SAN JOAQUIN COLLEGE OF LAW

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1717 SOUTH CHESTNUT
FRESNO, CALIFORNIA 93702
VOL. 4, NO. 3 DEC. 11, 1975

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photo by Jim Gray

Fresno County Juvenile Hall: For the Detained Minor It's Still Time.

Not with a Bang but a Whimper

Solving the Malpractice Mess

by Gary Smith

Malpractice insurance already costs Californians $240,000,000 a year. It costs you: $1.50 for every visit to the doctor; $40.00 for a typical surgery; $30.00 for a typical hospital stay.

Next year it may cost three times as much, so states a California Medical Association publication entitled "You and the Malpractice Insurance Crisis." For the past year, since California doctors were informed that their insurance rates would, in some cases, be increased 300%, the malpractice crisis has raged on, leaving in its wake the smoldering ashes of trust between the insurance, legal, and medical professions. For a year the debate has continued on. "Who is at fault?" "Why are the rates so high?" About the only objective result of the debate so far is the fact that people have become aware that malpractice insurance is adding to their medical bill. It is most amazing that so much time can go by with so little being accomplished; without the principles even being able to define the issues involved.

Since I am presently employed by an insurance company and have had the opportunity to work on malpractice cases, I have come to realize that not only are the laymen unaware of the causes and effects of the high cost of malpractice, but so are the people directly involved, doctors, lawyers, and insurance carriers. There seems to be an appalling lack of knowledge and, what is worse, a lack of effort to educate oneself with anything but a superficial analysis of the problem. To be sure there has been no shortage of propaganda published by both sides. The result is that there is no shortage of ammunition to use against a predetermined opponent but little objective evidence upon which to base a competent analysis. The result is a three-way finger pointing contest with each belligerent able to wave an ample amount of meaningless statistics in the face of his opponent to justify a stand that he would have taken whether or not the statistics were available.

The facts are these: In the period of July 1, 1974, to June 30, 1975, there was a total of 68 malpractice cases brought to trial which resulted in plaintiff verdicts. The average verdict was $141,000. In all, these verdicts resulted in judgments of 9.6 million dollars. This in itself is not too surprising, nor is it a staggering total considering the premium paid for the insurance. It is not a truly indicative figure, however, since almost all malpractice claims are settled out of court. From my own experience, I estimate that the above figures are only between 5-10% of the malpractice claims which were paid in that same period.

The cases brought to trial are the tips of the iceberg, and both quantatively and qualitatively the real problems lie below that highly visible tip. The overwhelming number of claims are never brought to court, and they include the majority of the sure losers (from the defense's standpoint). Those that are tried are

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Inside

Juvenile Lawyer

by Keith Lusk

As many lawyers know, the Welfare and Institutions Code (W&I) governs the manner in which juveniles are treated in California. The juvenile court over the years has become more and more oriented to an adversary proceeding similar to that which now exists in the adult courts. Formerly, attorneys who represented juveniles spent very little time, if any, preparing their cases. In some instances attorneys representing juveniles were not even aware that the W&I governed juvenile court proceedings. Almost without exception, at least in Fresno County, a juvenile is now represented by counsel either in the person of the public defender or private counsel. The Probation Department in turn is represented by the District Attorney's Office.

Last year, because of an interest that I have in juvenile court law, I was given the opportunity through my employment at the Probation Department to do legal research into certain problem areas in the W&I. One such problem area was the apparent conflict between W&I 625 and 625.1. W&I 625 declares in part that a minor may be taken into custody if the arresting officer has reasonable cause to believe that the minor comes within section 600, 601, or 602 (i.e., a neglected child, a child out of control, or a child who has committed a criminal-type offense). W&I 625.1 provides that an officer may *not* take a minor into temporary custody for the commission of a misdemeanor (W&I 602 offense), unless he has reasonable cause to believe that the offense *occurred in his presence.*

I was aware of at least one case in which an attorney for a juvenile argued that W&I 625.1 should prevail over 625 (his juvenile client committed a misdemeanor but not in the officers presence, and was arrested). Unfortunately, for the juvenile, the attorney had not researched the issue. The court ruled that W&I 625 would prevail based on a finding of the Attorney General, which at the time was the only authority that discussed the conflict. The Attorney General was of the opinion that W&I 625 would prevail over W&I 625.1 based on section 9605 of

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91.7% of 1975 San Joaquin Graduates Pass Bar

by Dennis Mederos and Michael Marderosian

For the second year in a row, the San Joaquin College of Law has proved that its graduates are competitive with those from any law school in the state based on state bar results.

Last year, out of the first graduating class in the school's history 71% (10 out of 14) passed the bar examination on the first attempt. Many felt this was an achievement that would be difficult to equal, much less surpass, yet that is exactly what the second graduating class did. There were twelve graduates who took the California State Bar for the first time, and eleven of those passed the exam. This 91.7% passing rate places San Joaquin among the top, if not at the top, of all schools in this category and gives the school a first time passing rate of 81% for its first two graduating classes.

However, these are only figures, and they do not give the real meaning the results have for the school. Through the first four years of the school's existence, the administration and faculty worked diligently to achieve the highest standards possible for a new law school. Even with such work, the fear persisted that perhaps there was some unforeseen deficiency. But this fear has been pretty well put to rest with the results recently achieved. The far-reaching effects go beyond the immediate praise lavished upon the school.

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Letters to the Editor

editor:

In 1967, a newspaper columnist, Flora Lewis, asked a man to define "femininity."

"It's looking pretty and elegant," he said. "And it's being nice, not arguing with men or nagging or complaining, or having different opinions. Not pushing them, or interfering or anything, not wanting to get their own way instead of doing what they're told. I would say it's wanting to please a man all the time."

Would you hire this "feminine" woman as your attorney?

Is this your idea of femininity?

Can you imagine a female law student reflecting this attitude in the classroom while being probed by the brilliance of an Eymann, or the questing elegance of a Frampton?

Did you think that economic equality had already been won by women?

Not so. According to 1974 statistics from the Department of Labor, more than 90% of the women who work do so because they need the money in order to survive . . . the same reason that men work.

It is a cruel myth that women have a choice of working or of staying at home. Most of them have no choice, just as men have no choice.

And when they do work, women are paid less. The average non-farm female hourly earnings were only sixty percent of their male counterpart's earnings as of 1973.

To demonstrate the inequality that still exists, here are some results of a 1974 survey of the Fresno offices of the Department of Employment Development, a State agency.

Of a total of 109 employees, 56% were women, yet their monthly mean income was $195 less than males doing the same work.

Only 16% of the supervisorial class were women.

Do male attitudes reflect the stereotype that women are not as Capable as men?

In a questionnaire taken from a random sample of Fresno Employment office employees, 60% of the males felt that women were not capable of being supervisors or administrators.

Therefore, since you, as attorneys, will be important catalysts of social opinion, I ask that you give just and tempered thought to your perceptions of women's role in our society.

Since most women, through death, divorce, or separation, face at one time or another in their lives the necessity of earning a living, all men who have ever loved a woman should change their definition of femininity and support women's efforts toward equality of economic opportunity.

Norma Crane

A President Lost

by Peter Champion

As the ninth "President of Congress," John Hanson's spot in history has been effaced from the American memory. If this was his sole claim to remembrance, one might justify his oblivion by stating he was not the *first* President of Congress. To justify thusly, one must disregard a position in which John Hanson was the first; *John Hanson was the first "President of the United States."*

Although the Articles of Confederation were not ratified until 1781, the Continental Congress had been in session since 1774. With the Articles' ratification came Congress's adoption of the ceremonial title: "The United States in Congress Assembled."

A full eight years prior to the adoption of the United States Constitution and George Washington's inauguration, representatives met in Independence Hall conducting business under the elected Provisional President Thomas McKean. Convening on November fifth, they unanimously elected John Hanson as the first "President of the United States in Congress Assembled."

Due to ill health, Hanson's administration lasted only one year, but what a significant year to our virgin nation! Hanson's direction and leadership were instrumental in guiding Congress into adopting the "Great Seal of the United States," into providing a permanent standing militia, into instituting the Federal Bank, into organizing the Post Office of the United States of America and the Postal Zone System, into dispatching and receiving ambassadors, into consummating "United States" Treaties of Peace and Alliances, into conducting the practical business of a sovereign, and into declaring that the last Thursday in November be set apart as a day for prayer and "thanksgiving."

As the United States' first President, John Hanson was a man who caught the stones of political and diplomatic peltings to build not a cairn, but a nation.

SJCL Releases Financial Report

The two tables below are reprinted from the 1974-75 financial report prepared for San Joaquin College of Law by the accounting firm of Horg and Gray. A copy of the full report obtained by the DICTA is available for inspection at the San Joaquin Law Library, main desk.

Assets July 31, 1975

CURRENT ASSETS	
Cash on hand	$ 20
Cash in bank—general	93,550
Cash in bank—trust	4,112
Prepaid expenses	1,752
Library lease—current portion (Note 2)	2,520
Total Current Assets	$101,954
DEPRECIABLE ASSETS—at cost (Note 3)	
Library and office equipment	$65,984
Less accumulated depreciation (straight line)	8,011
Total Depreciable Assets, Less Depreciation	57,973
OTHER ASSETS	
Library lease—non-current portion (Note 2)	$10,130
Estimated value of leasehold (Note 4)	50,000
Total Other Assets	60,130
Total	$220,057

General and Administrative and Library Expenses

Year ended July 31, 1975

GENERAL AND ADMINISTRATIVE	
Administrative salaries	$37,097
Faculty salaries	26,515
Other salaries	415
Advertising	1,346
Telephone	628
Insurance	793
Office expense	2,034
Rent for classroom space	6,113
Taxes and licenses	1,712
Travel	2,489
Graduation expenses	1,084
Depreciation (straight line)	132
Legal and accounting	5,568
Printing	684
Teaching aids	411
Other expense	329
Total General and Administrative Expenses	$87,350
LIBRARY EXPENSES	
Salaries	$ 5,615
Rent	6,020
Utilities and maintenance	1,438
Outside services	2,750
Supplies	897
Book binding	276
Depreciation (straight line)	4,717
Supplements	573
Zerox costs	321
Other expense	612
Total Library Expenses	$23,219

SJCL DICTA

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Sex And The Single Student: A Case History

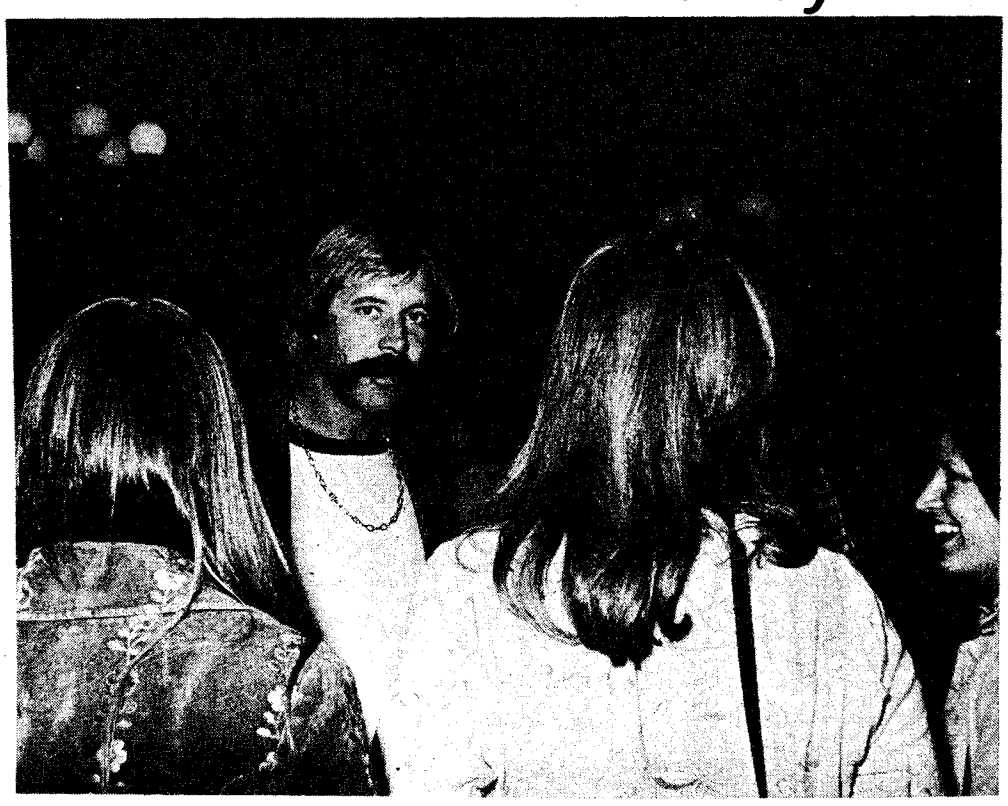


photo by Jim Gray

by Dr. H.

The Marquis de Sade, Dr. Kinsey, Masters and Johnson—all have dealt with the flourishing subject of human sexuality. But a thorough search of the psychoanalytical literature reveals that neither those authors nor any others have undertaken any discussion of human non-sexuality. Therefore, it is something of a medical landmark to report the following case history of an unmarried, male Caucasian law student, age 31, whose behavior totally dispels the myth of the free-thinking, sexually promiscuous student participating in one bacchanal after another.

Medical History

Patient: Mr. X (see photo at right).

Sex: Questionable.

Symptoms: Sexual debility, diminished capacity, loss of consortium, and alienation of affections.

Patient first began to notice the onset of the above symptoms soon after entrance to the San Joaquin College of Law in September, 1972. Upon learning that battery was any unconsented-to contact, he grew leery of making any advances whatsoever toward the opposite sex, for fear a barrage of civil suits would be lodged against him. When later he learned about the rights and duties of promisors and promisees, feoffors annd feoffees, trustors and trustees, and fiduciaries and fiddledeedees, he concluded that all relationships were fraught with peril. He neither wanted to do nor to be done to.

To determine the extent of his sexual dissociation, the patient was administered a series of Rorschach inkblot tests. The first diagram showed a large phallic symbol thrust beneath inkblot clouds. When asked what the diagram represented, the patient responded: "Piercing the corporate veil." (It should be noted that the correct response would have been either "The Washington National Monument" or "Lone Tree in Wintertime.")

The next Rorschach showed a male and female with outstretched hands standing underneath a fruit tree. The patient responded that the diagram showed "Offer and acceptance." When asked to explain further, he said that the man was showing his manifestation of willingness to enter into contractual relations to sell an apple tree to the female; that absent fraud, mutual mistake, anticipatory breach, or failure of conditions, the contract would be performed. He elaborated that such contract could be rescinded if (1) the tree did not produce apples, (2) the tree were destroyed by lightning before the female took possession, or (3) the apples turned out to be kumquats.

"The Thrill is Gone"

I pointed out to the patient that the correct response would have been "Adam and Eve in the Garden of Eden." Less desirable, but acceptable responses would have been "Newton Discovers Gravity," or "Socrates with Disciple Contemplating the Hemlock Tree." Upon hearing this, the patient grew silent and refused to examine any more Rorschachs.

Next, the patient was given a word association test. The following list of responses to the names of common objects gives some idea of the aberrant mental state of Mr. X:

Object: Boat

Patient Response: The Ship Peerless

Object: Car

Patient Response: McPherson v. Buick Motors

Object: Sheep

Patient Response: Shepard's Citations

Again, this word association test proved to be unproductive. The patient's responses were so peculiarly esoteric neither I nor my reputable colleagues had the slightest idea what neurotic world he inhabited. The direct-inquiry method of patient diagnosis was then resorted to:

Doctor: Do you have any sexual fantasies?

Patient: What are those?

Doctor: With what frequency do you engage in amorous relations?

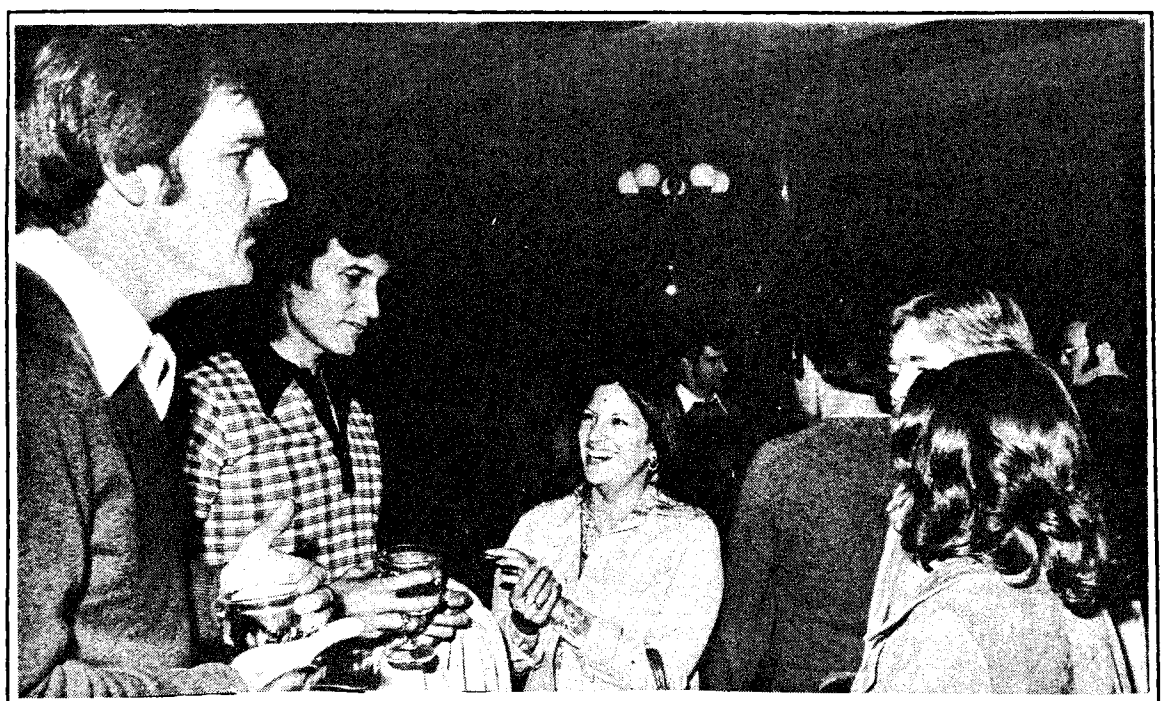
Patient: What are those?

Doctor: Do you ever have any fun?

Patient: I object that this line of questioning is immaterial, irrelevant, inconsequential, and incompetent.

At this point the patient excused himself and said he had to go memorize the 214 exceptions to the hearsay rule. "Oh well," I cried after him, "All you law students are alike — hearsay today, gone tomorrow."

Analysis: Patient suffers from severe psycho-sexual dysfunctioning brought on by monomaniacal absorption in studies. *Recommendation:* Immediate hospitalization for in-depth study in a clinical environment.



San Joaquin Students take time out to quaff a few glasses of beer at the 1975 ASB Fall party. The event was held in the Stein Room at the Silver Dollar Hofbrau and sponsored by the San Joaquin Associated Student Body.

photo by Jim Gray

a lawyer

Like a withering nut
or a wilting plant.
He is dying piece-meal
of a sort of emotional anemia
But is unperturbable
at the cool center of
Forum.
In him he bred the lawyer,
his coolness is professional,
Not excessive.
But he has chilled,
Softly by degrees,
his sensibility;
Has scissored, delicately,
the rapt
Body of music and love
from his own.
He would like someone
to speak to him,
And is almost afraid
that I
Will commit that indiscretion.

—Ezra Pound

The Malpractice Mess

there because; 1) there is a question of liability which cannot be resolved by a compromise settlement; 2) the amount of damages is in dispute and cannot be resolved; 3) the plaintiff can get damages in excess of the insurance policy limits, or 4) the insured doctor will not give his consent to settle. (This can be very frustrating for the claims adjuster who may be faced with a potential bombshell and a crusading and slightly paranoid insured.)

What must be very disheartening for the person who is earnestly trying to find a solution to the problem is the fact that in the first six months of this year the total amount of judgments against doctors increased by 15% (1974: 4.48 million; 1975: 5.18 million). Again, this is the tip of the iceberg. If the judgments rose by this amount in one year, what about the rest of the claims?

So far this much can be agreed upon: the insurance companies who write the policies are losing. Most doctors can ill afford the drastic increase in the rates, but those who can will likely pass it on to the patients anyway. It is doubtful that the lawyers as a whole are getting rich on their malpractice suits since most of these cases are losers. If the California Medical Association is correct, only 14% of the premium dollar ever gets into the hands of the victim, so the plaintiffs, as a whole, do not come out ahead. The sad fact is that in the process of making a claim for malpractice, in preparing for the action, and in actually presenting the case, very few persons, if any, come out ahead.

Defining the problem is the easy part. The real task is determining why it exists and taking action to eradicate it. Malpractice is like the festering of an infection which, if not controlled as soon as possible, can ravage the entire host. The first symptoms are apparent even now, and if not corrected swiftly and decisively, the host will have to pay the price later. And, in this case, the host is the right of the injured and the function of the courts.

The first anemic attempts to solve the problem have come from the Assembly in the form of AB 1, the Medical Injury Compensation Reform Act. Other equally antiseptic measures can be expected by the dozen in the next session. One would assume that the legislature wants to show that it is really interested in the doctor without being radical with the existing system. After all, it does seem wiser to test the water by sticking in your big toe than by diving in head first. On the doctors' part it seems doubtful that they will be placated for very long. What fighter having won the opening round wants to see the fight called off? (Keep your eyes and ears open because from all indications the best rounds are yet to come.)

The pamphlet described in the beginning of this article suggests measures that should be taken by the legislature. It states, "Costs can be dramatically reduced, while still protecting the patient's right to sue and collect damages, if the state will: (a) encourage arbitration if the patient prefers, (b) establish fair and adequate awards for economic loss suffered by injured patients, (c) change the practice of lump sum awards to periodic payments related to the patient's need, (d) place reasonable limits upon lawyers' contingency fees, (e) permit evidence in courts about payments the patient has received from other sources for the same injury, (f) require pretrial screenings to weed out costly nuisance suits." A great deal of this was accomplished in AB1. However, it is doubtful that this will have a great effect on the huge sums being paid in on malpractice premiums and paid out on malpractice claims. The effects of the provisions will not be known for some time, but it is a safe bet that considering the complexity of the problem, the unwillingness of the parties to make an introspective analysis, and the continuing pointing of fingers, a solution is a long way off.

Juvenile Court

the Government Code. That section in part stated that a statute that is enacted last in a session, and has a higher chapter number, would prevail over a conflicting statute in the same session with an earlier enactment date and a lower chapter number. The Attorney General pointed out that W&I 625 was enacted December 14, 1971, and had a chapter number of 1748. W&I 625.1 was enacted earlier, on November 8, 1971, and had a lower chapter number of 1415.

There is a slight flaw in the Attorney General's opinion. That is based on his failure to read Government Code 9605 in entirety. Later in the same section of the Code, it states that where a statute is merely amended, only the amended portion is to be considered to be enacted. The remaining portion of the statute retains the original date of enactment. W&I 625 was enacted in a session *prior* to 1971. In the 1971 session it was amended slightly, but not in an area that affects his discussion. Therefore, W&I 625 was in fact enacted prior to W&I 625.1, and according to Government Code 9605, W&I 625.1 would prevail.

In addition, it should be noted that a valid argument could be made that W&I 625.1 is an exception to W&I 625, a more general statute, and is more specific. There is authority that a specific statute, regardless of when it is passed, will prevail over a general statute.

Pursuant to this research, a legislative counsel opinion was obtained through Senator Deukmejian. The legislative counsel was of the opinion that the Attorney General was in error and in turn pointed out an unpublished case from the Second Appellate District of the District Court of Appeal.

In *People v. Jeffery John Maquire* (Crim. No. 25532; Jan., 1975), a six count indictment charged the defendant with three counts of burglary, two counts of receiving stolen property, and one count of possession of marijuana. All counts were charged as felonies. Police officers went to the defendant's home to arrest his juvenile brother. The officers arrested the juvenile for a misdemeanor offense that did not occur in their presence. Their procedure conformed to W&I 625, but not to W&I 625.1. In the course of the arrest, evidence was obtained that led to the indictment. The trial court decided that W&I 625.1 would prevail over W&I 625 and based that decision on reasons previously discussed. As a result, the evidence seized was suppressed pursuant to a defense motion under Penal Code 1538.5. The appellate court held that the trial court's suppression of the evidence was proper.

This case in part points out the need for adequate preparation of juvenile cases. Although many attorneys are now preparing their juvenile cases adequately, there still exists the unfortunate attitude that "after all, it is only kiddie court." Perhaps some day attorneys will prepare themselves as if they were going to trial in Superior Court when they have a juvenile matter. After all, the juvenile court is a branch of the Superior Court.

1975 Bar Results

The present provisional accreditation may well become full accreditation in the very near future. According to Dean Eymann full accreditation may well come by the fall of 1976.

Dean Eymann commented further on the results achieved this year. "These results (91.7%) reflect the school's high standards. The individuals who passed the exam should be very proud of their accomplishment. The results indicate how highly motivated they were as well as the high caliber of students involved. The school's chance for ABA accreditation has also been increased as a result of their outstanding achievement.

"The lackof ABA accreditation is not due to a deficient academic standard. The first-time passing rate of the State Bar by San Joaquin graduates seems to bear this out. The main requirement not met at this point is the need for five full-time professors on the faculty." The solution to this problem is financial, not academic, as Dean Eymann pointed out. "The reason full-time professors have not been hired is a simple one. The school just doesn't have the funds to hire the full-time professors necessary. This is why the [recruiting] program Charles Brewer has been working on is so important to the school. If each student could go to an undergraduate school and contact those interested in law, and inform them of San Joaquin's high standards, the increase in the number students would make it economically feasible to hire the necessary professors. That is why the administration feels that everyone involved in the school should participate in any way possible in the recruiting program. Once it is successful, then the final step in accreditation would be reached."

Dean Eymann's comments indicate the far-reaching effects of the results achieved by the graduating class of 1975. Not only is the standing for accreditation improved, but the reputation of the school is greatly enhanced. Because the reputation of the school from which a lawyer graduates reflects upon his qualifications as an attorney, we should be proud of the school's progress in the short time of its existence and congratulate the Class of 1975 for its contribution to that progress.

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