San Joaquin College of Law

DICTA

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71% OF FIRST CLASS PASSES BAR

Ten members of the class of 1974 at San Joaquin College of Law passed the California State Bar on their first attempt. Since fourteen persons from the first graduating class took the two and a half day test, this represented a 71% passing rate.

Class members were glad the waiting was over, though they will not officially be members of the Bar until sometime in December when they are sworn in. From that point on most of them will have to decide in which direction to go to enter their new profession.

The 71 percentile rate is a clear indication of the hard work and determination by students, faculty, and administrators to make San Joaquin an outstanding law school.

The names of the new attorneys are: Rod Haron, Jerry Henry, Ed Hunt, Paul James, Walter Johnson, John Mitchell, John Newman, Don Penner, Mio Quatraro, and Leland Sterling.

NOTES FROM THE WOODWORK

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

Hello out there, this is the woodwork speaking. Which piece? Well, as you enter the courtroom, look between and a little below the Judge and the witness, and if you concentrate, you may be able to distinguish an almost-human form sitting motionless except for a blur of fingers doing something to a small and silent keyboard. That particular piece of woodwork, attorneys of tomorrow, is called a Court Reporter — not Court Recorder, as some of the practitioners in your field insist, but Court Reporter — and what he or she is doing is making a record of whatever is being said, including mm-mm's, uh-huh's, nnh-nnh's, oh's, ah's, uh's and many other prehistoric forms of communication.

All of which brings us to today's subject, students, the Record (and the care, custody and control thereof, as we say in Legalese, a language preferred by lawyers and having an occasional similarity to English). The Reporter has custody of the Record, but the care and control is up to the attorneys. And like girls in sweaters, they only get out of it what they put into it.

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CUSTODY LIMITATIONS ON THE RIGHT OF PRIVACY.

by Bruce A. Owdom

The law, as a tool for ordering surging economic, social, and technological forces, seems to be forged often in the cool stoves of non-creative thought. As a result, the law frequently fails to meet its challenge to provide clear, workable solutions to conflicts between competing forces.

Such a conflict arose when the courts were called upon to strike a balance between an individual's right of privacy guaranteed under the Fourth Amendment and the latest law enforcement efforts to curb crime with modern audio technology. The court's struggle with a narrow aspect of this problem in California—namely, the right of privacy to which one lawfully held in custody is entitled—is the subject of this comment.

The first cases dealing with electronic eavesdropping established the view that the Founding Fathers in drafting the Fourth Amendment intended that the guarantee against unreasonable searches and seizures be applied to physical property only. Thus, in *Olmstead v. U.S.* 227 U.S. 438 (1928) a non-trespassory wire tap of the defendant's telephone was not an invasion of privacy under the Fourth Amendment. And in *Goldman v. U.S.* 316 U.S.128 (1942) an agent's unauthorized entry to place a recording device (which failed to work) did not taint evidence secured by placing a detectaphone on the outer wall of the defendant's office, because the latter did not involve a trespass.

The inadequacy of this formulation of the Fourth Amendment, in view of the advances of "bugging" technology which break down the protections formerly provided by walls and distances, was not confronted by a majority of the United States Supreme Court until *Katz v. U.S.* 389 U.S. 341 (1967). Katz was convicted of transmitting wagering information by telephone. At

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STUDENT FEES

The annual $10.00 fees for Student Association memberships are now due. They should be paid to Chuck Brewer, Association Treasurer.

Students may also pay association fees by sending their check for $10.00 to SJCL Student Association, 1717 S. Chestnut, Fresno, Ca.

Past housing subsidies have concentrated on new construction rather than rehabilitation. The above house, typical of rural Fresno County, might still be salvaged if rehabilitation subsidies were made available.

FED HOUSING PROGRAMS FULL OF HOLES

by Kathy Hart

The Housing Act of 1937, which created a low-rent program known popularly as "public housing" (and known familiarly by the tenants who live in them as "The Project") marked the federal government's initiation into government-subsidized housing programs for low- and moderate-income families. If 1937 was an initiation, 1949 was total immersion: the Housing Act of 1949 declared as a national goal a "decent, safe, and sanitary dwelling for every American" and expanded the range of subsidized housing progams to include homeownership and various types of rent supplements. By 1973 immersion had turned into a drowning and the water was getting brackish. Putting a halt to it all, Nixon declared an eighteen-month moratorium on all government-subsidized housing projects, leaving the poor people—and the construction industry—to fend for themselves.

Two major criticisims of past governmental housing programs, whose effects can be seen throughout Fresno County—are the following:

1. Construction standards for subsidized housing are unrealistic and tend to treat people as if they were all middle-class whites; and
2. Subsidies are distributed in a way that reinforces ethnic segregation and economic isolation. In some communities in Fresno County subsidized housing accounts for over one-fourth of the total housing stock (Huron, San Joaquin, Parlier, Mendota), whereas in other communities (Clovis, Coalinga, Kingsburg, Sanger) there is almost no subsidized housing of any kind. It is *not*, as some think, the referendum requirement for low-rent public housing that is entirely responsible for this disparity, for there are many housing subsidy programs that do not require a referendum for their approval.

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CONGRATULATIONS CLASS OF 1974

FRESNO DETENTION FACILITIES CHANGING IN FORM AND SUBSTANCE

The most noticeable change in Fresno County's jail is its exterior. Windows with bars have been replaced by concrete designed to make the facility more amiable with the other modern structures nearby, and to make the entire facility more secure. The days of cutting through bars and climbing down outside walls via bed sheets are in the past.

Interior modifications in the facilities for men have proceeded slowly. The first and fourth floors have been completely modernized, each serving different functions.

The fourth consists entirely of cells monitored by the most up to date equipment and "decorated" with all the comforts of home (beds, TV's, etc.). The first floor consists of dorm facilities, interview areas, visiting facilities and staff offices. (See September edition).

Other floors of the facility have not yet been modernized, though the plans have been made and reconstruction is to begin in the near future.

The contrasts between the new and old sections are very noticeable. The older cell blocks are much more enclosed and do not offer much in terms of suitable living conditions for prisoners or deputies. Two separate programs at the jail illustrate the degrees of difference in the present rehabilitation structure.

One program is designed to give repeaters a chance to learn about themselves so they can fit into society upon their release. A large room with many of the features of a normal home, (chairs, couches, carpeting, etc.) is provided for these men. A strong point of the program is the counseling of inmates as they proceed through the program.

The other "program" is known as the "hole" and consists of a punishment cell which has little light, no furnishings, other than toilet, and where privileges are nonexistent. This is the place where alleged offenders of jail rules are placed for various lengths of time.

Future plans include remodeling the second and third floors. A type of recreation area for prisoners is being contemplated in order to eliminate some of the frustrations and antagonisms experienced by prisoners in confinement for long periods. In addition, if the current trial counseling program works, it may be expanded, depending on the availability of funds for such programs.

Facilities for women inmates do not appear to have been part of the remodeling program. The women's section adjoins the west side of the main jail building.

The cafeteria of the jail is functional and efficient, though without candles on the tables and waiters to serve the food.

Attorneys, friends, or relatives who wish to visit may have the choice of using the one interview room (4 ft. by 5 ft. in dimension) or the back corner of an old visitors area. In either situation, privacy is at a minimum.

The attitude of the women jailers is perhaps the only saving grace of the facility. All other improvements apparently are some period of time away.

While many improvements have yet to be made in the facilities in Fresno, those who have worked on the plans for improvements to date should be given credit for their efforts and more funds in their budgets so that future changes will not be long in coming.

Perhaps the best that can be said for any jail is that it is a good place to stay away from. New bars, locks and keys do not make it a prized vacation spot.

WAITING

"They're in the mail."
Did you hear?
That Jeopardy issue wasn't too clear.
"Any day now—how do you feel?"
Feel, hell, this thing's unreal.
"Statistically speaking we're hoping for 8"
But how did I do on that damn multi-state?
Mailman's coming.
My stomach's a flip.
Do I see the brown envelope?
Fat one or thin?
I should sue the Bar for the
state that I'm in.
Go on, you can do it—Go check out the news.
It's only a test—what's there to lose?
I reach out for the the one that'll seal my fate—
Could I still be a Dentist or is it too late?
"Congratulations!" it reads
This is your lucky day—
Pay for one Reader's Digest and give
another away"
Sh-i-t!

Mio D. Quatraro

DICTA STAFF

Editor ..... R.L. "Chip" Putnam
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STUDENT ASSOCIATION: A MUST

At the latest student board meeting the members discussed the problem of low association membership. As the exchange of ideas on how to elicit membership took place, I thought to myself what type of campaign drive would be necessary to accomplish our goal.

Recollections of past and current board activities as a selling point crept to mind—instances of members putting in long hours to draw up a student constitution; working on orientation and graduation committees, on tutorial programs, banquets and socials; organizing and maintaining direct lines of communication with the administration; working to get action on student suggestions and grievances; seeing to it that administrative directives did not work injustices on students; relaying vital information to students on developing school policy and board activity; helping to form a school paper; and on and on.

However, the more I thought about selling points the more it became apparent that one simply cannot, in a convincing manner, tell non-members that the association is involved and doing its best to realize that which we as board members were elected to do. But, the constant growing pains of our new school all to vividly portray the story of a need for student involvement and coordination.

We as the elected student body officers and class representatives invite and cajole you to enter the body politik. Enrich your student life and ensure the progressive and enlightened growth of our to a single conclusion, neglected students and unresolved friction. school. Policy decision making from only the administrative point of view leads all too often

Students can realistically avoid administrative arbitrariness and at the same time facilitate the school's effort in its search for a place on the California map. We should strive in this effort to put ourselves along side such other well-known institutions as Stanford Law School and Boalt Hall. We as students must provide the labor and sweat in a cooperative effort with our administration to secure such worthy attainments as A.B.A. accreditation.

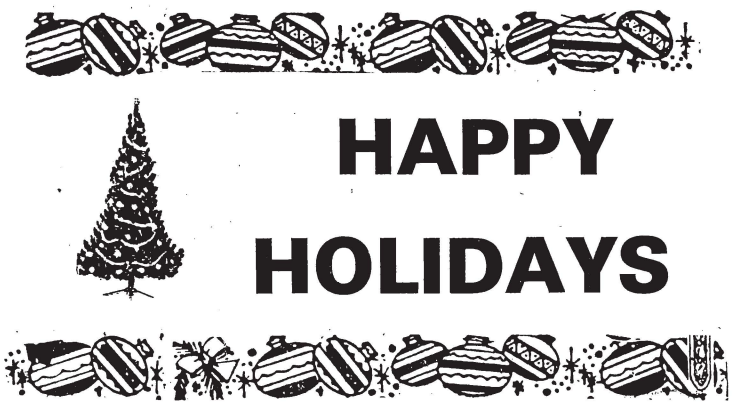
The board for example is currently planning the entry of SJCL into state wide moot court competition. Additionally, the board is in the investigatory stage of a plan to raise scholarship funds for students. But so much more needs to be done and so much more can be done if we come together under the auspices of a cohesive association.

Please help us to help you. For information on how you can join and begin taking a responsible role in your school see me or any of the other school officers or representatives.

—Gary S. Austin,
Vice President

Important Dates

December 16 — 19 Midterms
December 20 — January 5, 1975 Christmas Break
January 6 Spring Semester Begins; Tuition Due



Housing

To the first charge—that construction standards are unrealistic—one need only look at the minimum design standards required by the Housing Authorities of the City and County of Fresno for the government-funded Section 23 leased housing program (a rent-supplement program in which the Authority leases new or existing houses from owners, sublets them to tenants, and pays the difference between market rent and what the tenant can afford to pay).

The Housing Authority publishes a 68-page guide on design standards, whose niggling details run something like this:

> All sprinkling systems shall have pop-up type sprinkler heads;
>
> No rock, redwood chips, or bark are permitted on leased housing sites;
>
> Wood fencing shall be made of redwood or cedar and shall not contain knots in excess of 1 and 1/2 inches in diameter;
>
> Nationally recognized brand name appliances shall be provided in the kitchen;
>
> No point on the floor must be more than 6' from an electrical outlet;
>
> Interior walls must be finished with top quality interior flat latex paint, such as Dutch Boy NO. 34W14 Heavy-Bodied Acrylic paint, or equal.

Perhaps the most reprehensible requirement is that the food preparation-cooking area shall be screened from the living room sitting area, as if living and eating were two mutually exclusive functions.

This is the house that Subsidized Housing builds. We don't allow bark or chips on the soil, although they decompose to create enriching humus. We don't allow large knots in the fencing, which eliminates all possibility of recycling some weathered farm fencing. We promote the use of redwood when its use should probably be taxed; as one of the endangered forest species, the use of redwood should be discouraged, not encouraged. And we provide a host of fancy electrical appliances in kitchens of elderly housing units, when many of the elderly prefer sparse and simple kitchen facilities.

The cost of subsidized housing is staggering—the construction cost of a recent 30-unit public housing project in Firebaugh was estimated to be $800,000—almost $27,000 per unit, which does not include the thousands of dollars in administrative and maintenance costs.

Older homes can be remodeled, though it may not be necessary to go into the detail the owner of this home did.

In deference to the Housing Authority, I should explain that they have their "compelling" reasons for some of the above requirements. If they require top quality Dutch Boy paint they'll end up with Sears Best, whereas if they required any less they'd probably end up with homemade whitewash. And they don't want bark or chips on the soil for fear the low-income tenants will be flinging the stuff at each other.

Still, we have set such a standard for middle-class hygiene, uniform construction methods, and the inclusion of technical gadgets in subsidized houses that some think Peru, India, and Japan are likely to be housing their poor in decent homes and communities long before the United States does. In Hong Kong they've built steel uprights and beams, with concrete slabs poured into place and requisite utility networks supplied. These have been turned over to people as "shells" to be personally finished.

Meanwhile in Fresno County there are people living in old buses and in cars, and every morning when I go to work I see people who have spent their nights sleeping on the Fresno Mall, which might be rather a nice thing to do on a hot summer's night *if* you only had to do it once.

One problem is that past federal programs have concentrated almost entirely on new construction rather than on the rehabilitation of existing housing. The first policy statement under the Housing and Urban Development Act of 1968 specified that two of the six million subsidized units planned for the country were to be rehabilitated units rather than newly constructed ones. In the second policy statement the number was reduced to one million on the grounds that rehabilitation costs had risen.

This policy has .been criticized by many, who regard rehabilitation as preferable to new construction. It is faster and cheaper, does not require the consumption of new land, and involves bringing houses up to health and safety codes rather than outfitting the kitchen and utility room with wall-to-wall Westinghouse.

Congress recently enacted the Housing and Community Development Act of 1974, which will substantially change the way housing subsidies are administered. No longer will the federal government be the almost exclusive provider of subsidies; cities and counties will be able to devise their own housing programs and will receive block grants to carry out the programs.

Whether they will do better than the government has is problematic—the same old inequities may simply be cast into new forms. On the other hand, many see this as a chance for cities to demonstrate that locally designed programs—absent federal strictures—will achieve a better balance between new construction and rehabilitation and will fit housing into the context of total community development. Cities and counties have until April 1, 1975 to prepare grant applications under the new Housing Act; what will be done remains to be seen.

P.C. 270: GO TO JAIL DO NOT PASS GO

by R.L. "Chip" Putnam

Legislation is desperately needed in the area of child support regulation under Penal Code section 270, particularly in relation to its effect on indigent defendants.

As the law currently stands, a person who has failed to make some, or all, of his payments to the county for support of his children, can be ordered to appear for a hearing, and if he does not have some acceptable excuse, he can be given up to one year in the county jail.

While on the surface it may be argued that punishment is the proper remedy, the fact remains that the courts often neglect to go beyond the four corners of the complaint in front of them.

The typical indigent defendant is charged at arraignment with willful failure to make his payments, appointed a public defender because he cannot afford private counsel, then given a hearing two to five days later. In the interim period he is to contact the public defender, who in turn is somehow to gather all facts from the defendant, a person most likely ignorant of most of the facts in his case as well as the law involved.

The man from Family Support, in contrast, may have a four inch file compiled over months of investigation. He often seems to raise some little fact that makes the defendant look like a sly and cunning thief.

Somehow, the court overlooks the defendant's "salary of $150 to $500" a month from which he has payments for child support of $100 per month, rent and other expenses which come from breathing. Jail is the word and Heaven forbid if the person has remarried or is living with another person! The "crook" is getting what process is due to him — or is that due process?

The county will expend something like $6,000 for the defendant's room and board, continue with child support payments, and pick up the welfare tab should there be a second family involved whom the defendant was supporting. To top off the penalty, the defendant has lost his job and will, thus, be forced into a more difficult situation once he exits the jail.

Solutions are not easily brought about by legislation.

There can be no doubt that a person who desires to have children should also realize the responsibilities involved, including support of the children should the marriage later dissolve.

The problems stem from facts such as a person's changing social situation and physical and mental capabilities, as well as changing standards in society. Justice mandates that the courts and the laws recognize such changes and provide positive judgments for such problems.

For instance, a jail sentence for a child support case may be justified if used in a manner which serves as a recovery of county expenditures while protecting the defendant's future earnings. Several weekends on a road detail or painting park benches is much more productive than rendering the person an inmate in a debtor's prison.

Laws must be simplified so that a person realizes he has a debt and knows that there are *positive* alternatives. For example, if a person cannot find employment, alternative service should be available to compensate the county for benefits conferred on him and on his behalf.

Providing alternatives and recognizing that humans have their faults, as well as assets, can go a long way in improving the so-called due process, provided those who in some way have failed to make child support payments.

Oppressive laws, and oppressive administration of them, may not take away the right to live, but may usurp the desire to live in those who find that tomorrow will be worse than today.

Custody

trial the government was allowed to introduce evidence which had been obtained by attaching an electronic listening device to the outside of the public telephone booth from which Katz had placed his calls.

Katz's conviction was reversed because the FBI failed first to obtain a search warrant. More important, the court rejected the government's contention that since the eavesdropping did not involve a physical trespass, the Fourth Amendment was not violated. "The premise that property interests control the right of the government to search and seize has been discredited. The Fourth Amendment controls not only the seizure of tangible items but extends to the recording of oral conversations as well, overheard without any technical trespass . . . ." The Fourth Amendment protects people, not simply "areas", against unreasonable searches and seizures. Therefore, the recording of Katz's conversation violated his right to privacy, on which he justifiably relied in using the telephone booth.

Like earlier cases in California, *People v. Morgan* 197 Cal. App. 2d 90 (1961), admitted into evidence a recording of a conversation the defendant had with his sister over an intercom-like telephone at the jail. The court initially reflected the *Olmstead* view that the evidence was admissible because the installation and use of the equipment did not involve a trespass, but it noted further that there was no invasion of privacy because "a man detained in jail cannot reasonable expect to enjoy the privacy afforded a person in free society. His lack of privacy is a necessary adjunct to his imprisonment" for the purpose of maintaining jail security.

Circumstances which fit somewhere on a continuum between *Katz's* justifiable reliance on his right to privacy and *Morgan's* denial of any reasonable expectation of privacy occurred in *People v. Chandler* 262 Cal. App. 2d 350 (1968). The defendant and his accomplice were arrested and placed in the back seat of the patrol car, where their incriminating conversation was recorded. Citing *Morgan* and other authority to reiterate the general rule that prisoners do not have a right to privacy, the court held without further analysis that "reasonably the right of a defendant to privacy while under valid arrest in a police car can be no greater than if he were in jail."

However, a year later in *People v. Blair,* 2 Cal. App. 3d 249 (1969), another District Court of Appeals recognized that under *Katz* "it is conceivable that in a given case the police might make representations to even an incarcerated defendant that would cause him to have a right of privacy." But before a jail prisoner may have a reasonable expectation of privacy, there must be some "affirmative representation" to that effect.

Just such a representation was found by the California Supreme Court in *North v. Superior Court of Riverside County,* 502 P 2d 1305 (Cal., 1972). Here a detective surrendered his private office to the defendant and his wife so that they could talk. Unknown to either the defendant or his wife, the police had installed a recording device in the office, and the conversation was recorded.

The Court emphasized its approval of monitoring inmates' conversations, even with their spouses, in visiting rooms and similar places. "That practice seems reasonably necessary in order to maintain jail security." But here the circumstances suggest that the police has "lulled" the defendant and his wife into believing that their conversation would be confidential. This deliberate deceptiveness coupled with injury to the confidentiality of the husband-wife relationship (which is protected under California Evidence Code section 980) prompted the Court to disallow such exploitation of a situation where marital privacy is reasonably expected to exist, "for the sole purpose of obtaining incriminating evidence."

If the juxtaposition of *North* and *Chandler* suggests the current perimeter in which a reasonable expectation of privacy may arise, it also illustrates an uneven rationale. It is at least arguable whether or not protection of confidential relationships is a valid criterion for the determination of the existence of a reasonable expectation of privacy, especially in light of the emphasis placed on jail security in denying that right. Even in *North* the Court mentions the policy favoring the use by jail authorities of reasonable security measures.

Yet in *Chandler*, where the defendants had been held in a patrol car when their incriminating conversation was recorded, jail security was asserted as justification for denial of their right of privacy. Moreover, it would seem just as likely that the defendants in *Chandler* were "lulled" into believing their conversation was confidential as the defendants wife in *North*—perhaps by officers who left the defendants alone in the police car ostensibly to complete the investigation at the scene but actually "for the sole purpose of obtaining incriminating evidence."

Woodwork

As an example, a few weeks ago, during a short civil court trial, questions were fired at the witness in such a barrage that he found it easier to keep up by merely nodding or shaking his head. As far as the attorney was concerned this was a really heavy cross-examination, but on the Record it's a monologue. When I mentioned to Counsel, during a recess, that there were several questions with no audible response, he said, "Oh, that's okay, the Judge saw it." Well, that's fine for now, but if it should be appealed, is he going to send the Judge up with the transcript to explain?

Reporters can and sometimes do put down, "Witness nods head," or, "Witness shakes head," but is that reporting or interpreting? It's not that I wouldn't like to add my two cents to the proceedings, but I don't think I have the right. So, as many other Reporters do, I put "(No audible response.)" in the transcript, if one is made.

Some of you are probably thinking, "Well, if an audible answer is required, why doesn't the Reporter say something?" In many cases, we do, but when Counsel is steamrolling, it's usually at a pretty rapid clip, and all the Reporter's efforts are concentrated in getting it all down, not in interrupting. And needless to say, breaking into the middle of a brilliant examination is less than appreciated. And when it's the Reporter doing it, of course there is that momentary lapse, while everyone wonders where the voice came from.

As I mentioned earlier, the attorney has the care and control of what he does and does not get into the Record. So, Lesson Number One is to be sure the witness answers aloud. Just in passing, "Yes," or "No," as an answer leaves no doubt as to its meaning, which is not always the case with "Uh-huh," or "Nnh-nnh." If a witness answers, "Hmm-mm," you could ask, "Is that yes?" which hopefully will force a "Yes" reply.

There are many other helpful hints concerning making a good Record, such as using some kind of restraint when dipping into Legalese, or avoiding what Reporters call false starts, where the attorney starts out with a thought, gets a new one in the middle of that one, hesitates, decides the first one was better, and then forgets where he is. Then there are the occasions when Counsel start getting a bit testy with one another, and soon are directing remarks to each other and not to the Court. Judges don't seem to like that very much.

Then there are the problems —well, maybe we can get into some of these another time. You have enough to worry about as it is.

The author is currently the Court Reporter for Superior Court Judge Hollis Best.

WANTED

Persons interested in writing articles and/or assisting with the publication of the DICTA are encouraged to contact Chip Putnam, 1974-75 editor (224-3742).

There are also plenty of opportunities for amateur or expert photographers! Give us a hand for your benefit.