SAN JOAQUIN COLLEGE OF LAW

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dicta

National Lawyer's Guild Sponsers Police Brutality Workshop

by J. Spears Eckles

According to the Preamble of the Constitution of the National Lawyers Guild, the organization "...seeks to unite the lawyers, law students, legal workers, and jailhouse lawyers of America in an organization which shall function as an effective political and social force in the service of the people, to the end that human rights shall be regarded as more sacred than property interests. ...(To) bring together all those who...work to maintain and protect our civil rights and liberties in the face of persistent attacks upon them; and who look upon the law as an instrument for the protection of the people, rather than for their repression".

In furtherance of these goals, the San Joaquin Valley Chapter of the Guild sponsored a Workshop on Police Crimes and Malpractice on Saturday, October 21, 1978 in the Unitarian Church in north Fresno.

Attended by 50 local attorneys and a sprinkling of law students, the workshop focused on the problems of those defending clients who had been charged with violation of Penal Code 243 (Battery on a Police Officer), when from the citizen's viewpoint, he was defending himself or others from police brutality.

Terence Hallinan, prominent San Francisco criminal trial lawyer who is currently representing Juan Corona in his Solano County appeal of a conviction for mass murder, kicked off the all-day meeting. Mr. Hallinan's all to short presentation set the pace for the day. A successful complainant himself in a police brutality case in the 1950's, Mr. Hallinan told his audience that it takes money to win a civil rights action and most of the victims don't have a very "deep pocket." He also stressed the theory that the police officers who commit these acts of violence fall into the "bad apple" category—and are not to be considered typical of the everyday public servant.

Practical suggestions offered to those representing citizens in actions of this nature included "**always** ask for a jury, the Judge is too often one of your deficits in civil rights cases", and "photograph immediately, get the pictures before the bruises heal".

Hallinan further stated that the most the defending attorney can hope for is an acquittal for his client. He reminded those present that although there is much interest in the subject by society at large, rarely will a jury award damages to a victim of police brutality because they recognize that they, as taxpayers, will be paying the bill.

Marc Ament discussed the implications of Senate Bill 1436 on California Criminal Discovery when the bill takes effect in January, 1979.

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*** $25.00 REWARD ***

FOR THE BEST ARTICLE SUBMITTED

THIS YEAR TO THE DICTA EDITOR

N.H.P.

Water Law Open to Bar and 3rd & 4th year Students

Douglas B. Jensen, of the law firm Baker, Manock & Jensen, will be teaching a course in Water Law this Spring. The course will be open to third and fourth year students as well as members of the bar.

A graduate of the Stanford University School of Law, Mr. Jensen spent two years in Chile with Charles J. Meyers investigating the implementation of their new water codes. This was done pursuant to an exchange program of law students and law professors.

This course will be taught from an interdisciplinary perspective in that the student will come away with a knowledge of geology, hydrology, and economics as well as the laws regarding water. The Professor categorizes this as a writing course.

The material to be covered will include...basic hydrologic facts; analyze basic resource allocation theories; examine relationships between California riparian and appropriative surface water rights, conflicts between federal and state clams, California groundwater law, federal reclamation law, transfers of water rights, water pricing, and regulations of waste waters; and review California water agencies.

In addition the class will be reviewing the recommendations of the Governor's Commission to Review California Water Law, which is chaired by Charles J. Meyers.

This course promises to be both rewarding (2 credits) and enlightening, and is considered by many to be essential to the Californian Practitioner. Details as to registration may be obtained from the registrar's office (251-7512).

by Neal Hart Pedowitz

D. A. Debate

Candidates for Fresno County District Attorney opened the San Joaqu n College of Law Speaker's Program for the 1978-79 academic year.

Dale Blickenstaff and Anthony Capozzi debated a variety of legal issues before a crowd of 50 persons in the Pacific College Cafeteria on October 31.

Blickenstaff, a native of Modesto, graduated from California State University, Fresno in 1964. He received his law degree from California Western School of Law in 1967. After law school he served five years as a Deputy District Attorney for Fresno County. He has been in private practice since 1973.

Capozzi was born in Buffalo, New York. He received his undergraduate degree from the University of Buffalo in 1967. After graduation from the University of Toledo, College of Law in 1970, Capozzi served as a law clerk to a United States District Court Judge in Springfield, Illinois. In 1973 he was appointed Assistant United States Attorney for the Eastern District of California. In 1974 he was appointed Supervising Attorney in charge of the Fresno office.

Their debate was noticeably different from earlier campaign encounters, with the candidates focusing on legal issues rather than each other's records.

The legal questions debated were compiled by students, faculty and area attorneys. Each candidate was permitted to speak two minutes on a question. Moderator for the debate was Gary S. Austin, SJCL alumnus and organizer of the SJCL Alumni Association.

Both Capozzi and Blickenstaff said they favor the death penalty and support Proposition 7, which increases penalties for first and second degree murder.

"I do support the death penalty," said Blickenstaff. "I believe that it is a just punishment and a proper deterrent to crime."

Capozzi favored the death penalty "as a gut reaction, an emotional issue." As to it's deterrent effect, he said, the death penalty only "deters the one who commits the crime."

The candidates differed as to the campaign against California Chief Justice Rose Bird.

Capozzi said a campaign had developed against her because she is a woman and because she was appointed by Governor Brown. "I think it's a witch hunt by Senator (H. L.) Richardson," he said.

Blickenstaff would not tell the audience how he would vote in the matter of Chief Justice Bird. He noted he had serious doubts about her qualifications at the time of her appointment. "She's been pretty much an organizer, and an administrator," he said. "She hasn't participated in that many decisions."

Both candidates said they would take a hard line approach toward narcotics trafficking.

"All sorts of drugs are available in Fresno," said Blickenstaff. "We've got to do something about those 8,000 (heroin) addicts because they commit the majority of theft crimes in the county."

Continued on back page.

On Duty

Kaye Jaggers

COULTER V SUPERIOR COURT OF SAN MATEO
21 Cal. 3d 144 (1978)

This case considers whether social hosts may be held liable to third persons injured by the consumer of alcoholic beverages supplied by the social host. The majority concludes that a social host is governed by Business & Professions Code Section 25602 and may be held liable to third persons injured by an obviously intoxicated guest.

The facts of the foregoing case may be summarized as follows: Janice Williams became intoxicated at a party given by Schwartz & Reynolds & Co., owners of an apartment complex. Subsequently, James Coulter was injured when the car in which he was riding as a passenger collided with roadway abutments. Ms. Williams was the driver of the auto. Coulter filed a complaint against Schwartz & Reynolds & Co. alleging that defendants negligently served "extremely large quantities" of alcoholic beverages to Williams. Defendants demurred and the Supreme Court of California overruled the demurrer.

Traditionally, this state had uniformly held that the furnisher of liquor was not legally accountable to another person injured by the intoxicated party (**Cole v. Rush,** 45 Cal 2d 345 (1955). This judicial policy was defended on causation grounds. It was determined that it was the consumption, rather than the sale or gift, of liquor which was the proximate cause of injury resulting from its use. In **Vesely v. Sager,** 5 Cal 3d 153 (1971), upon reexamination of the proximate cause issue, the courts determined that commercial vendors of liquor may become liable to third persons injured by the consumer. The consumption of alcoholic beverages, the courts determined, is a reasonably foreseeable intervening act, and, as such, is insufficient to relieve the vendor of liability. In addition to indirect causation, the courts decided that the vendor owed a duty of reasonable care to the public by virtue of Section 25602. Section 25602 provides that "Every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to...any obviously intoxicated person is guilty of a misdemeanor."

Today, the courts have extended Section 25602 to noncommercial suppliers of liquor. The logic is that the section was adopted to protect the general public from injuries to person and damage to property resulting from the excessive consumption of liquor regardless of who furnishes the beverage. A duty of care and the attendant standard of conduct required of a reasonable man, may be found on a legislative enactment and, in this state, a presumption of negligence arises from the violation of a statute. In other words, the courts found a duty of due care based upon a criminal statute.

In **Kindt v. Kauffman,** 57 Cal App 3d 845 (1976), the courts stated that the existence of a criminal statute punishing the defendant's conduct is but one element in the perception of duty. "A criminal prohibition becomes a rule of civil liability only because the courts under common law principles accept it as a controlling standard. A determination of the existence of such a duty depends also on an evaluation of administrative, moral and socio-economic considerations." (Id.) "Duty" is not sacrosanct in itself, but only an expression of the sum total of those considerations of policy which lead the law to say that a particular plaintiff is entitled to protection.

Conceding, as the majority opinion does, that there exists a duty on social hosts to protect the general public from intoxicated guests, at what point is this duty breached? Is it the first drink? The 10th drink? Obvious intoxication is often recognizable only after the fact. It is inevitably that last drink which makes the consumer obviously intoxicated, not the one before. The concurring opinion by Mosk states that "The law frowns upon adding a straw to a camel's back previously broken." However, it is not the straw added after the fact which, in most cases, produces the injury complained of. More often than not, the social host must violate the statute prior to his knowledge that it has been broken.

In **Borer v. American Airlines,** 19 Cal 3d 441 (1977), Justice Tobriner quoted, "Every injury has ramifying consequences, like the ripplings of the waters, without end. The problem for the law is to limit the legal consequences of wrongs to a controllable degree." (**Tobin v. Grossman,** 24 NY 2d 609 (1969). In delineating the extent of a tortfeasor's responsibility for damages under the general rule of tort liability (Civ. Code Section 1714), the courts must locate the line between liability and nonliability at some point.

Taking the majority opinion as it stands, Schwartz & Reynolds & Co. should utilize the comparative fault doctrine as announced in **Nga Li v. Yellow Cab Co.,** 13 Cal 3d 804 (1975) (hereinafter cited as **Li**). If the use of intoxicating liquor by the average person in such quantity as to produce intoxication causes outward manifestations which are plain or easily discovered by the social host, then they most certainly are obvious to the passenger of an auto. Prior to **Li,** this state employed a theory of contributory negligence to bar plaintiff's recovery when the conduct on the part of the plaintiff fell below the standard to which he was required to conform for his own protection. In **Li,** the courts realized that the doctrine of contributory negligence was inequitable in its operation because it failed to apportion the damages based on the relative fault of the parties. Today, in all actions for negligence resulting in injury, "the contributory negligence of the plaintiff does not bar recovery, but the damages awarded are diminished in proportion to the amount of negligence attributable to the person recovering." (Id.) Although the plaintiff's conduct relates only to his self-protection and is not tortious in itself (See Prosser, **Law of Torts,** Section 65, page 418), it can be compared to the tortious conduct of the defendant in determining relative fault.

As previously stated, if Ms. Williams was so obviously intoxicated that there arose a duty on the part of Schwartz & Reynolds & Co. not to serve her more liquor, then she surely was obviously intoxicated to a person sitting less than three feet away from her in an auto. Coulter must surely have been negligent in riding with an intoxicated driver or in not driving himself.

Another line of attack available to the defendants to lessen the damages they must recompense (if any) is the comparative fault of Ms. Williams. A recent court decision has allowed comparative fault principles to be applied to situations involving multiple tortfeasors. (**American Motorcycle Association v. Superior Court of L.A.,** 143 Cal Rptr 692 (1978). This specific question was left open for later consideration in **Li.** In **A.M.A.** the court determined that a "comparative negligence defendant is authorized to file a cross complaint against any person, whether already a party to the action or not, from whom the named defendant seeks to obtain total or partial indemnity." (Id.) This is not an abolition of the joint and several liability doctrine; rather, it is a modification of this state's common law rules governing the allocation of loss among multiple tortfeasors. Each tortfeasor is still indivisibly liable for the entire loss diminished in proportion to the amount of negligence attributable to the plaintiff; among themselves, the defendants may apportion their liability by the rule of comparative fault. As it was Ms. Williams who was primarily negligent in driving while intoxicated and causing an accident in which Coulter was injured, these allegations should be sufficient to suggest that Ms. Williams' negligence was a concurring cause of Coulter's injuries.

ROLL OVER CARDOZA

"Ladies and gentlemen of the jury, I am before you today in order to prove my client's innocence beyond a shadow of a doubt. Granted, two days ago he did enter a liquor store and demand money from the clerk and, in response to no money given, shot the clerk. However, my client is just a victim of circumstances.

Here are the facts:

On June 1, 1978, Ms. Smith entered Sears Roebuck & Co. with the intention of purchasing a firearm to be used for her protection. She filed all of the forms required by the law, waited the requisite amount of time, and legally obtained the pistol. On June 2, her son, Jack, showed the pistol to his 15 year-old friend, Mike. Mike returned on June 3 and stole the pistol from Ms. Smith. In his haste to find a safe haven, Mike dropped the pistol in a gutter where my client found it. He picked it up and was on his way to the police station to return it when he passed Bad Boy Liquor. He remembered that his illegitimate son was in the hospital recovering from cuts and abrasions received while engaged in a gang war and that he (my client) had no money with which to pay the hospital bills. After all, welfare and unemployment checks can only stretch so far in this period of inflation despite the fact that my client is receiving welfare under three different assumed names. My client entered the store merely with the intent to obtain the badly needed money; it is not his fault that the clerk refused to comply.

As is obvious, my client is not the proximate cause of the death. But for Mike dropping the gun, my client would never have attempted to rob the liquor store. Mike, therefore, is responsible for my client's acts. Of course, Mike can seek and can obtain total indemnity from Ms. Smith. He is just a nice young high school student who has never before done anything wrong. But for Ms. Smith purchasing the pistol, the the idea of theft would never have entered this innocent boy's mind. She is the proximate cause of Mike's actions.

Now, as to Ms. Smith's responsibilities; Sears should never have sold her the pistol in the first place. The duty of reasonable care on the vendor's part shrieks out. They are primarily responsible to see that their products are not sold to persons when there is a foreseeable risk of injury to any member of the general public. It is very foreseeable, in fact, almost inevitable, that someone, somewhere, someday will be injured by a pistol whether it was legally or illegally purchased. The liability of Sears is simply too obvious to even discuss.

Continued on back page

Alumni Corner

Greetings.

It has been sometime since we have heard from each other. Don't you agree that it is time we got back together? And wouldn't it be nice if we could do this through the vehicle of an alumni association which would ensure regular and continual contacts? If interested read on!

Beginning in August of this year I received a number of phone calls from various alumni seeking information as to whether or not an association existed. My answer was always the same, a categorical "I don't know". I began calling around myself and discovered that nobody was really sure. However it was learned during my investigation that many of you showed great concern in an association.

A decision was therefore made to 'try it again'; moreover, to give it the ol' all American (second?) effort. General Patton would be proud of us. Anyway, I decided to take it upon myself (since there weren't a lot of volunteers hanging around at the time) to contact John Loomis, now Dean of San Joaquin, the president of the McGeorge School of Law alumni association and members of each graduating class of our school. In fact I met personally with them.

From these meetings I detected that a critical core of interest, time and support existed which could, if mobilized, sustain an initial reorganization drive (I say reorganization because there has been a prior attempt to organize the association). However any long term program would necessitate a much broader base of support. So more testing of the water is in order. This is where we come in as alumni of San Joaquin. If the readers of this article are jazzed about all of this let me hear from you—and real soon!!! For now you can do this by simply contacting me by phone or letter at the District Attorney's office. Your feedback is absolutely essential for without it we must assume that sufficient interest does not exist and we will stop with our reorganization effort.

Oh, before I forget, the space for this article is brought to you via the Dicta and Neal Pedowitz, editor. He is 110% behind us and has graciously offered to us column space in every issue. Tentatively it will be entitled "ALUMNI NEWS"; and what's more it will include a biography line featuring a new and different alumnus each issue. CAN'T WAIT! All of this in spite of the fact that most of us gave up the art of writing after Dick Salisch's appellate writing class. Just kidding Dick—please don't sue, my pocket isn't deep yet.

But even further, Mr. John Loomis, the senior statesman (statesperson?) of our grand alma mater, has expressed a real interest in our organization plans. He has even pledged staff and material support (in reasonable quantities I'm sure). Hey, let's strike while the promises are hot—What do you say?

One last comment. If enough positive feedback arrives, then one of our fellow alumni will be sending out a flyer to all of us regarding election of class representatives, an update on the latest fast breaking alumni news and an alumni directory. PLEASE SEND NO MONEY (however, if you just can't control yourself, send a check c/o Gary's Mexico Vacation fund—not really).

STAY TUNED. MORE TO COME!

Until our next communique,

Gary S. Austin

Dean's Corner

by John E. Loomis, Dean

I spent a mid-October day in Berkeley absorbing information, formally and informally, at the annual meeting of the Education Committee of the California State Bar. Out of the several hours of discussion and the talk which took place around the dining table, several bits of information of interest and significance, not only to law students, but all others interested in legal education in California, were developed. I will share the highlights with you.

California law schools are closely following enrollrollment trends. For several years it has been up. This fall a significant change has been noted. While there has been no change in enrollments at A.B.A. accredited schools, State accredited school enrollment has registered approximately a 10% decrease in 1978, as compared pared with 1977. The greater portion is observed to have taken place south of the Tehachapis.

The consensus of those discussing the matter was that the rapid climb in enrollment of law schools in California is over and that over the next several years approximately the present enrollment, or perhaps some additional decrease is to be expected.

The Committee of Bar Examiners informed us in detail concerning changes in the grading of the Bar Exam. Part of the process has been changed in a manner so that it is unnecessary to read all essay answers. In the first go-around, four (but not the same four for each applicant) essay answers and the MBE are read for all applicants. Those applicants who have more than 670 points at that time are passed simply on the basis of the partial reading.

In the second phase of the new procedure, all of those not passed in the first phase have all of their essay questions read. Those receiving more than 1217 points are passed, those having between 1165 and 1217 are moved into a third phase, are deemed "questionable" and all their essay questions are re-read by new readers. Finally, those applicants who, at the end of the third phase have scores between 1175 and 1200 are placed in reappraisal, at which stage each applicant has his or her full set of answers and scores reviewed by one reappraiser, who makes the final pass-fail decision.

The Committee of Bar Examiners has also made a study with the use of data from the accredited schools which has established a predictability rate between Bar scores and LSAT scores adjusted by individual schools' grade point averages. The curve for each school will be furnished to the school and will be a helpful indicator for the school with regard to its individual grading standards.

People v. Perez and the role of clinical education in the education process was subject to detailed review. The return of on-the-job training for lawyers in the last ten years has, of course, been remarkable. It is from clinical programs that the problem raised in **Perez** arose. 47 out of 50 states have student-practice rules, and the number of certified law students has grown from a few hundred in 1970 to over 2500 today. The State Bar is filing a brief with the California Supreme Court in the **Perez** hearing. which will be held in November. We, of course, hope that the conclusion of District Court of Appeals that student participation and trial constitutes denial of counsel and unauthorized practice of law will be reversed.

The meeting concluded with a panel discussion among Deans Caddish, Anderson and Warren with regard to the ramifications of the Baake Decision. While this discussion was very interesting, I am glad to say that it has little relevance to San Joaquin College and stands little chance of becoming relevant here in the immediate future. In the meantime, as pressure for admissions relaxes, the possibility for ture Baake-type cases lessens.

Finally, Students, you will be interested to learn that a national professional responsibility exam, modeled on the California experience, has been adopted. California is a part of the program, and with its introduction in November, 1979, it will be given nationally in November, April and August of each year. Does this forebode a trend toward a national bar examination? I believe we are going to hear more discussion about that proposition over the next several years.

Police Brutality Workshop

Mary Louise Frampton spoke on Theories of Civil Pleading. Ms. Frampton noted that just as victims of police brutality are often without financial resources, so too, is the officer unable to satisfy a judgment for damages unless the "deep pocket" can be reached. She offered several practical suggestions for bringing your client's case in the forum of your choice. The general consensus of the group seemed to be that in actions of this nature, the better forum in Fresno County is State Court.

The afternoon session offered a demonstration of cross-examination by John Gant of a "cop" charged with use of excessive force. The remainder of the day's schedule centered around discussions by Stevan Noxon on the tactics of the District Attorney's office; Jury Selection by Lee O'Brien, staff member of the National Jury Project; and Pre-trial Investigation by Douglas Rippey, a local private investigator.

EDITORIAL

Student Body Association (1977-1978)

The Student Body Association of the College of Law meets on a monthly basis in an effort to plan student activities and to provide a forum for discussion of problems. All students are members of the Association and pay a $10.00 student body fee at registration in the Fall. The direction of the association is geared not only toward social and sports functions for the students, but also toward an integration into the activities of the legal community in the Valley. In an effort to achieve this end the Association invites speakers from the legal community to speak to the student body at various times during the year. The Association also sponsors a police ride-along program in which interested students may accompany an officer on a full eight hour shift in the patrol cars. The activities that are provided are intended to supplement the law school experience with those elements which classroom work cannot provide. By this contribution graduates of the College of Law are better prepared for what awaits them after law school.

Student Association (1979-1980)

The San Joaquin College of Law Student Association has the primary purpose of providing an open forum for student discussion. This organization, open to all new law students, serves as a vehicle for the determination of student interests and activities within the law school community.

STUDENT ASSOCIATION (1981-1982)

The San Joaquin College of Law Student Association has died for lack of interest.

Young Lawyers

On November 4th, The California and Fresno County Young Lawyers Associations presented a three hour program entitled "Opening a Law Office."

An excellent film, "Making It On Your Own," was shown, and a panel of private practioneers discussed the following topics:
Financing, site selection, establishing a practice, calendar and docket control, time-keeping, accounting and bookkeeping, internal files and billing.

For the paltry sum of $10.00, I received the handbook, "Opening A Law Office," and enjoyed an edifying experience. The speakers were qualified, experienced, and the program well planned.

Special Thanks to Robert Webster, Don Fishbach and Judith Saley for a superb presentation.

If you're a law student, under 36, or in practice for less than 5 years, it will be well worth your while to attend future presentations planned by The Young Lawyers Associations.

by John Shehadey

Debate
continued

"No one can wipe out the drug problem. No one," said Capozzi. "It's too lucrative to stop." He called for a "three-fold approach" to stop the suppliers, distributors and users. This would put a dent in the narcotics problem, he said.

Both candidates said juveniles who commit serious crimes should be treated as adults.

"If a juvenile commits a big-time crime, treat him as a big-time person," said Capozzi. "We have to to come down harder on them."

"The juvenile justice system has allowed first-time offenders and second-time offenders to go largely unpunished," said Blickenstaff. "Something has got to happen to that child to know his act won't go unpunished."

Both candidates opposed plea bargaining for felonies but said it was often necessary with lesser crimes because of the excessive number of misdemeanor cases before the courts.

"There should be no sentencing bargaining whatsoever," said Blickenstaff. A defendant should attempt to convince the judge of mitigating circumstances in his case, he added. "This is outside the DA's bailiwick."

"When you get to Superior Court it's a no-plea bargain situation," said Capozzi. However, at the Municipal Court level "there must be plea bargaining, or else the criminal justice system will fall in," he added.

The candidates differed slightly as to the discretion to be allowed deputy district attorneys in handling cases.

"I don't think the individual deputies are allowed to make decisions" at present, said Blickenstaff. "I would want them to exercise their own sound judgment" with the parameters of office policy, he said.

Capozzi said he will allow the deputies to exercise "complete discretion" in determining what should be done with a case. "I would prefer to take deputies out of private practice or from judicial clerkships" rather than appoint recent graduates from law school, he added.

The candidates agreed on the value of continuing legal education and training in the District Attorney's office.

"I think it's important to train new lawyers and give older lawyers a brush-up," said Capozzi. He recommended the county take advantage of free courses offered by the National District Attorneys Association and the Law Enforcement Assistance Administration.

"We have to start a program to teach new DAs and older, experienced attorneys how to be better trial lawyers," said Blickenstaff. A training program must instill the will to win and do an excellent job, he added.

The candidates also agreed the District Attorney should not pick and choose cases to prosecute.

"I'm going to prosecute any case that's presented to me," said Blickenstaff. "I think I'm duty-bound to prosecute it." Capozzi agreed, saying, "If it's a violation of a law, you prosecute it."

Blickenstaff and Capozzi said the grand jury indictment procedure should be used with care.

"In my view a grand jury should be used very sparingly by a DA," said Blickenstaff. He likened the grand jury to a Star Chamber proceeding which "runs against our sense of justice." However, he did approve of the grand jury's watchdog function.

"Very sensitive cases" should be brought through the grand jury system, said Capozzi. The grand jury is most useful when it investigates such cases, he added, because reputations are often involved.

by Phil Tavlian

On Duty
CONTINUED

Poor Sears, you say? Of course, it is not fair to hold them liable when all they were doing was complying with the laws and trying to make a living. The basic problem is that the legislature failed to write the firearm statutes in such a manner as to protect against situations such as the one before us today. We pay the legislature to write laws which will protect the poor, helpless public. They have been negligent in their duty. They are responsible, not Sears.

As is obvious to you by now, the legislature is not really the true tortfeasor. You are. You elected them. Yes, you failed to live up to the duty required of you to elect reasonable and intelligent men who can guide our lives and protect us against all hazards. But who is to indemnify us, you ask? Your Maker, of course. He was at fault in not making a perfect human being.

I rest my case."

Far-out? Ridiculous? Absurd? Well, reread **Coulter v. Superior Court,** Supra, or **Ewing v. Clover Leaf Bowl,** 78-5 Appellate Report 21, Jan. 26, 1978, or the recent "Born Innocent" case, and see what our courts are doing to the concept of duty.

(All comments to this article will be printed—Ed.)

THE PATH OF EXCESS

by J. V. Henry

So now you're a law student. There's even a TV series about you. Your head spins with unwanted "crossovers" such as The Admissibility of the Conversion Rule. No, your mind analyzes: Admissibility comes from evidence; Conversion is a tort, and Rules are from civil procedure. Your friends give their pity and their admiration.

To add to your thoughts, these suggestions are presented.

Learn to speed read. This is not just reading fast, but adjusting for comprehension and retention. Not only will this improve your study, it will be useful for life.

Join a study group. Comparing and discussing cases with classmates is crucial to your law school experience. You will deal more with lawyers than judges. Professional relations include the art of fighting well. Much more, they include the art of cooperating.

Learn your instructors' nuances and style. You will be working in front of judges who are variable in personality and persuasion. Your ability to predict and avoid gaffes will be tested by your instructors.

You are already admired for your ambition. Most of you are working, a major burden on your study time. Many of you are spouses or parents. Forty hours a day might satisfy your need for time. Out of this struggle you will gain the gift of time management, dealing with the competing demands on your time.

"Oft times," wrote the poet William Blake, "The path of excess leads to the palace of wisdom."

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