When a petition for hearing reaches the Supreme Court, Mosk went on, each of the seven justices draws a petition at random and prepares a memorandum on the case. There is a conference every Wednesday each week of the year, during which the justices discuss each other's memoranda, recommending whether the petition be granted or denied. If a majority decides to grant the petition, the matter is set for oral argument, prior to which a calendar memo is prepared.

Mosk talked about the Hot Court vs. the Cold Court: a Hot Court is one in which the judges know all the details of the case prior to oral argument. On the other hand, a Cold Court, of which Felix Frankfurter was an exponent, is one in which the judge's mind is a *tabula rasa*, and he has no preconceived notions prior to oral argument. The California Supreme Court is strictly a Hot Court, where the judges are extremely familiar with the case law and legal subtleties prior to oral argument.

After oral arguments a conference is held and a tentative vote is taken. The Chief Justice assigns one judge to write the majority opinion; when completed, the opinion is circulated for comment. Occasionally, he announced, a dissenting opinion will garner the requisite four votes, and the Chief Justice will reassign the writing of the majority opinion.

In discussing legal trends, Mosk said he was concerned about the Legislature's recent abolition of indeterminate sentencing. As soon as there is a particularly heinous offense, Mosk predicted, there will be a public outcry to increase the sentences. Yet the United States already has more persons per capita in jail serving longer sentences than does any other Western country.

Mosk foresees the day when there will be preliminary hearings in all criminal cases. As it is now, whether a case goes before a grand jury or a municipal court for a hearing is solely at the District Attorney's whim rather than at the defendant's option. Though his is a minority opinion, he thinks such a procedure is an equal protection violation. Grand juries he sees as useful investigatory bodies, but he questions their value as accusatory bodies.

Mosk fielded a barrage of audience questions ranging from queries on the recent U.C. Davis Medical school minority admissions case, to the Bee 4 case (Mosk had voted to grant a hearing), to questions on legal ethics. Commenting on the minority admissions, Mosk said he hopes the case goes to the U.S. Supreme Court. Unlike the 1974 *DeFunis* case, the U.C. Davis case is not moot, as the applicant was never admitted to medical school.

To the question "What factors does the Supreme Court look at before granting a hearing?" Mosk responded: cases which have a broad, general public interest transcending the interest of the parties before the Court; cases in which there is a conflict between two courts of appeal; and cases in which there is misleading language that might confuse other courts. The California Supreme Court, he admonished, cannot police the whole judiciary, so even incorrectly decided appellate cases will not necessarily be reviewed at the Supreme Court level.

Mosk closed his speech with a few comments on the prospect of attorneys' advertising; if advertising were allowed, he fears, the floodgates would be open, for the First Amendment would not countenance restrictions on what could be said in such advertising.

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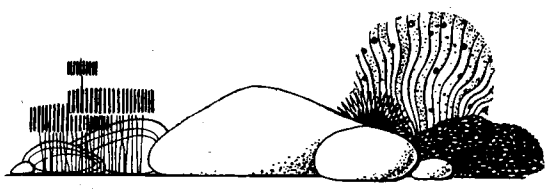
The Student Association is extremely appreciative of the efforts of Judy Lund, chairman of the Speaker Committee, in arranging for Justice Mosk's speaking engagement at SJCL.



Urgent Priority: National Defense

by Bob Sherfy

[Editor's note: As a student association publication, *Dicta* is a forum accessible to all lawstudents regardless of their political stance. Sherfy represents the conservative point of view. Readers' responses reflecting other points of view are invited.]

In this election year, we are hearing much rhetoric about our nation's priorities. Unfortunately, national defense—especially in liberal circles — is only a "priority to the extent that it is pictured as a convenient scapegoat (under the awesome-sounding title of "the military-industrial complex") for our national ills. The Democratic platform urges defense cuts, and though the Republican platform calls for a superior national defense, concessions under President Ford to the Russians over nuclear weapons are alarming. In addition, Mr. Carter has apparently chosen to ignore the shift in the nuclear balance of power and would support the concept of "rough equivalency".

So what is so bad about "rough equivalency"? Since both sides would suffer terribly from a nuclear war, isn't it simply enough to keep the weapons we have without building more?

This question can best be answered by determining if the Russians have the same fear of nuclear war as we do. Stated simply, they do not.

Weaponry is glorified and paraded through the streets. The Soviet Union's foremost military journal restates the Russian view that war is an instrument of policy and that nuclear weapons present an immeasurably more effective means of struggle that is at the disposal of state power.

The Soviet leadership, headed by Leonid Brezhnev (a former general who retained from his earlier years "close friends in militar circles and a marked taste for armaments," according to Georges Bortoli, an authority on Soviet matters) has in the past decade increased its country's ber of inter-continental ballistic missiles from 224 to more than 1600, its sea-launched ballistic missiles from 29 to around 800; and its nuclear warheads from 390 to approximately 3,500.

In the words of Daniel O. Graham, former chief of America's Defense Intelligence Agenc, "The Soviets have not built up their forces, as we have, purely to *deter* a nuclear war. They build their forces to *fight* a nuclear war, and see an enormous persuasive power accruing to a nation which can face the prospect of a nuclear war with confidence in its survival."

The Soviets put little value on the human life. Stalin killed 12-15 million of his own people largely for political reasons, and 6 million of these people were murdered simply to collectivize agriculture. The Soviets have not changed. Brezhnev's hands are bloodied by some of the dirty work he carried out for Stalin. Countless people are now being imprisoned and drugged in Soviet camps.

The Russians believe they can hold casualties down to 10 million people in a nuclear war. Simply because we believe a nuclear war is unthinkable, does not mean that we should project our pattern of rationality on to a nation whose track record proves they think differently.

Newsweek columnist George F. Will supports the proposition that the Soviets believe Nuclear war is *not* unthinkable. They have invested more than $1 billion a year in their civil defense program. A lot of new industry is away from large cities. Factories are protected by blast shields; machinery is mounted on shock absorbers. Nebraska grain is stored underground. There are plans for evacuations, shelters and post-attack recovery. Obviously, Soviet leaders take seriously the possibility of winning a nuclear war.

Even if there is *never* a nuclear war, Soviet superiority in nuclear weapons will afford the Russians an opportunity to confront the United States with the type of choice Kennedy offered Khrushchev over the Cuban missile crisis in 1962.

We must continue and step up our military research and production. In many categories, we have fallen behind the Soviet Union. Our "rough equivalency" is indeed becoming rougher. If we continue to sweep the issue of national defense under the rug of domestic concerns, we will soon live (?) to regret it.

Student Professional Workers

by Dennis Mederos

One of the best educational programs in any type of profession is on-the-job-training. This concept is as true in the practice of law as it is in any other area.

Several students of San Joaquin are getting such training in the Fresno Count Public Defender's Office, which has a program whereby five students are hired to work in the office as Student Professional Workers. Even though such a name to many people connotes nothing more than a glorified law clerk, these positions have resulted in what for most of the Student Professional Workers is the first actual practice of the law.

Each student is assigned to work on a misdemeanor case load in association with a Deputy Public Defender. This involves conducting most of the preliminary casework and often results in actual courtroom representation by the student.

To represent a client in the courtroom, the student must first be certified by the California State Bar. This enables the student to operate at all stages of the criminal justice system so long as there is court approval and a supervising attorney present at all times.

The result of this is that the Student Professional Worker is then given the Opportunity to participate in the arraignment, pretrial motion, trial, and sentencing stages of the criminal process. The word "participate" should not be used lightly, for often the Student Professional Worker has virtually an unchecked hand in how an individual case is to be treated. This is not to say that the Student Professional Worker's actions are unsupervised; but by virtue of the caseload at the misdemeanor level, the responsibility within the office as to what actions to take on an individual case often falls directly with a Student Professional Worker.

Probably the most valuable experience obtained in the whole program is the opportunity to experience exactly what is involved in dealing with people at an attorney-client level. It is at this level that the Student Professional Worker realizes the responsibility and the reliance placed upon the attorney by the client.

The most exciting aspect of this whole program is the opportunity for the Student Professional Worker actually to be the attorney of record when an individual case is to go to trial. At this point, the student gets to handle the preparation, investigation, and presentation of a case actually presented before a judge and jury.

In the Fresno County Municipal Court System, a Student Professional Worker is allowed, so long as written consent is given by the client, to conduct the total defense of a client at trial. The only requirement is that a Deputy Public Defender be present at all times to supervise the student's conduct. The practical effect of this is that there is usually an attorney present only to watch as the Student Professional Worker conducts the whole presentation of the trial. The student is often very much surprised to discover that the judges in the municipal court system will give the Student Professional Worker, who is acting in the capacity of an attorney, the same respect and responsibility as any other attorney representing a client.

Such experience gained prior to admission to the Bar is a type of legal education that very few practicing attorneys were ever fortunate enough to have had. It is for this reason that the program conducted by the Public Defender's Office is invaluable. One of the nice added benefits is that the Student Professional Workers are paid for the work they do for the office.

For those interested in filling a position in the Public Defender's Office as positions open up, they need only place an application with the office. It should be mentioned that participation in the Juvenile Justice program (provided by San Joaquin in association with the Public Defender's Office) is a great way to get the initial experience necessary to qualify for a position as a Student Professional Worker.

Taken in total, the experience obtained through the Public Defender's Office has served for many of those who have been Student Professional Workers as the most educational aspect of their legal study. It is very untortunate that not all law students are given the opportunity to be involved in such a learning experience.

Student Association Calendar

Student Board Meeting ..... *Oct. 5*
Time: 6:00 p.m.
Place: Pacific College Cafeteria Conference Room
Topic: Budget

Annual Football Game, SJCL v. Humphrey's..... *Oct. 23*
Time: 1:00 p.m.
Place: Kearney Park

Fall Party & Speaker's Bureau..... *To be Scheduled in November*

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