San Joaquin College of Law

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Professor's Column

EYMANN

NO FAULT INSURANCE.....
FAULTY OR NOT

No fault insurance has been adopted in two states--Massachusetts and Florida. Similiar legislation failed to pass in our state last year. Two new 'no fault' bills--A. B. 50 (Fenton) and S. B. 10 (Song)--have been introduced this last January. As the proponents of NO FAULT INSURANCE are confident that it will eventually become California law, this proposed legislation should be examined.

These Bills require that each policy of Motor Vehicle Liability Insurance offer payment to the insured, without regard to fault, of the following items:

1. Medical expenses, including products, drugs, services, diagnosis, care, recovery or rehabilitation, up to $50,000;

2. Loss of income, including a reduction of earning, but excluding continuation benefits, up to $750.00 per each 30 day period;

3. Expenses for services injured would have performed for himself or dependents, up to $15.00 per day;

4. Funeral expenses, up to $1,000;

5. No recovery for pain and suffering, unless medical expenses exceed $1,000, or the injury results in the loss of a body member, serious impairment of a bodily function, serious and permanent disfigurement, serious and permanent disability, or death. In these instances, however, the limit for general damages would be $5,000.

6. When medical expenses exceed $1,000. or the injuries specified above occur, the injured may then sue civilly, without limitation on amount.

The exclusion of property damage from 'NO FAULT" legislation, leaves the majority of auto collisions unaffected. The award of medical expenses, loss of income, and funeral expenses to the motorist who is negligent, provides compensation which is now denied. This removes the harsh doctrine of contributory negligence, which has produced much criticism.

The elimination of compensation for pain and suffering, where medical expenses do not exceed $1,000, or the injury is not as serious as specified, also eliminates the blameless driver from any consideration for his pain and suffering. The innocent driver, who is hit from the rear and suffers a "whiplash"--necessitating therapy for six months and wearing a collar for four weeks before full recovery is achieved--would receive medicals and loss of income, but nothing for his pain and discomfort.

The critical issue where no fault insurance applies is: Should all motorists be protected, regardless of fault, at the expense of those who are blameless? The answer may lie in one's view of the present status of personal injury litigation.

The difficulty and expense of suit; the spectre of contributory negligence, which is always pleaded and decided by judge or jury; and the delay in payment for either expenses or general damages, which is often present if settlement is not reached, are the barriers a litigant now faces. On the other side of these barriers is the expectation of additional compensation for pain and suffering if they are overcome.

We now have the choice of either a 'whole loaf' or none. In the near future, it may be a certain 'half loaf'. Which do you prefer?

-Dan B. Eymann

NB--A copy of the Fenton and Song Bills is now in the law library.

It's a question of fact

Getting Practical

WHAT PRACTICAL TRAINING
IS
AVAILABLE? By Mio D. Quatraro

Law is practically the only profession in the country whereby a person can graduate from law school, pass the bar, and hang out a shingle without ever having had experience in legal practice. Hopefully, this is changing.

A few of us at SJCL have been fortunate enough to find practicing attorneys willing to hire us under the newly amended state bar rules V, VI, and VII. Under these rules a student may do legal research, prepare legal documents, investigate, interview and negotiate, and is allowed, in some instances, even to try cases in court.

The student must have completed the second year at our school in good standing, must be certified by the Dean, an assistant or associate dean, and must have a practicing attorney who is agreeing to take full responsibility for the student's activities and supervise all work done as provided under Rule VI.

At the present time Rod Haron and I, from the third year class, are working twenty hours (plus) a week for the Public Defender under these rules. The experience of handling a misdemeanor, for example, from the arraignment through the trial and in many cases to the sentencing and appeal if necessary, is invaluable. Because we represent indigent clients, as long as we have their permission and an attorney in the courtroom, we are fully complying with the rules.

Judy Ward is also certified to assist the attorneys in her law firm, but because their clients must pay for services rendered, she is, as yet, unable to take a case into the courts.

These amended rules have given us a door into the courts, but it still takes an attorney to turn the key and open it for us.

WHAT IS BEING DONE TO MAKE MORE OF THESE JOBS AVAILABLE? Judy Ward, representing the SJCL Student Association, addressed the January Board meeting of the Fresno Bar Association concerning this practical training for law students. She reports that her talk acquainting the board members with the amended rules and our availability was well received and she was invited to send out a notice in their next bulletin.

Judge Eymann states that although the school has no official internship program or placement services at this time any job opportunities which the school becomes aware of are immediately passed on to the students. He feels that once we are accredited there may be more such opportunities. In the meantime, it seems, we must continue to promote ourselves.

Editor's note

by Richard Rossi

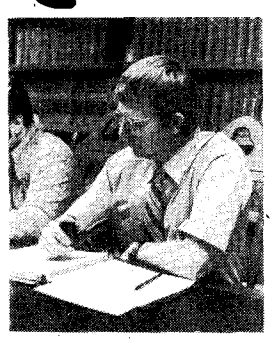
Law school is two-faced. Many people think that by learning rules of law once, it's history, and by combining this with writing techniques, they will succeed in law school. That theory is not completely without merit, it just does not recognize the true issue. The fact is, law school teaches the student to approach problems in a very special way: Like a lawyer.

I must hasten to assure you that studying the law and its history is an imperative pre-requisite to being a lawyer (and staying in law school). But it is only absolutely necessary because it teaches the student to think like a lawyer, not because the student is memorizing rules of law.

It follows that a person with the ability, either developed or inherent, to analyze in this special legal way could succeed by memorizing rules of law in the abstract. This raises a further point. As one continues in his study of the law, he unconsciously develops this analytic ability and it eventually becomes secondary to learning the law. This is only after much study and probably much more experience. What is this special ability to think like a lawyer? It could be said that

(Continued on Back)

prexy's prose



Scientific Method vs Legal Method

THOSE WITH A SCIENCE BACKGROUND MAY APPRECIATE THIS!

It is usually thought that the scientific method is the ultimate in skepticism and objectivity, but Dr. Allen D. Allen (that's right), a mathmatician-physicist, argues that the fact-finding enterprise of the courts is actually more skeptical and objective.

Allen details seven similiarities between the judicial and scientific approaches, two of which bear mentioning. First, is the court's rejection of hearsay evidence, which Dr. Allen contracts with the reliance of the scientist on literature references. "When a researcher cites the work of others, he is in many instances alluding to facts of which he has no direct knowledge", he says.

The second area of difference is in acceptance of bias. Allen points out that 'great pains are taken under the trial system to ensure that finders of fact are unbiased." He notes that prospective jurors are interrogated and dismissed, judges disqualify themselves, and changes of venue are sought and granted, all on behalf of this principal.

Allen notes that science plays a different game. Example--the controversy raised by the race and intelligence theories of Stanford's Shackley and others. Such researchers 'may incur the displeasure of his colleagues if he fails to display sufficient bias', he says. Thus, whereas the judicial system filters out bias entirely, the scientific system filters out only unpopular bias.

Conclusion? Allen believes that it would benefit scientists to engage in a little of that 'lawyer-like thinking' we are all so hot on at the moment. Try these arguments on the next scientist you meet at a cocktail party and see how he reacts.

-Leland Sterling-

Students Urge by-laws Change

As now written, the Student Association by-laws allow only third year students to run for the office of Student Association President. This provision thus insures that, for most of the term of office (which runs from April to April), the President will be a fourth year student.

It has been proposed that the by-laws in question be changed to allow second year students to run for this office. However, this proposal does NOT include a provision to allow first year students to seek such office. The following factors and arguments concerning the advantages and disadvantages of allowing third, second, and first year students to run for the office of President should be considered by each member of the Student Association before voting on this proposed change.

But, before studying these arguments, this writer thinks it appropriate to interject a suggestion concerning eligibility of all student association officers. Shouldn't there be a by-law which provides: For any student to be eligible for office in the Student Association, that student must not be on scholastic probation while running for election to such office. Such a rule would, as nearly as possible, preclude (1) the chance that such elected officer would be rolled out of the law school prior to serving his term in office. (2) the necessity of holding interim elections to replace that individual. The present by-laws do not include this requirement, but such should be the goal of the Association.

Now, back to the pros and cons of the present proposal. One of the most important factors which has been presented by both the advocates and critics of the proposed change is the element of TIME. More specifically, who would have the most time to spend on student affairs, a third year or second year student? Assuming that both were working full time, it has been said that a third year (or fourth year) student would have the burden of reviewing for the Bar Exam in addition to current assignments. This may or may not be true, because many graduating students will wait to review while they are taking a professional bar review course. On the other hand, it is suggested that much of the Association's President's work is done in the summer months prior to the beginning of the fall classes. Second year students have two full-time classes plus Moot Court during this period, while third year students only have a condensed' course. However, this does not take into consideration the employment factor. If either is not employed during this period, the time factor would not seem to be as relevant. The scales would tip in favor of the third year student in this regard if both, or neither, were employed.

Another argument is that a third year president- elect might be subject to scholastic probation during the 4th year because of a poor showing during third year finals. It is said that this would place added pressure on such a student to increase study time to insure graduation and thus neglect necessary Association work. But, of course, the same argument applies equally to a second year student, because of his desire to stay in school.

It is also maintained that a fourth year student's impending graduation will tend to diminish his interest in problems which will affect the Association after he or she leaves the school. In other words, such a student would tend to let a problem slide with the expectation that it would 'just go away', at least until after his graduation. However, it is asserted that if a second year student is close to the borderline with regards to probation, then such a student may lack sufficient zeal to press controversal issues upon the school administration.

As noted above, the present by-laws allow election of a student on probation. Under such a condition, if a second year student did poorly on his second year finals, he would be subject to probation or roll out, depending upon his previous record.

As noted above, the present by-laws allow election of a student on probation. Thus, if either a second or third year probationary student were elected and then did poorly on finals, both would be subject to roll out. And, if both were not on probation at election time, but did poorly on finals, they would both probably be around to fill out their term of office depending on their summer school performance. In such a case, the odds would certainly be on the non-working third year student because of only one summer class, whereas the second year students would be on a marked disadvantage because of two classes plus Moot Court. However, if a non-probationary third year student were elected he would most probably be able to serve out his term even if he did poorly on his third year finals because he would only be on probation and not rolled out.

Another argument states that a fourth year incumbent would not be around to aid the subsequent president because of graduation. However, the incumbant could provide assistance from April until graduation.

It is also said that third year students tend to have an advantage due to his experience in student government because of past services as class representatives, or as officers within the Association. However, this argument takes little note of the fact that second year students may already have extensive experience in student government prior to entrance in law school. This may be especially true in a night law school where the average student tends to be somewhat advanced in age. It is probably safe to suppose, at this point, that neither second or third year students can claim to have a monopoly on experience or knowledge.

It is noted by some, that the diminished size of the third year class due to attrition, unreasonably limits the number of qualified candidates. This argument would be especially relevant if probationary students were precluded from running for office.

A final argument with regard to third year students is that they have proven their ability to survive the many pressures of law school and thus are most likely to be around to serve their term out.

Thus, between the third and second year students, the above factors and arguments will certainly vary with a given individual because of personality differences. However, such variables must ultimately be considered and decided by the voter at the ballot box.

Finally, as to possible reasons preventing first year students from running for the office of president, the following have been stated on various occassions.

(1) The period of adjustment that each beginning law student must make with respect to the rigorous scholastic load heaped on during the first year.

(2) The pressure of first year finals and the Baby Bar, if it is still required, thus producing a high attrition rate.

(3) The lack of at least one year of law school experience so as to fully appreciate the problems of fellow law students.

(4) The first year student has not had the opportunity to demonstrate his or her ability to successfully manage the time required to complete his lesson assignments as well as serve the Student Association in a meaningful capacity.

Because of the above arguments, it is believed by some that the present by-laws are unreasonable and arbitrary in precluding at least second year students from competing with third year students for this office.

By Gaines Green

(More:: Editor"s Note)

it is the ability to focus only on the pertinent facts of the problem. Or, extending that explanation, it could be said to be the ability to focus only on the issue itself with such facts as are absolutely necessary to make a determination.

I submit that it is the latter COMBINED with the ability to objectively examine every possible argument. That is, the ability to focus on the main issue and then objectively test every possible solution. This, to me, is the true legalistic 'thinking'.

Take the development of the law. By definition, development connotes changing with changing times (even though the changer may be a bit slow). Therefore, only by examining every possible solution, even to a problem with 'sufficient' precedent, can it be said that the law develops. Of course this objectivity is necessary a fortiori with respect to situations in which there is no precedent. Making law must be done with much care and finesse.

Reducing an issue to its lowest common denominator in terms of facts not only takes much practice but a good knowledge of the law. This is so because without knowledge of the applicable, the analyst cannot tell what facts are relevant. The law dictates those facts which are relevant and applicable (e. g. in burglary, intent).

The pertinent question now emerges: How does one develop this analytic ability? There is only one way. Study each and every case assigned to find the reason for the application of that specific rule of law. Then see if you could develop a different rule for the case, supporting this with every bit of logic you can conjure up. 'Thinking' is the essence.

Law school then turns out to be the study of cases and rules of law, and.....

RICHARD ROSSI

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night school: A REBIRTH

REBIRTH, SECOND CLASS
CITIZENSHIP..... AND
THE ABA

-by-
ERNEST KINNEY

A recent issue of JURIS DOCTOR magazine presented a glimpse of the 'fatigued warrior'-- the student who works by day and studies law at night, only to be maligned as second class citizens by the legal world. The controversy regarding a recent California Supreme Court justice nominee who had been a night law student is a case in point.

The crux of the article, however, was the recent rebirth of night law schools and the new enrollers who were not 'day law school rejects' but, rather, tremendously motivated, energetic, intelligent students.

The night law school saw whatever prestige it had turn to ashes in the 60's. Seven night-time law schools folded between 1964 and 1970 for reasons that are obvious in retrospect. Adequate financial aid was available for full time day students. Viet Nam left full time students eligible for draft deferments while part time night students slowly bit the dust under Uncle Sam's power. Night and combined day/night schools, feeling the economic crunch, had to close down or lower standards to keep the school in operation.

1973 presents a sharp contrast to the bleak picture of the 60's. The distinction between day and evening education has become greatly blurred. Without question, simple supply and demand is the true equalizer in this case as evidenced by the fact that 125,000 people took the LSAT exam last year, while only 36,000 first-year slots were available.

The rebirth of night law schools, such as the San Joaquin College of Law, will need the concentrated efforts of a capable staff and a dedicated student body. The fact that our school is on the threshold of Provisional Accreditation by the California Bar bears out our success to this date. However, much more remains to be done.

Professor excellence at the podium and scholastic improvement by the student are always in order. Moreover, we must strive for American Bar Association (A. B. A.) accreditation as well as that of the accreditation by the California Bar.

The A. B. A. standards for accreditation have been adopted by most of the states. This means that if our school is not A. B. A. approved we CANNOT even TAKE the bar exam in another state so as to practice law therein. This would seriously limit our mobility and flexibility and we would be at a severe disadvantage when we begin to practice law.

Recent communication received from the A. B. A. points out that California has one of the lowest admission standards by law schools in the Unitesd States. California has more law schools without A. B. A. approval than any other state. The fact that California has the most difficult BAR EXAM does not change the A. B. A. 's view of California's comparatively low admission standards.

In essence, we must try and meet A. B. A. standards and satisfy the burden of proof that is placed on the school. Dean Eymann, when appraised of the current A. B. A. information, expressed interest in attempting to meet that burden.

This writer feels that California and A. B. A. accreditation would help to thoroughly wipe out the remaining vestiges of the second class citizenship that will continue to plague all nighttime law students unless our standards and excellence are overtly proven.