San Joaquin College of Law

DICTA

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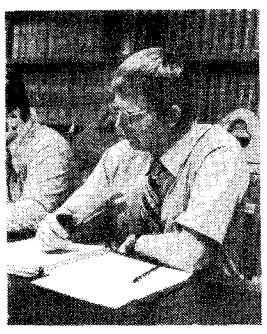
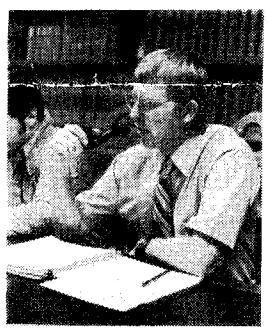
L. Sterling

prexy's prose





Much Ado About Much To Do

A good many times during these last several years, I have had occasion to muse over the significance of the Dean's early remark to our first year class to the effect that 'the law is a jealous mistress'. Now we all know that the keeping of a mistress is something about which few of us are capable of being very profound. But even a casual glance at the paperback section of your favorite book store will tell you that the subject is not completely without authors. There are at least some lotharios brave enough to kiss and tell. But where is the neo-Hefnerian legal Cyrano to share his savoir-faire learned in courting lady law? What is the proper way for the beginning law student to keep his new mistress? The following article recently appeared in a newsletter from the University of San Francisco and has been passed along by Dean Eymann. It provides the same kind of ex cathedra advice to the law student that the Playboy philosopher gives to the gallant.

"In class this year, you will be called on to recite. This entails expressing your opinion of the case or cases that are being discussed that day. On these occasions, you will inevitably have your certain conceptions of 'The Law' shattered by the professor. And invariably, you will be told, 'Don't take it personally'.

"This is not a little like the executioner saying, 'Don't take this personally' just before he springs the trap at your hanging. It is the same thing.

"So, may I offer some advice. Bull shit! Of course it's personal. The whole thing is personal. In the first place, it takes a great deal of fortitude to stand in a room full of strangers and expound on a subject about which you know very little. In the second, it is a damned humiliating experience to then have your conscientious and sincere opinion casually dissected by an expert. You will grope for points which last night seemed so obvious as anything you have ever known. And you will flounder.

"It is, indeed, a very personal thing. So do take it personally. Go back to your books and work harder. It will come. This is only the first of such experiences. There will be many more."

Anonymous

Leland Sterling
President, Student Association

More than just a bunch of books and concrete

January 2nd marked the opening of the San Joaquin College of Law Library. We are no longer able to use our excuse of 'not being able to get to the library'. That excuse is SHOT!

As indicated in the notice above, students will be able to utilize the facilities seven days a week. Unfortunately, no arrangements have been made to allow students to use the library other than the establsihed times. Law students are staffing the library and, at the present time, all positions are filled.

The building was constructed at a cost of $37,000. The 2400 square feet will accomodate thirty students at a time and will comfortably house 20,000 volumes. Already the school has invested several thousands of dollars in books and plans are underway to spend an additional $10,000.

At the present time, the library contains all volumes necessary for preliminary approval for accreditation, and by July, all volumes necessary for provisional accreditation will be there.

Books may not be checked out. Although a card catalogue is planned, at the present time the books have not been catalogued.

These law sources are currently available in the library:

REPORTS

- California Reports (2d and 3d) (Cal. Rep.)
- California Appellate Reports (2d and 3d) (Cal. App.)
- American-English Annotated Cases (Am.-Eng. Anno.)
- American Law Reports Annotated (2d and 3d) (A. L. R.)
- Lawyers Reports Annotated (L. R. A.)
- Supreme Court Reporter (1st and 2d) (S. Ct.)
- Pacific Reporter (1st and 2d (P)

LAW REVIEWS

- California, Columbia, Harvard, Yale, Stanford, UCLA, USF, Santa Clara, Michigan, Pacific

ENCYCLOPEDIAS

- California Jurisprudence
- American Jurisprudence
- Corpus Juris (2d)

DIGESTS

- West's Digest
- Federal Digest
- Modern Digest
- Supreme Court Digest
- American Digest

CODES AND SERVICES

- California Codes
- U. S. Code Service
- Uniform Annotated

In addition, the library has copies of Words and Phrases; Black's and Bouvier's dictionaries; Shepard's (California only), the Restatements; and several treatises.

The library is not just a 'bunch of books and concrete'. It is to be used.

LIBRARY HOURS

Monday-Wednesday-Thursday (noon to 6:30 p. m.
Tuesday-Friday (noon to 10:00 p. m.)
Saturday-Sunday (10:00 a. m. to 6:00 p. m.)

Future plans include a student work room, an administrative office, and a bookstore.

SEE YOU THERE!

Professor's Column

NITZ

on the death penalty

IS THE DEATH PENALTY DEAD?

Within a brief period of four months, it appeared that the penalty of death in California received the death knell from the courts. On February 18, 1972, the California Supreme Court startled the world by holding that the penalty was unconstitutional per se, as being cruel or unusual punishment under Article I, section six, of the California Constitution. Then on June 29, 1972, the U. S. Supreme Court held the penalty to be unconstitutional under the cruel and unusual provisions of the Eighth Amendment of the U. S. Constitution.

Immediately after the California decision the proponents of the death penalty responded to the decision by beginning an initiative to place the question of the death penalty on the November 1972 ballot. The required number of signatures was secured and Proposition 17 was passed by the voters on November 7, 1972. The Proposition amended the Constitution of the State of California by providing that all statutes relating to the death penalty as of February 17, 1972, the day before the California Supreme Court decision, were reinstated with full force and effect and further the Proposition provided that the death penalty was NOT to be considered cruel or unusual punishment.

Proposition 17 is a legislative enactment and is subject to a discussion of its constitutionality based on California constitutional provisions and law. However, because of the U. S. Supreme Court decision, I am sure that any discussion of the death penalty will be based on that holding.

In the U. S. Supreme Court decision, nine separate opinions were written in a 5-4 decision. Two justices for the majority held that the penalty of death was unconstitutionally cruel and unusual punishment per se. That is, the penalty could not be used as a criminal sanction under any circumstances. These two opinions were in accord with the California decision. The remaining three justices of the majority felt that the penalty was unconstitutionally cruel and unusual in the limited cases before the court; namely, for First Degree Murder and for Rape. These three based their opinions on the fact that death was a discretionary punishment and that there were no standards given by which the jurors could be assisted in making their discretionary choice. This uncontrolled discretion made the punishment cruel and unusual.

The four dissenting justices all echoed the same general theme; namely, that the determination of the use of the death penalty as a criminal sanction was a legislative function and not judicial. They based their respective opinions on different constitutional grounds but all found the punishment not to be cruel and unusual.

From the above discussions, there is no question but that all statutes leaving the question of whether to impose the death penalty entirely to the discretion of the jurors are unconstitutional. In California this would eliminate First Degree Murder, P. C. 187, Kidnapping for Ransom, or Robbery with bodily harm, P. C. 209, Trainwrecking, P. C. 219, Explosion of Destructive Devices causing great bodily injury, P. C. 12310, Sabotage resulting in death or great bodily injury, Mil. and Vet. Code 1672(a).

At the same time there would be no question but that the three mandatory death penalty sections of the Penal Code; namely, Treason against the State, P. C. 37, Perjury in capital cases, P. C. 128, Malicious Assault by Life Prisioners, P. C. 4500, would be constitutional under the Federal decision. For any of the present discretionary statutes to become constitutional it would require a legislative enactment making the penalty of death mandatory in those particular cases.

(CONTINUED ON BACK PAGE)

It's a question of fact

What Are We Doing Here

Question of the day: What are we doing here?

When I approached Judge Eymann about this, I learned that this school, originally his brainchild, came as a direct result of frustrations encountered while he was trying to teach a local bar review course. More often than not he found himself having to teach a subject rather than review it. He approached the State Bar Committee as to the feasibility of an accredited law school in the San Joaquin Valley. Population-wise, it was considered a risk, but with the aid of John Loomis and Oliver Wanger, a corporation was formed in the fall of 1969 and the following year the school, structured strictly towards the goal of accreditation, opened its doors to the first fifty-eight students.

Since the State College system will not allow a law school, the obvious choice for our school was an association with Pacific College. We lease the classrooms and facilities, but full control of the law school lies with our governing Board of Trustees with Judge Eymann, Mr. Loomis, and Mr. Wanger as the Steering Committee.

Last year, after being in existence for only two years, we were granted Preliminary Approval for Accreditation which means 'although the school does not meet the Standards for Provisional Accreditation, it does appear to have an organizational structure and program consistent with the Standards for Accreditation and be capable of qualifying in the near future, for Provisional Accreditation. This is the earliest such approval has been granted in any school in California except U. C. Davis which is under the University of California system.

Accreditation is the goal for the school and if we can help by all becoming attorneys, then that's a part of the goal, too. . . . our part.

You may have noticed that the first year class out-numbers both other classes. An uninformed source, who shall remain nameless even under threat of contempt, says the reason for this yearly drop in class size is directly related to the individual's I. Q. ---'I' for insanity!

I rest my case.

Mio D. Quatraro

Editor's note

San Joaquin College of Law is a professional institution, as such it merits and needs a professional publication; this is the philosophy of this year's "DICTA" staff.

To achieve this character, "DICTA" will assimilate commercial newspapers and will take advantage of the school's inherent talent.

A "Professor's Column" (a prominent feature), will allow instructors to voice their opinions and analysis of current issues.

Students are encouraged to submit articles for publication.

Both students and instructors should take advantage of the "LETTERS TO THE EDITOR" column to criticize or commont on anything.

nitz

(CONTINUED FROM PAGE 1)

The provision of Proposition 17 stating 'that the death penalty was not to be considered cruel or unusual punishment' was also affected by the Federal Decision.

The Supreme Court has held that the death penalty is cruel and unusual punishment under some circumstances at least.

Proposition 17 has no such limitation, but decrees that the death penalty is not cruel or unusual punishment. This prohibition, not being severable within itself, must fall as being unconstitutional. The death penalty is, therefore, still cruel or unusual punishment as the California Supreme Court has decreed. The prohibition against the use of the death penalty would still apply to all California statutes, including the manditory statutes. It is felt that the California Supreme Court decision, declaring the death penalty to be unconstitutional per se, is the Supreme law of the State and that Proposition 17 is unconstitutional.

-Melvin Nitz-

Dicta Staff

EDITOR . . . . . RICK ROSSI
FEATURE WRITERS
Mio Quatraro
Lee Eberlein
REPORTER Debbi Davis
CONTRIBUTORS
Leland Sterling
Melvin Nitz
PRODUCTION ASST.
Donald Peoples

From the L.A. Daily Journal

Supreme Court Reaffirms Products Liability Standard

The State Supreme Court has reaffirmed California's products liability rule as announced in **Greenman v. Yuba Power Products, Inc.** (1963) 59 Cal. 2d 57.

In Greenman Justice Traynor wrote, "A manufacturer is strictly liable in tort when an article he places on the market, knowing that it is to be used without inspection for defects, proves to have a defect that causes injury to a human being..."

Plaintiff, in the present case, while driving a bread delivery truck, was involved in a collision with another vehicle and suffered serious personal injuries. He claimed that a defective aluminum safety hasp broke, releasing the trays which slid forward, struck him in the back, and hurled him through the windshield. He won a jury verdict after presenting evidence that the defect proximately caused his injuries.

Defendant, which acted as sales agent for the assembled truck, appealed on the grounds that the trial court erred in refusing an instruction to the jury stating that the plaintiff could not recover unless he also established that the defect made the product unreasonably dangerous to the user. This additonal element is articulated in Section 402A of the Restatement Second of Torts.

The Supreme Court reaffirmed the Greenman standard and said, "We are not persuaded to the contrary by the formulation of Section 402A..." Judgment for the plaintiff was affirmed.

Cronin v. J.B.E. Olson Corp., State Surpeme Court, Sac. 7913, Oct. 17, 1972, per Sullivan, J. Roger D. Hallsy for appellant; William H. Lowi for respondent. (hjh)

Context Determines Whether Search and Seizure Legal

The C.A. 2d has held that the constitutional guarantee against illegal search and seizure must be shaped by the context in which it is asserted.

As defendant attempted to board a N.Y. flight, he and his luggage activated a metal detector, alerting the U.S. Marshal on "anti-hijack detail." Responding to the officer's question, defendant said he had metal in his pocket, and removed a "roach clip."

The hostess then asked whether "they" might look through the luggage and he replied affirmatively; whereupon she unzipped the luggage and the officer searched it and found marijuana and cocaine. Defendant was convicted of possession of cocaine, but believed the luggage had been obtained by an illegal search and seizure.

The C.A. found that defendant voluntarily consented the the search, and that it was not required that defendant be advised of Miranda rights or of his right to refuse consent to the search.

In addition to the express consent, the court noted the existence of announcements in the boarding area that luggage was subject to search.

Letters to the Editor

Planned for next issue: Write to us!

Student Comment

Eberlein

Casebook to stay

If you don't know it by now, you're hurting, but. . . at the San Joaquin College of Law. . . the case study method is used in teaching the law.

To many students, it is a waste of time. They'll argue that many valuable hours are spent in reading long, drawn out cases, many of them written in a language no longer used. . . (early English not latin) and often times they are written by judges who should have been doctors, which isn't really a bad idea. . . especially if you are having trouble keeping up.

"All I do is struggle over the long, drawn out things", says Joe College, "when all I want is a simple rule of law to put down on a test." Our friend Joe isn't really off base. He has a definite point.

But there are a number of things Joe is missing.

Do you remember the old adage about the liberal arts courses that all students were required to take in addition to their major subjects? Joe College's dean used to say, "It makes for a well-rounded man." By that we can surmise he meant (1) Joe had better spend the time in class rather than eating, (2) Since Joe very likely wasn't going to make it in any field he chose. . . if he was around he could (a) roll with the punch, or (b) travel from situation to situation with ease. . . or (3) a man versed in only one subject is about as dull as a sunburned icicle.

"So what?", you ask. "Show me some benefits in the case method!"

THE FACTS MAN. . . . JUST THE FACTS!

Since we have to write any number of exams in the very near future. . . including a semi-important little thing the state requires, a persual of the facts. . . and proper utilization of facts in the body of the discussion on the examination is imperative.

If we actually take the time. . . in reading cases, to see how the judge writing the opinion or decision, utilized the facts, organized the facts . . . and didn't deviate from the stated facts. . . we should be learning something.

Spelling, grammar, and the use of a proper legal phrase. . . "Et tu Brute". . . are also important, especially if your command of the King's English only includes a few guttural grunts. . . by which you have so far been able to carve out your own little living space. Take a look at the sentence structure of the case. The shorter. . . and more concise you can write it. . . the better it is. (Don't closely examine this document. . . the non-sequitars are following in close order.)

While you're looking at the sentence structure . . . don't let the body hide behind the bikini. Look at the way the whole decis is laid out. (No pun intended).

Look at the number of different logical approaches the court has used to shore up its premise. The judge isn't going to put all his eggs in one basket. He's not going to hang the roof on the building with only one support. He's going to use every available piece of evidence to jam the cork in the test tube and make his case air-tight.

"O. K", you say, "why can't I get the same thing out of a canned brief, you know, those little games written by M-D's. . . who just couldn't fight four year's at night?

"You can. . . you can". . . except you won't be doing the digging. You won't be wading in the proverbial creek, cloths pin firmly in place. . . . . trying to find bits and pieces of the law scattered like jewels along the bottom. If you think the creek stinks. . . kindly re-read the above paragraph.

When the final bar exam comes. . . you have to dig through the pile of rubbish and run screaming before the court with what you found. . . not what somebody else says you should have found.

Sure, canned briefs save time and if you just can't find the time to read the case. . . they are probably a helpful crutch. The problem is: a crutch never cured a problem. . . it just eased the pain.

So you spend hours digging through the cases. . . come to class ready to recite and then find you didn't really see the big issue. Sure you feel dumb. . . we all do when we miss it. . . but isn't it a good feeling to know this was only a class. . . and not a bar exam. . . . or a big case where ownership of Joe College's letterman sweater is being decided.

I submit the case study method is here to stay. Until the end of the semester anyway.