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NEW FACES ON CAMPUS SUMMER COURSES by David Overstreet

New courses and faces are to frequent the San Joaquin campus this summer and in the fall. The expanded curriculum will not only enhance what SJCL offers academically, but will also benefit students with practical experience.

In the fall the eminent Dean Bailey of Stammer McKnight, Barnum, and Baily will bring the new course of Civil Trial Practice to the halls of San Joaquin. Motions, discovery and depositions, jury selection, the actual trial (both during the trial and post trial procedures), and *voire dire* examination are among the areas Mr. Bailey will teach.

The new professor looks to use a combination lecture and practical application approach. Student readings will be covered in lectures and practical exercises will include opening

statements, discovery plan, and actual *voire dire* examination experience. Mr. Baily comes to us with twenty-six years of experience practicing in Fresno with Stammer-McKnight. He is a *top-notch* practitioner graduating from Stanford Law School in 1952. Among other engagements he has been a past chairman for the State Executive Conference of Bar Delegates.

Another new course to be unveiled in June will be Business Torts, jointly taught by Nick DiBiasco of (get ready for a mouthful) Thomas, Snell, Jamison, Russell, Williamson, and Asperger, and Ted Forest who is from the Office of Consumer Protection of the District Attorney's office, employed there since 1975. Mr. DiBiasco comes to SJCL with a BA in History from the University of Santa Clara where he gradu-

ated magna cum laude. He is also distinguished with Alpha Sigma Nu membership and working in the Moot Court Board of Boalt Hall. Mr. DiBiasco served two years in the Judge Advocate Corps of the U.S. Army prior to practice with Thomas, Snell, et. al. Last year he was Treasurer of the Fresno County Bar. Currently Mr. DiBiasco is on the Board of Directors of the Fresno Trial Lawyers Association.

Ted Forest will be sharing the teaching load, drawing on experience from the Office of Consumer Protection. Of some merit, Mr. Forest returns to San Joaquin as an alumnus of our prestigious institution. It is a special pleasure to see an SJCL graduate ready to teach in the same institution he learned the honorable profession. Prior to his education at San Joaquin, Mr. Forest earned his Bachelor of Science degree in 1973 from Northeastern State College of Missouri.

The DiBiasco-Forest joint instruction of Business Torts will commence June 6 continuing through July 19, the date of the final exam. The course will cover a general overview of California and Federal law on consumer transactions in detail, deceptive sales, promotional techniques, false advertising, and of course theories of recovery.

Business Torts (and other subjects including Administrative Law and Debtor Creditor Law) is open to attorneys (as well as other law school students) who may audit SJCL courses for \$90 per unit plus a \$15 registration fee.

Although Torts is not new to the Law School curriculum, Mario Beltramo joins the staff of professors this fall as a partner from the firm of McCormick, Barstow, Sheppard, Coyle, and Wayte. Mr. Beltramo hopes to dive into this first-year course with assistance to the student by giving writing experience in mini-exams. By this approach, the incoming first grader will have an opportunity to get-the-feel of final exams.

Continued on page two

JOAN MCINTOSH SWORN IN by Barbara St. Louis

"I hope to be judged for what I am rather than any label that might be attached," states Fresno's most recent appointee to the Fresno County Municipal Court. The reserved Joan McIntosh explains "It's unfair to blanket a group of people as 'Brown appointees' or 'Reagan appointees' or anything else. People should be evaluated on their own merits."

Ms. McIntosh was appointed by Gov. Edmund G. Brown, Jr. to replace the Hon. Armando Rodriguez upon his elevation to the Superior Court bench. Although Gov. Brown is the first California governor to appoint a more proportionate number of women to the California judiciary, this soft-spoken jurist does not foresee the appointment of women coming to an abrupt end when Brown departs from our state's capital. "I like to see women getting the opportunities they have been getting. On the other hand, positions of advancement, such as judgeships, should be available to everyone. Women don't need special looking out for. Most women now interested in the law are very capable of asserting themselves. Future governors will not ignore them."

Continued on page five

ATTENTION SJCL ALUMNI. ANNOUNCING ONE YEAR AD HOC COMMITTEE

Since my last communique in the November issue of the Dicta (1978), a very small nucleus of die hard alumni have diligently continued to clear the way for the formation of a special one (1) year ad hoc committee to undertake a number of chores necessary to the successful establishment of an alumni association. The most important of these chores is the drafting and filing of a charter and bylaws. The ad hoc committee will possess all powers necessarily incident to carrying out these duties.

Now that the ad hoc committee is ready for formation the next step is to invite all interested alumni to join it. The work will be hard but rewarding. Please don't pass this opportunity by if you think you can be of assistance--The committee needs your support. Preferably the ad hoc committee should be as representative of each graduate class as possible in order to ensure a well balanced opinion. In furtherance of this goal I encourage communication among the alumni for the purpose of double checking that each graduate class has at least one representative on the committee.

To join, all you need do at this time is simply take two (2) minutes and fill-in the pre-prepared cut-out coupon and mail it back to me at, 7th floor, Fresno County Courthouse, 1100 Van Ness, Fresno 93721. Send it no later than June 10, 1979.

Thank you in advance for your support.

Signed,

GARY S. AUSTIN

NOTE: COUPON IS ON PAGE FOUR.

NEW OFFICERS

INSTALLED by David Overstreet

After campaign speeches March 26 and elections the following Wednesday, new members for SJCL's Student Association were appointed to take office the night of the annual Spring Banquet. The new installs are:

PRESIDENT
John Shehady

VICE PRESIDENT
Dave Overstreet

TREASURER
Barbara St. Louis

SECRETARY
Julie Brungress

Two Student Representatives for each class were also elected.

The theme of the new administration looks to even greater student involvement in various programs to be provided in the 1979-1980 school year. A desire of the new Association is that through such involvement students will

continue to be inspired to create new programs and ideas which will supplement San Joaquin's growth as a fine institution. By the enthusiasm of these executives it is hoped that the audience of lawyers and judges in the community for such events as scholarly legal speakers, seminars regarding important legal issues and subjects, and recreational functions such as tennis, racquet ball, and golf tournaments.

Most of all the new installs are motivated to motivate students, faculty, alumni, and the legal community to utilize the increasing potential of San Joaquin College of Law to enhance Fresno's legal capacities. It is their desire to work closely with these four groups, incorporating as many suggestions as are possible. Those interested in such involvement should notify appropriate student representatives, executives, or the school's administration.

LETTERS TO THE EDITOR

Dear Editor,

As an organization with a forty year history of struggle for human rights, we wish to register our outrage at the police surveillance of the educational rally held at the Mall clock tower about the crisis in Iran. All permits required under local ordinances had been obtained by the sponsoring organization, U.S. People's Committee on Iran. Nevertheless, at least seven members of the Fresno Police and Sheriff's Departments were present observing and photographing people in the audience. One camera was used from a conspicuous position behind the speakers platform, another from a concealed position in the window of Room 216 of the Security Bank Building.

There is no legitimate purpose in surveillance and photographing people who are exercising their constitutional rights of freedom of speech, assembly and association.

Not only does such surveillance inhibit citizens from enjoying their constitutional rights; it also wastes taxpayers' money which would be better spent to protect the community from real crime. This activity parallels a history on the federal level of wasting tax money to bankroll repressive regimes abroad, and allowing such organizations as SAVAK, the Iranian Secret Police, to operate in this country. Locally such waste of law enforcement resources has been exceeded only by the use of 18 officers to raid the last Lions' charity gambling event.

Only recently has the press in the U.S. begun to accurately report on the events in Iran, where a national liberation struggle has been escalating during the past year. This underscores the necessity for rallies such as the one held on December 20 where people can disseminate and exchange information about the situation in Iran and especially the facts about the involvement of the U.S. Had this surveillance been an isolated incident, it would have been bad enough. A pattern, however, is discernible in the history of police obstruction of First Amendment Rights in Fresno. In the early 70's a computerized system of dossiers which included "intelligence" bulletins, containing political information rather than suspected criminal activity, on such American Political Association, and a farming co-op, was dismantled by our Sheriff as a result of public pressure. In the 60's police developed a bogus file of "known campus radicals" at Fresno State University.

On the very same street corner where the recent rally was held, the police arrested numerous labor organizers during the winter of 1910-11 in an effort to stop them from speaking. Indeed, the plaque commemorating that struggle was dedicated only four years ago, and had the police attended and photographed that function, they might have learned something about the constitutional rights of their employers, the people of Fresno.

SAN JOAQUIN VALLEY CHAPTER
NATIONAL LAWYERS GUILD

Dear Editor,

Since the completion of the school year is near, it is time to look back and reflect on the accomplishments of the past year.

The student government has been able to accomplish a few noteworthy goals this year. The constitution was amended to initiate many needed changes. The student government, with the help and work of Gerri Brown, has also started a program to recruit new students. This year also saw one of the best turnouts for the Fall Picnic. I'm sure the First year class is still gloating over their victory in the football game!

The final accomplishment this year was the purchase of a fine plaque for Gregory L. Myers to show the students' appreciation for his hard work and dedication as Student Body President, suitable for hanging. (The plaque that is.) However it is still questionable whether this last point is in fact a noteworthy event.

The length of this letter is in direct proportion to the goals and accomplishments finalized this past year.

KAREN L. BROWN

Dear Editor,

Legal difficulties are an extremely frequent consequence of pathological alcohol abuse. Approximately half of all arrests in this country are alcohol related. While no firm statistics can be cited relative to alcohol use as a factor in divorce, it is probably significant in at least 1/3 of marital dissolutions. Many crimes of violence, especially within family and friend relationships, are alcohol related. Burglary, forgery and bad checks are also frequently contingent on drinking.

None of these facts should seem surprising when one considers that an estimated 10,000,000 Americans are victims of alcoholism, a progressive, insidious disease, in excess of 43,000 in Fresno County alone. Alcohol is a legal, condoned drug in our society. One out of every 10 persons who drink do become alcoholic.

With the frequency of so many alcohol related crimes, one would think our Legal community would have more background in dealing with the alcohol abuser/alcoholic. In not undermining the role of the attorney as legal advocate, an additional role of client counselor might be augmented, due to the unusual nature of alcoholism as an illness which often results in some variety of legal involvement. Such an emphasis unquestionably means expending additional time and energy in assessment, persuasion and referral; and the lawyer's motivation must come from his own value priorities.

Mindy Pedowitz

NEW FACES - SUMMER COURSES

CONTINUED

Mr. Beltramo also hopes to emphasize the application of punitive damages as well as negligence, product liability, and strict liability.

Mr. Beltramo graduated cum laude from Notre Dame Law School in 1972 and currently serves as a member on the Board of Directors of his alma mater. While at Notre Dame he was Administrative Editor on the Law Review. Having seven years of trial work with McCormick-Barstow, Mr. Beltramo is also a member of the Northern California Defence Council and the Fresno Barristers.

At this point, the warmest welcome is extended to these gentlemen by both students and faculty. We look forward to your instruction with great anticipation, and sincerely hope your experience is as enriching as we know ours will be. Welcome again.

A NOTE FROM THE EDITOR

THE DICTA READILY ACCEPTS ARTICLES REPRESENTING NEWS OR OPINION ON SUBJECTS OF INTEREST TO THE LAW STUDENT, PROFESSOR, OR PRACTITIONER. HOWEVER, *THE DICTA* RESERVES THE RIGHT TO EDIT ARTICLES SUBMITTED FOR PUBLICATION. ADDRESS CORRESPONDENCE TO: THE DICTA, SAN JOAQUIN COLLEGE OF LAW, 1717 SOUTH CHESTNUT AVENUE FRESNO, CALIFORNIA 93702. TELEPHONE: (209) 251-7512.

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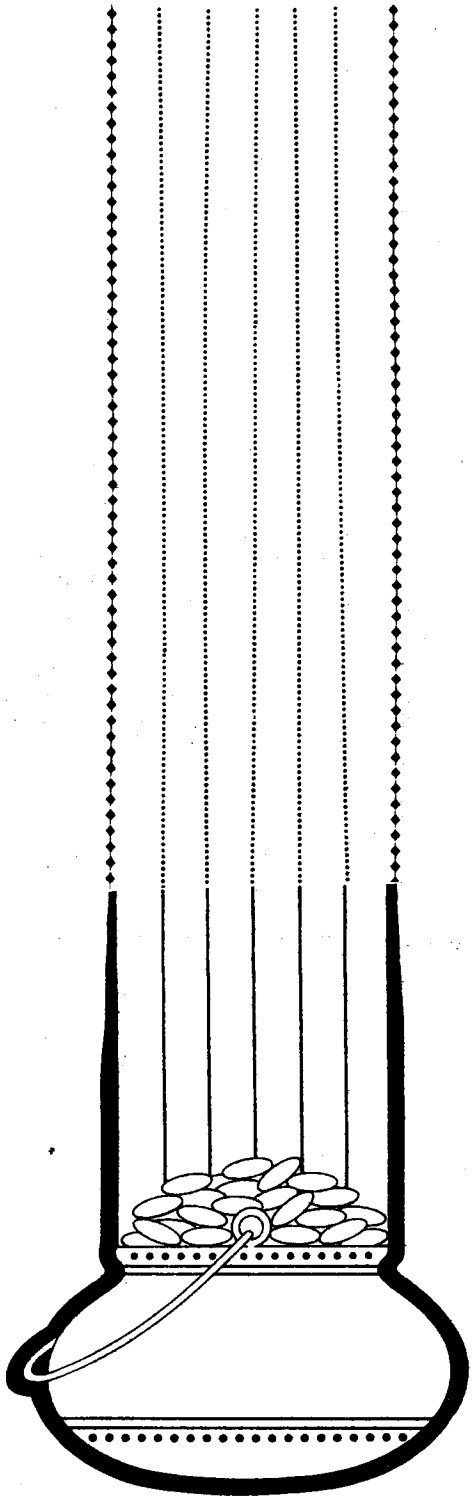
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WITKIN'S "MOTHER LODE": MORE PYRITES THAN GOLD?

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by
J. V. Henry



In his 18th Spring address to the Fresno County Bar Association, B. E. Witkin's theme was "Punitive Damages: The New Mother Lode." Recent judicial trends, according to Prof. Witkin, have overburdened our courts and oppressed business and the wealthy. Further, a plaintiff may be unjustly enriched by a windfall award of exemplary damages.¹ By abandoning the rigid distinctions between contract and tort liability for punitive damages, Prof. Witkin feels the courts have abandoned all rational limits in this area.

Prof. Witkin's brilliant critique displayed biases not evident in his scholarly publications. Both empirical evidence and judicial developments should mute Prof. Witkin's cry of "Eureka!"

First, actual punitive damages awards are rare.² Since *Brown v. Merlo*³ voided California's guest statute and *Li*⁴ adopted comparative negligence, California, willful misconduct issues have substantially decreased. Fewer claimants need to prove that the defendant was not only careless but an "expletive deleted."⁵

Second, punitive damages have been a part of California jurisprudence since our adoption of the Field Lode.⁶ While the long-standing existence of a rule should never block its reconsideration, our experience demonstrates little injustice with punitive damages. The limiting factors of *j.n.o.v.*,⁷ conditional order granting or denying new trial,⁸ and appellate review⁹ limit the jury's theoretical power to abuse its discretion. If deterrence is a policy of torts, punitive damages tailored to the defendant's wealth are a Solomonic sword of justice.¹⁰

In our constitutional democracy, the trial jury serves as a "mini-legislature", applying the general law to the specific evidence.¹¹ Instances of genuinely evil conduct by wealthy persons will be treated specially as a violation of *noblesse oblige*.

The "arbitrariness" in certain celebrated cases has its own internal standard. The \$127.5 million Pinto verdict approximated Ford Motor's profit in knowingly omitting safety features. *Wetherbee v. United Insurance Co.* 1F Cal. app. 3d 266, 95 Cal. Rptr. 678, (1971) noted that \$200,000 was less than

one week's net income for the defendant. The Eastern playboy on vacation knowingly infected a Wyoming girl with V.D., resulting in her permanent sterility and the birth of an infected child. Could one say that a \$1 million battery award was unjust?¹²

Unwarranted invasion of privacy was Prof. Witkin's palest *bete noir*. Trial courts have wide latitude as to protective orders.¹³ Discovery documents have not been routinely filed since 1978.¹⁴ By way of motions for partial summary judgment, defense counsel may limit "deep-pocket" inquiries where there is not a triable issue justifying exemplary damages.¹⁵ Prof. Witkin's arguments re exposure to charitable solicitation or kidnapping invite a *reductio ad absurdum*.¹⁶

According to Judge Learned Hand, the economic deterrence theory of torts was foundational and unified: if the risk of verdict exceeds the cost of prevention, planners will limit conduct or expend sums for prevention.¹⁷ The Pinto verdict imposed a "Naderesque" premium: a manufacturer should not intentionally commit even a fraction of its consumers to death or horrendous injury by fire. If it so chooses, its verdict risks expand.

Prof. Witkin bemoans the development of the "bad faith" exemplary award against insurers who willfully refuse to settle for policy limits. He fails to recognize the economic utility of the "bad faith letter" in reducing litigation.

Tort and contract are not impervious hemispheres. The duty to avoid intentional injury to another may arise from contract.¹⁸ Compensation is a sufficiently rational limitation on both tort and "tortious breach" verdicts and judicial review of jury discretion.

Prof. Witkin's presentation was dynamic; his rhetoric lived up to the Witkin standard. However, in this writer's opinion, his thesis *non erat demonstrandum*. Substantial, objective, economic proof should preface a shift from existing law, rather than citation of the occasional "horrible," as did our speaker.

There are more pyrites than nuggets in Prof. Witkin's claimed "New Mother Lode." His implicit proposals for "reform" are not adequately supported.

1 Since the purpose of exemplary damages is vindication of public policy, Mr. Witkin maintains that such awards should escheat to the state. He fails to note that since such awards may be taxable, the state may share in the plaintiff's "windfall". The attorney's share is also taxed.

2 A search of Jury Verdicts Weekly for the random period May-July, 1978, discloses only six punitive damage awards in California Superior Courts for this period. In this writer's general practice, punitive damage issues have occupied less

3 8 Cal.3d 855, 106 Cal.Rptr. 338 (1973)

4 *Li v. Yellow Cab Co.* (1975) 13 Cal.3d 804, 119 Cal.Rptr. 858

5 Gross negligence is negligence with a "vituperative epithet" *Wilson v. Brett* (1843) 11 M. & W. 113, 116, 152 Eng. Rep. 737; *F. McAdoo v. Richmond & D.*

Ry. Co. (1890) 105 N.C. 140, 150 II S.E. 316 ("a mere expletive")

6 Civil Code Section 3294

7 C.C.P. Section 629

8 C.C.P. Section 662.5

9 See 4 Witkin, Summary 3155-58, "Torts", Sections 867-869 (8th ed. 1974)

10 When a Saudi prince punches a flight attendant, should he pay the same award as a small farmer? The tort policy of deterrence is minimally served by an affirmative. Should a wealthy defendant who insists on the delay and expense of litigation be immunized from any threat of a "box car" verdict?

11 *Delvin, Trial by Jury* 164 (1956)

12 Such outrageous conduct might also result

in a similar verdict against a cowboy. The enforceability of such a judgment is substantially different. Should this be a basis for criticism?

13 C.C.P. Section 2037.8

14 E.g., C.C.P. 2030

15 C.C.P. 437 (c); C.C.P. 2037.8 See *Gombos v. Ashe* (1958) 158 Cal.App. 2d 517, 527 322 P.2d 933 (punitive damages not recoverable for even gross negligence)

16 Does one really imagine a "wealth-searcher" randomly combing Superior Court files for wealthy defendants?

17 *United States v. Carroll Towing Co.*, 159 F. 2d 169 (2d Cir. 1947)

18 See *Savage v. Mayer* (1949) 33 Cal.2d 548, 551, 203 P.2d 9; *Meadows v. Bakersfield Savings & Loan Association* (1967) 250 Cal.App.2d 749, 59 Cal.Rptr. 34

INAUGURAL MESSAGE

Looking forward, we, the students at SJCL have a lot to be proud of. Recent BAR statistics show SJCL with a first place state rank in graduating students passing the BAR exam over the last three years. We are ahead of schools such as Hastings, Stanford, McGeorge and U.S.C. and this is not easily done.

This is not bad for a school celebrating its 10th year in existence. However it did not come easy and it won't be easy to stay NUMBER ONE. Those who have graduated ahead of us are now some of the leading attorneys in the area, and alumnus Phil Aaron is the first of our lot to make it to the bench. This should not be too surprising to those of us still attending school. After "fighting" through four years, in addition to working full time and being involved in community activities, here at SJCL it shouldn't be a surprise to hear that most of the SJCL graduates have a reputation as lawyers not easily discouraged or "fighters" if you will.

So, those of us still "fighting" have our work cut out. All we have to do now is stay NUMBER ONE. To help ease some of the pressures around here the incoming student association members would like me to mention that we are planning a full slate of activities for next year on an academic as well as a nonacademic basis. I won't get specific in this message but in the next issue we hope to present much of next years schedule so you can plan ahead.

Looking forward to 1979-80.

John Shehadey

ATTENTION SJCL ALUMNI

FILL OUT THIS COUPON
AND BECOME
A PART OF THE TEAM

NOW!

- YES, I wish to become a member of the SJCL Alumni Ad Hoc One Year Committee.
- NO, I do not wish at this time to be a member, but I will give whatever help and support I am able if called upon by the Ad Hoc Committee

Submit no later than June 10, 1979

NAME: _____

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PHONE: (____) _____
(Phone number where you can be reached during day hours)

ROBINS v. PRUNEYARD SHOPPING CENTER

by
Betsy Temple
(Legal Services, Inc.)

The California Supreme Court, in a 4-3 decision in the above-entitled case, has held that the California Constitution protects "speech and petitioning, reasonably exercised, in shopping centers even when the centers are privately owned." By so holding, the Court expressly overruled its prior decision in *Diamond v. Blanel*, ("Diamond II") (1974) 11 Cal. 3d 331, in which the Court had held that the U.S. Supreme Court's decision on the issue in *Lloyd v. Tanner* (1972) 407 U.S. 551 was controlling.

Robins v. Pruneyard Shopping Center, Cal. Supreme Ct., March 30, 1979 was brought by a group of high school students who attempted to solicit support for their opposition to a U.N. resolution against "Zionism." They set up a cardtable in the courtyard of the Pruneyard Shopping Center and sought to discuss their concerns with shoppers and to solicit signatures for a petition to be sent to the White House.

They were ordered to leave by Pruneyard's security guards; they left the premises and later filed suit.

The California Supreme Court first addressed the question "Does Lloyd identify special property rights protected by the Federal Constitution?" The Court concludes that "Lloyd is primarily a First Amendment Case." That is, Lloyd defines limitations on free speech, rather than defining the nature or scope of 5th and 14th Amendment property rights of shopping center owners.

Having thus answered the first question, and after detailing the expanding role of the shopping center in today's society, the Court addressed the question "Does the California Constitution guarantee the right to gather signatures at shopping centers?" The Court noted that Article I, Section 2 of the California Constitution dealing with free speech is worded differently from the U.S. Constitution. "Though the

framers could have adopted the words of the Federal Bill of Rights, they chose not to do so." Consequently, the Court found special protection given to freedom of speech by the California Constitution, and concluded that "speech and petitioning, reasonably exercised," in privately owned shopping centers is protected under the California Constitution.

The Court added a cautionary note - "By no means do we imply that those who wish to disseminate ideas have free rein," and stated that speech and petitioning may be governed by rules regulating time, place and manner.

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JOAN MCINTOSH SWORN IN

CONTINUED

Born in Chicago, Ms. McIntosh came to California at the age of fourteen. She completed her masters degree in history and philosophy at Claremont College and obtained her law degree from Southwestern of Los Angeles in 1970. She has practiced criminal law at the Fresno County Public Defender's Office, the Fifth District Court of Appeals and most recently with the U.S. Attorney's Office. The new jurist sought the judgeship at the urging and support of her friends after attending an American Bar Association seminar held in London which compared the American and British criminal justice systems.

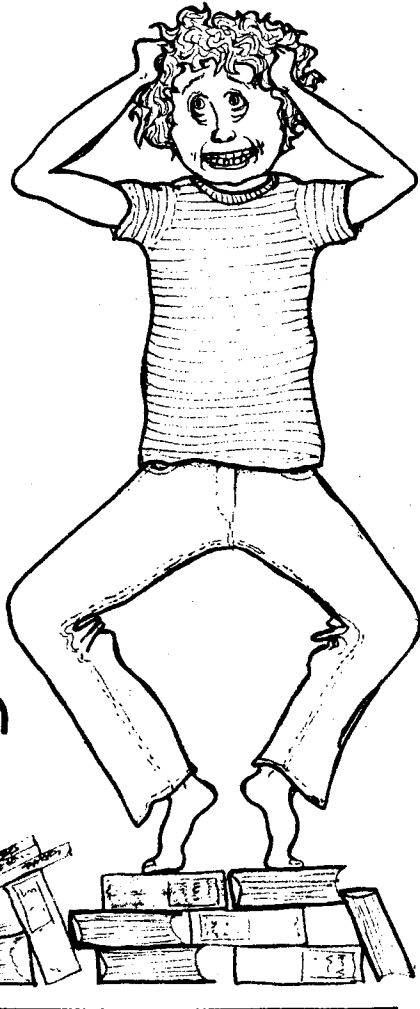
Regarding the issue of elected vs. appointed judges, Ms. McIntosh maintains, "I am not a political person and am not into raging an electoral campaign of any kind. Although many people feel that judges should be subject to the feelings of the voters, I wonder if the election process is really all that dependable. The incumbent judge is under a severe handicap in any election challenge if he adheres to the rules of ethic applicable to him. So, I think there could be something different than electing judges. There should be a disciplinary commission and, certainly, a way to remove judges who prove incapable."

She views the judge's role as one of moderator. "(The judge) provides an arena for two sides of the case. Each side has an equal opportunity to present argument. On the other hand, (the judge) ought to be able to give the whole proceeding some sort of direction when it is not progressing. Questioning of the witnesses from the bench, however, is only appropriate when the attorneys have not made the issues clear. I would expect for that situation to be very rare. Most attorneys I've met are quite capable."

The swearing-in ceremony is scheduled for May 18 at 3 p.m. on the B-1 level of the Fresno County Courthouse. The public is invited. In July, the new judge will attend a two-week seminar at the California Center for Judicial Education and Research in Berkeley, California. The school for judges provides instruction regarding the rules of court and different areas of the law.


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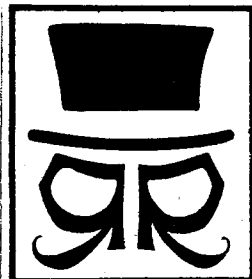


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GETTING THE U.S. TO PAY PART OF YOUR LEGAL EDUCATION

by
Ron Henderson
(6 year I.R.S. vet)

Since SJCL students do not qualify for government loans, the method I am referring to is through a tax deduction, and the resulting savings in income taxes paid to the U.S. government.

In order to deduct the expenditure under Internal Revenue Code (I.R.C.) Section 162, the I.R.S. has set forth the requirements in their Regulations Section 1.162-5. These regulations state that generally a deduction will be allowed if (1) the education maintains or improves skill required by the individual in his employment or other trade or business or, (2) meets the express requirements of the individual's employer, or the requirements of applicable law or regulations in order to keep his job, status, or pay rate. But before you get to excited, the regulations go on to state even if the above criteria is met, the expenditures are non-deductible if they are made (1) to meet the minimum educational requirements for qualification in his present employment or trade or business or, (2) are part of a cause of study which will lead to qualifying the taxpayer for a new trade or business (this is tested objectively not subjectively).

So even for those of us who would meet the general rule, we are stopped by the "new trade or business" test. Research of cases has shown that this is one area in which the I.R.S. always wins if they want to.

For example, most of the latest cases in this area have been published as Tax Court Memorandum decisions, indicating (at least in the Tax Courts' point of view) that the area of law is well settled. In several instances college level professors have sought the deductions, which were denied by the Commissioner and affirmed by the Tax Court. The taxpayers' contention was that since they were already teaching and would only teach law after obtaining a degree, it was not a "new profession." This argument was rejected by the court pointing out not all teaching and related duties are considered to involve the same general type of work. See Ruddy, Jr. v. Comm., 474 F2d 1342 (1973) affg TC Memo 1971-316 and Bouchard, TC Memo 1977-273.

The strongest case to lose involved a Marine Corps officer who had the military specialty of basic lawyer (although not possessing a law degree) and practiced law within the military justice system. Since certain functions were not open to him because of his lack of degree (acting as a judge or chief trial counsel) the court felt his securing of a law degree qualified him for a new trade or profession and denied the expense. Grover, 68TC No. 48 (1977).

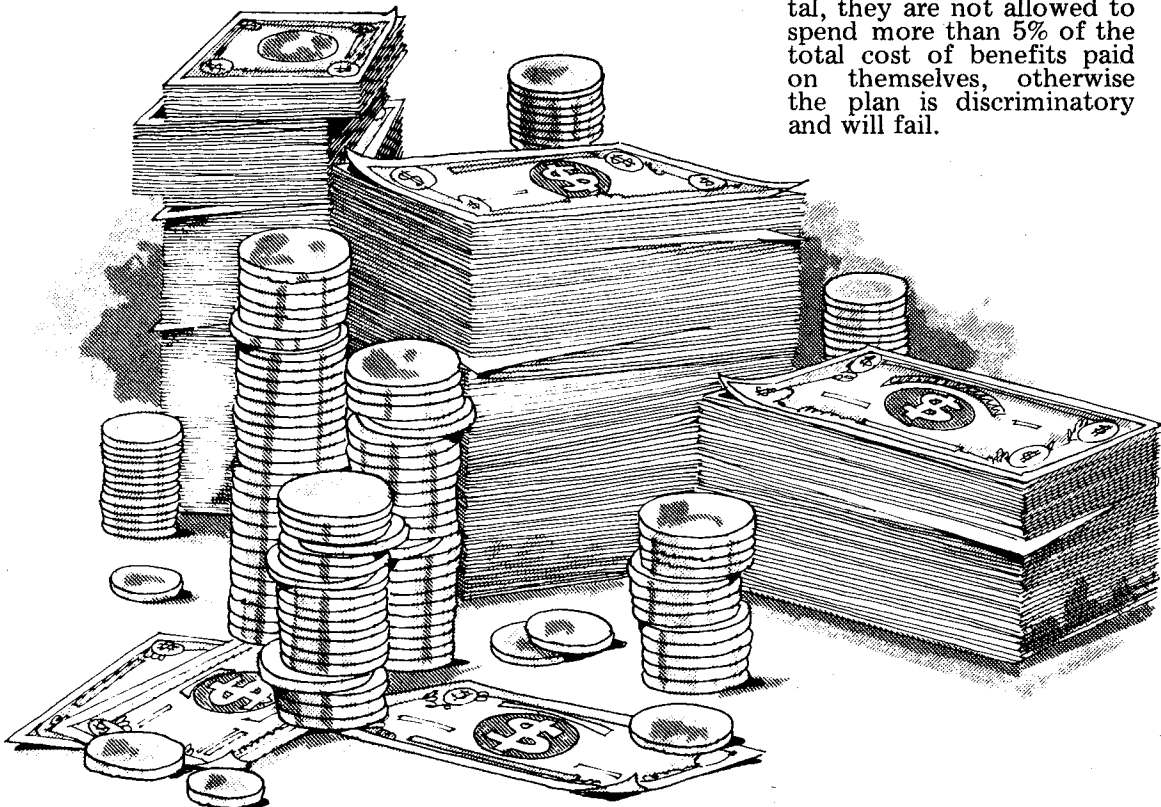
The case of Patrick L. Johnson, TC Memo 1978-257, is directly on point.

In this case, a law clerk whose was attending night school was denied the deduction for his law school and bar expenses. The Tax Court said "it is axiomatic that law firms only hire law students as clerks and equally clear that students don't enroll in law school to get a job as a clerk."

Therefore it does not appear likely one will be allowed the deduction by the I.R.S. Of course one can play the "tax lottery". That is take the deduction and hope you are not audited, or that the auditor is not too bright and will overlook it.

But there is a new law effective for tax year beginning after 1978 which allows an employee to receive tax-free education benefits. (This is temporary and will expire in 1982). Under this law it doesn't matter if the education qualifies the beneficiary for a new job or profession, it will be tax-free to the employee and deductible by the employer if certain conditions are met. They are that the plan be in writing; be nondiscriminatory, that benefits to the principal owners be limited, that alternative remuneration not be offered, and that the employees be notified of the plan's existence (I.R.C. Section 127).

So if you own your own business you might look into this or try to convince your employer to offer a qualified plan. Business owners should be aware that if they own more than 5% of the stock or the capital, they are not allowed to spend more than 5% of the total cost of benefits paid on themselves, otherwise the plan is discriminatory and will fail.




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DEANS CORNER

MOOT COURT

by
Nancy Smith

The latest Journal of the State Bar of California brings us up to date on San Joaquin College's position relative to other law schools with respect to its students' performances on the Bar Examination. This report is, indeed, gratifying and encouraging. From my viewpoint, however, it calls for particular words of congratulations for jobs well done to the successful students and to the faculty members who have contributed so much in guidance and intellectual stimulation to the students.

It is axiomatic that a competent and dedicated faculty is crucial to the success of any law school. San Joaquin has been fortunate in being able to recruit from the local Bar and Bench people who are not only highly competent in their particular fields, but also, who have brought teaching abilities and enthusiasm into our program.

Questions have been posed to me from time to time as to how faculty members are selected and occasionally, whether in selecting faculty members some kind of "buddy" system is involved. Students, faculty and the Bar at large are and should all be interested and concerned with the process.

Faculty members are recommended to the administration by the Faculty Committee. The Committee, in turn, is made up of five faculty members selected by vote of the faculty at large. When a particular faculty selection is recommended to the administration, it has been the administration's practice thereupon to invite the recommended person to join the faculty.

The fundamental question is, how does the faculty committee make its recommendation? As an ex-officio member of that committee, I can tell you it is a produce of discussion, argument, agonizing and occasionally inspiration.

Basically, the committee looks at the Fresno County Bench and Bar, as its pool from which to seek instructors. We are helped by the fact that quite a number of people have in the past furnished us with personal resumes and expression of interest in particular areas. This information has been very helpful to the Committee in the selection process. Unfortunately, with the number of people in the local Bench and Bar, it is most difficult for a small committee to be able to have broad enough contacts to be able to consider all eligible persons who might be interested.

With this particular problem in mind, the committee has strongly urged that our procedures for selection include means of securing greater knowledge as to interest and expertise among prospective instructors. One way to meet this criteria, is to invite those members of the Bench and Bar who are interested in making the extra commitment involved in law school teaching to send his or her resume and expression of interest to the law school for the committee's aid. To those of you in the Bench and Bar who participate in letting us know your interest, we will be most grateful.

I trust that these comments fairly address the questions raised concerning faculty selection and will have the added effect of bringing to the committee's attention interested, qualified people who might otherwise have been overlooked, and to assure that, as we strive to achieve, our faculty will continue to grow in stature and ability.

I expect that this will be my last contribution to the Dicta in this academic year. Accordingly, it is appropriate that I should remind you, students, faculty, staff and friends to plan to attend the graduation ceremonies to be held on the evening of June 1. Our sixth graduating class will be cheered on its way and it will be delightful to have you all taking part.

DEAN JOHN E. LOOMIS

Stanford Law School hosted the annual Roger Traynor California Moot Court Competition on Friday and Saturday, April 20-21, 1979.

All accredited California Law Schools are invited to attend this competition sponsored by the California Young Lawyer's Association of the California Bar. Of the 28 accredited law schools in the state, 21 attended the competition this year. The team from each school researches a hypothetical problem, prepares a written brief, and argues orally against selected teams from other schools. This year's problem raised the issue of whether or not there is a private right of action under Title IX of the Education Act Amendments of 1972, which provides in part that no person shall be discriminated against in any education program or activity receiving Federal financial assistance. A further issue involved the Equal Protection Clause of the United States

Constitution. An additional issue which was only raised by Stanford Law School and by the San Joaquin College of Law, was that of mootness.

The San Joaquin College of Law was represented by third year students Dave Anderson, Phil Tavlian, and Nancy Winston. Anderson and Winston argued against the team from McGeorge; and Anderson and Tavlian went against the team from Ventura College of Law. Although the team did not advance into the final rounds of competition, the oral evaluations done by the judges indicated that San Joaquin's team gave an excellent presentation. Team member Phil Tavlian noted: "The Traynor competition provides an excellent opportunity to test ones briefing and oral advocacy skills. Any California law student who has the opportunity to participate in this statewide moot court program will certainly benefit from it."

Judges for the final round of competition were

the Honorable Stanley Mosk, The Supreme court of California; the Honorable Anthony M. Kennedy, U.S. Court of Appeals, Ninth Circuit; and the Honorable Mariana Pfaelzer, the U.S. District Court for the Central District of California.

The team from Santa Clara School of Law won the competition for the best oral argument; McGeorge won for the best appellant's brief and Pepperdine won for the best respondent's brief.

The purpose of the competition is to give aspiring lawyers a chance to test their court room skills against their peers and to practice advocacy skills at the Appellate level.

The competition is named in honor of Roger J. Traynor, who was chief Justice of the Supreme Court of California from 1964 through 1970. He was Associate Justice from 1940-1964, and upon retiring from the bench in 1970, joined the faculty at Hastings College of the Law, where he continues to teach as well as act as advisor to the Hastings Law Journal.



Reprinted from The Virginia Law Weekly October 6, 1978.

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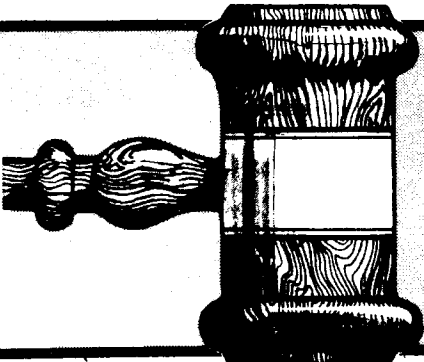
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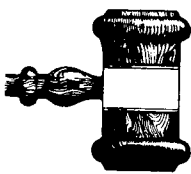
The Weekly Gavel

Written Words: Roots of Democracy

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Viewpoints are points of view. This entire section offers diversity, indepth analysis, and intellectual stimulation. Here you will find "point-counterpoint" type articles dealing with key contemporary cases and rulings. We feel that this format will bring you the incisiveness that these issues command.

FEATURED CASES will also be included under this heading. These articles are written by noted specialists in the field to which the case pertains.



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