



San Joaquin College of Law

November/December 1980

DICTA

The Future of the Juvenile Court

by Douglas E. Haas

On October 21, 1980, at the Hacienda Inn, in Fresno, California, a conference was put on by the Fresno County Inter-Agency Committee. The purpose of the conference was to explain, analyze and diagnose problems within the current juvenile court structure. Dependent children processes were discussed during the morning session and delinquent children processes were discussed during the afternoon session.

The first panel included Dr. Charles Dean, Chairman of the Criminology Department at CSUF, Russell Thomas, a social worker with the Fresno County Department of Social Services, Carolyn Leeper, a Supervising Group Counselor at Fresno County Juvenile Hall and Juvenile Court Referee, J. M. Carter. Dr. Dean capsulized the history of the juvenile court in the United

States and the philosophies that preceded it. From the ninth through the fifteenth centuries, infanticide was a common practice. During the sixteenth through the eighteenth centuries unwanted or mis-behaving children were literally abandoned and would then be left to die. Later they were placed in institutions. The first juvenile detention facility in the United States was constructed in Lima, Massachusetts in 1849. Special hearings for juveniles originated in Massachusetts and New York during the year 1875. The first actual juvenile court was created in Cook County, Illinois by Judge Roscowe Pound, in 1899.

Carolyn Leeper commented that over the last three years there has been a decrease in out of control and runaway bookings but an increase in violent crime bookings and female bookings into Juvenile

Hall. She reported on responses she elicited from Juvenile Hall wards from a series of questions she posed to a group of them. Many wards felt that the Juvenile Court's purpose was to punish. A great percentage of minors polled stated that they did not believe that a Public Defender was a real attorney.

Referee Carter commented on how the distinction between regular adult court and the juvenile court is disappearing rapidly. In 1977 an addition to Welfare and Institutions Code section 202, part (b) was made. "The purpose of this chapter also includes the protection of the public from the consequences of criminal activity, and to such purpose probation officers, peace officers, and juvenile courts shall take into account such protection of the public in their determinations under this chapter." There exist both statutory and

procedural differences. A juvenile is not entitled to bail out pending further court hearings. Their release is contingent upon the danger they may pose to themselves and to the community. A juvenile is not yet constitutionally entitled to a jury trial. Pursuant to *In Re Gault* they are entitled to all due process safeguards an adult is during the actual adjudication hearing. A juvenile court referee may not hear matters unless the minor and his attorney stipulate that the referee can act as a judge. As of January 1, 1981, the public will be admitted, if they desire, to all juvenile hearings where the minor is accused of a serious, "laundry list" offense. Offenses included are murder, robbery, rape, assault with intent to commit murder and etc.

The second panel was made up of Ben J. Kelly, Director of the Fresno County Department of Social Services, Alan Peters, Assistant Director of Eligibility Services with the Department of Social Services, Kathryn Barieau, volunteer, Children In Placement Project, Myron

Shapiro, the chief deputy District Attorney at Juvenile Court, and Carolyn Morse, a defense attorney with the Public Defender at Juvenile Court. Mr. Peters spoke about referrals involving abused children. Approximately two-thirds of all cases reported are reported by non-professionals. However, physical removal of the child from a home must be executed by a peace officer. Mr. Kelley related the current philosophy of the Department of Social Services in regards to removing children from unfit homes. The goal is to either return them to the home as soon as possible or place them up for adoption. This provides a more emotionally stable life for the child. Mr. Shapiro related that approximately 419 Welfare and Institutions Code section 300 petitions were filed last year. The petitions are actually filed by the Department of Social Services. The District Attorney's Office has the job of representing the minor and the Department of Social Services. This can create conflicts. The burden of proof to find a child to be a

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by Phyllis Eash

Five new professors have joined the SJCL faculty this year. They are: Craig Christensen — Corporations; Wes Merritt — Moot Court; John Fitch — Community Property; Don Fischbach — Torts; and Steve Rau — Wills and Trusts.

Craig Christensen majored in History at BYU. He attended law school at Vanderbilt in Nashville, Tennessee. While he was in law school he taught history at an undergraduate college, worked for a local attorney, worked for a Savings and Loan company, was a partner in his own business and took Japanese while supporting his wife and children. He graduated from law school in two years and three months. After law school Mr. Christensen worked in the

corporate legal department of Aladdin Industries. Next he went into the general private practice of law and accepted the role of night judge. He is presently with Kimbel and McMichael. Mr. Christensen has been married ten years, has four children and in his spare time he plays the guitar and reads. He considers himself politically conservative and very family oriented. He stated that he has a great interest in international and tax law and speaks two Asian languages. Mr. Christensen stated that while in private practice he had a great deal of courtroom experience, he has never been in a court in Fresno County during the three and a half years he has practiced here.

Wes Merritt majored in

Business Administration at Loyola, and attended law school at the University of San Diego. Except for a few months one winter as a law clerk, he didn't work outside law school, but his duties there included being on the moot court board and writing the Law review. When asked about his law school experience, Mr. Merritt stated that he wished that he had been more relaxed from the outset of law school, because the first year he was so intimidated it hurt him academically, and that he did much better once he learned how to relax. After finishing law school he went to work for the Court of Appeals as a Research Assistant to Don Franson. Next he went to his present position as County Counsel Deputy, where he primarily serves the sheriff's

SJCL Picks Five More Winners

Department and handles public employee matters and discrimination questions. Mr. Merritt is single, a practicing Catholic, a part-time helper at the Newman Center, has been a Big Brother for seven years, and is a member of the YMCA where he swims and lifts weights. He bicycles, likes "dating the ladies" and enjoys the Y's women's aerobic dance class as a spectator sport. He states that he is politically more conservative than liberal.

John Fitch majored in Philosophy at Oxidental College, and attended law

school at Boalt Hall. He supported his wife and four children while he was in law school and spoke of his memories of the pressure, the heavy work load and the guilt he felt whenever he took time off from his studies. Mr. Fitch said that in law school one must have a sense of humor or go crazy, and related an incident of how he and his friends wrote a phony blue book. Enclosed in his book was a \$5 bill and a note from the fictional student asking for a passing grade because he was a

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Book Review

Partisan Justice. By Marvin E. Frankel. Hill and Wang. 1980.

by Thomas Sharpe

Attacks on America's judicial system are not unusual. Hardly a week goes by without an editorial, an article, or a new book appearing on the scene with the express purpose of explaining what is wrong with our legal system. Invariably the explanation for the "decline in American justice" involves, at least in part, a "legion of immoral lawyers" who are corrupting the system. Get rid of the lawyers, the argument goes, and the problem will be solved.

It is not surprising that these attacks often fall on deaf ears. Those in position to make changes in the judicial system understand how the system is designed to operate. The "outside" commentators have mistaken advocacy for immorality. After all, if one only understands the principles behind our adversary system . . .

Marvin E. Frankel's *Partisan Justice* is not so easily dismissed. Mr. Frankel understands the system. After over thirty years in what he describes as the "disfavored"

profession, including 13 years as a U. S. District Judge and three years on the A.B.A. Commission currently considering revisions of the Code of Professional Responsibility, he is not an outsider.

The premise of Mr. Frankel's book is that society has not lost confidence in our legal system because a few individual lawyers subvert the system for personal gain. It is not the moral quality of members of the legal profession that is at issue. The real problem is the set of values our adversary system has forced the profession to adopt. Frankel contends that we should hardly be surprised that citizens have lost confidence in a system that claims to determine justice, but allows adversary roles to supercede the search for truth.

(While Frankel is often concerned with determining "truth," he takes great care to avoid becoming involved in metaphysical discussions. For the purposes of his arguments, truth is to be defined as "accurate statements of what individuals actually believe.")

The author convincingly sets forth his case. The adversary system not only allows, but often requires partisans in legal disputes to engage in

conduct designed to block accurate statements of what is believed to be the truth. Mr. Frankel cites instances where lawyers have allowed cases to be decided upon factual premises known by the lawyer to be "inaccurate." He cites instances where discovery devices have been used to "wear down" opposition efforts to get at the relevant facts. He cites instances where "imaginative" questioning of witnesses under cross-examination has made what is known to be accurate appear false. He assures us that this type of activity is not unusual, nor is it regarded by advocates of the adversary system as beyond the scope of ethical conduct.

The message is clear. Excesses in the adversary system are commonplace. The blame for these "adversary stunts" clearly rests on the system that requires the lawyer to serve as the zealous champion of his client. Combative excesses must be expected in a system where it is viewed a triumph of justice when one's client prevails — despite any wrongdoing or guilt that may be involved. In the section dealing with the lawyer's Code of Professional Responsibility, Mr. Frankel wonders why there is no listing of a "Duty to Seek Justice," or of a "Duty to Promote the Quest for Truth," while there are numerous listings of the "Duty of a Lawyer to a Client."

But Marvin Frankel did not write *Partisan Justice* to simply vent his frustrations with the American system of justice. He warns that his book should not be taken as a general condemnation of the way we conduct our fights for justice, but should be regarded as an effort to point out imperfections in our method. His argument is that while the adversary system has been allowed to spawn excesses, it need not be abandoned. More than half of the book deals with possible changes in that system. Mr. Frankel asks us to consider some of his thoughts.

As would be expected, most of Frankel's suggestions are aimed at tempering the lawyer's perceived duty to prevail for his client at all costs. Limitations of space prohibit a complete catalogue of his suggestions. Some are admittedly theoretical, abstract, unproven. A few are less tentative, being the subject of "noble experiments" in American courts. Others are proven, having been borrowed from other systems. A few of the more prominent follow.

As already mentioned, one of the main complaints put forth is that our present system does not place enough value on

revealing the truth, at least when this may prejudice a case. Frankel would change the extent of the duty the attorney owes to his client's cause. The lawyer would not be allowed to conceal, twist, or misrepresent what the client or lawyer perceives to be the truth. The author does not claim that this change in the traditional role would come without resistance, both from the clients and the lawyers. Clients will not feel comfortable with "hired guns" who owe less than all-out devotion. Lawyers will no longer be "forced" to follow twisted courses to victory. Frankel is realistic. He does not envision an "elevation of truth to the status of an invariably paramount value." But it should be accorded more value than it is under the existing scheme.

Many of the problems involving courtroom procedure, including the troublesome area of oral testimony, may be solved by utilizing modern technology. County courts in Ohio, Indiana, and Wisconsin have been experimenting with video tape playbacks. Under this system, each side records its witnesses and other evidence on video tape. The presentations are then examined for admissibility before being played to the jury. There is no worry that inadvertent revelations or other impermissible statements will be heard by the jury, nor need the actual trial be delayed while points of law or procedure are worked out, since this can all be done outside the jury's presence. Again, Frankel recognized the source of opposition. Opponents would be sure to ask how the jury could tell who is telling the truth? How much of the trial should be taped and how much should be live? For

what type of cases would this technique be suited? These are valid concerns, but the existence of concerns does not justify ignoring a valuable tool.

Also consistent with the theme of this work is Frankel's suggestion that not all disputes need be solved by setting the disputants "to fighting" with hired advocates. Tribunals without lawyers are nothing new. In the form of small-claims courts they have been in existence for a number of years. The author sees no reason why the same type of tribunal cannot be extended to a much larger scale. Rather than allowing the amount in dispute to control jurisdiction for this type of hearing, Frankel suggests the nature of the legal and factual questions could be determinative. Both time and money would be saved if the parties to a dispute submitted factual and legal determinations to a neutral party. As is true with all of the suggestions in the book, this is not a full-blown plan, but rather a suggested possible direction. There would certainly be difficulties, but the major premise is that many disputes can be more efficiently solved through impartial investigation than through costly competitive procedures.

Mr. Frankel asks us only to accept his ideas for what they are — suggested directions. He admits that many of his proposals contain "broad generalities." But he also submits that there is more than a passing need for change. Something must be done if the legal system is to regain the public's confidence. Recognizing this need, he further pleads with the legal profession to take the lead in the matter. It is time that the "legal power elite begins to act in the public interest." Excessive adversariness has led to excess. Tactics that hinder rather than promote just results may no longer be allowed in the name of the adversary system.

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veteran with three children. He stated that one of his favorite law school memories was of Prosser giving his Christmas reading of **Bleak House** on how, when traced down, the fog invading London emitted from the head of the Chief Justice. When Mr. Fitch finished law school he went to work in the legal department of PG&E, stayed there three years, then took a position with a Fresno Firm, and after six years there he opened his own practice specializing in Family law. In his spare time he enjoys scuba diving, swimming, gardening, bicycling, and Chinese cookery. He states that politically he is a Valley Democrat. Since this interview Mr. Fitch has been appointed as a Superior Court Judge.

Don Fischbach majored in Business Administration and Industrial Relations at Cal Poly. He attended Hastings and remembers mainly hard work, poverty and good friends. He stated that due to his wife's help in putting him through school, except for his clerking experiences during his second and third summers, he was able to attend law school without taking an outside job. He came to Baker Mannoek and Jensen directly from law school and has for eight years specialized in Medical malpractice defense, plaintiff personal injury suits and labor law. Mr. Fischback is very involved in various local organizations which include the Bar Association, Young Lawyers, Fresno Legal Services, Trial Lawyers Association and is involved in fund raising for the Cancer Society. He is married, has two daughters, and in his spare time enjoys night league basketball and racquetball. He considers himself politically a liberal.

Steve Rau majored in Political Science at UC Berkely and attended law school at UC Davis. Upon his graduation from law school he practiced law for one year and then went to New York University and received an LLM in Taxation. At UC Davis he was a married student, and stated that his

wife worked to help him through school so he wasn't forced to take an outside job. Mr. Rau stated that although he was a serious student and did well academically, he looked at law school as his last great opportunity before knuckling down to work every day, and he spent a lot of time fishing, drinking and talking with the most interesting friends he has ever had. Mr. Rau clerked at McCormick Barstow his last summer of law school and came to work for them directly from law school. He likes to spend his spare time with his family, or in the mountains, and enjoys continental cooking. He considers himself politically a liberal on many issues, but states he also supports conservative candidates at times. Mr. Rau stated that he realizes that most SJCL students are in a different position than he was, and although he doesn't want to give the impression that he was flip about school, the practice of law can become a real grind and he hates to see people devote 100% of their time to school, because he believes it is more important to be a well-rounded individual with interests outside the practice of law.

All five of these new professors devoted time during their interviews to discuss their feelings about teaching, expressed the hope that they would be good teachers and succeeded in communicating caring attitudes toward SJCL and its students.

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THE FUTURE OF THE JUVENILE COURT cont'd.

dependent child of the court is "a preponderance of the evidence." However, there must be "clear and convincing proof" to remove a child from an unfit home. After the court has established that the child has been neglected or abused the burden of proof shifts to the parents to rebutt the proof.

Deputy Public Defender, Carolyn Morse, related that their job is to represent the parents. They usually receive the case five to fifteen minutes prior to the hearing. The job is difficult, as what the court can use to establish that the home is unfit, is not concrete. If the parents Disagree with one another, each one is entitled to be represented by a separate attorney.

During the luncheon, Associate Justice of the Fifth District Court of Appeals, Pauline Davis Hanson, gave a very inspirational speech that favored, and urged the continuance of the juvenile justice process. She related that if all

the bills presented during the last session of the state congress had passed, there would no longer be a juvenile court. She sees the utility and need for juvenile probation services. In speaking about the appellate court she offered a description of it. She compared it to an Indian Chief's tribe in Colorado. When war broke out between the various tribes, this particular tribe would retreat to the mountains. After the battle was over this tribe would come down and kill the wounded. She feels that the appellate court is too far removed from the reality of the "streets".

The afternoon panel consisted of Sheriff Harold McKinney, Juvenile Court Judge Frank Creede, Public Defender, Melvin Nitz, Kern County District Attorney, Alfred Leddy, and Fresno County Chief Probation Officer, James Rowland. The panel fielded questions from the audience. Sheriff McKinney firmly believes that the exclusionary rule is a detriment to law enforcement and to the courts and that it only benefits criminals. He feels that the Miranda decision is too expansive. Mr. Nitz defended the worth of the exclusionary rule. He feels that many injustices were committed in California prior to the beginning of the expansion of civil rights, in the early 1950's, by the California Supreme Court. Judge Creede believes that the juvenile court is successful and serves a valuable purpose. He feels that recidivists need greater attention. Alfred Leddy expressed his disapproval with the liberalness of the current system. He feels that the present California Supreme Court is not benefiting law enforcement or the prosecution. James Rowland

supported the present juvenile justice system. However, he would support a law change that would enable authorities to hold out of control minors in secure facilities after they have run away from an attention home.

The final presentation of the day came from Congressman, Ken Maddy, Assemblyman, Jim Costa, and Assemblyman, Richard Lehman. Ken Maddy explained that the legislature believes that the concept of rehabilitation has been exhausted, that a full adversary system should be established for some classes of juvenile crime, and that the system needs to emphasize more preventitive measures. Future developments may include a broad base attack, underscored by "toughness", on juvenile crime, an increase of sanctions on "hardcores", and the institution of character education for juvenile offenders. Currently 33 to 40 percent of all adult felons go to prison. He feels that, shortly, the prison system will undergo a breaking poing, because, regardless of the lack of money, felons will be taken off of the streets. Jim Costa emphasized the loss of revenue and its consequences for the State budget next year. He predicts a reduction in revenue by approximately two billion dollars. The results will be the institution of cuts and compromises in many areas. There will possibly be consolidation and elimination of some educational programs. Richard Lehman expanded on the dilemma. More prisons are needed to house the influx of offenders but there is a lack of funds to build them. He is especially interested in solving the problems regarding drug abuse by juveniles.

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Alumni Notes

by Nanette Selover

Angus I. Saint-Evans, class of '78, is practicing law in Orland, Calif., where he lives with his wife and two sons. In May, he was appointed to the post of City Attorney of Orland by the city council there. He will continue in his solo private practice, doing both civil work and accepting court appointments for criminal defenses. Mr. Saint-Evans graduated from Willows High School and Chico State before attending San Joaquin. He was admitted to the bar in October of 1979.

Michele Belanger is the featured alumni this issue. Ms. Belanger graduated from San Joaquin also in 1978, having first attended local high schools and earning a B.S. in Criminology from CSUF. Michele decided she wanted no part of "corrections" after completing an internship at Juvenile Hall as a counselor, and promptly enrolled at SJCL. During law school, she returned to Juvenile Hall via the District Attorney's Office in the days when certified law students were allowed much freedom in the courtroom. Michele found the experience invaluable, working mostly with felony motions and conducting misdemeanor trials. Pending passing the Bar, she clerked in the downtown portion of the D.A.'s office in the delightful capacity of Public and Information Deputy (a big Ugh! here).

Passing the Bar with flying colors (is there any other way?) she promptly bought a case of Dom Perignon, shared it with her friends and began her

present career as a Deputy District Attorney in January of 1979. Starting out with a misdemeanor caseload, she moved on in a year to an assignment in Justice Courts. Her biggest challenge has been co-counseling with Jim Ardaiz (judge-elect) on the Sylvia Martinez murder case. She also had a fun time (?) in Muni Court prosecuting prostitutes at a time when the restrictive "maps" prohibiting the professional women from certain parts of town were at issue.

Ms Belanger has served on various committees in conjunction with her assignments, notably the Inter-Agency Task Force on Inhalent Abuse. She also serves in an advisory capacity with the YWCA's Battered Women's Shelter, the Marjorie Mason Center.

In her leisure time, Michele plays racquet ball, tries to teach her Golden Retriever pup to catch a Frisbee, gives dinner parties for her

degenerate friends, goes skiing, eats and drinks wine.

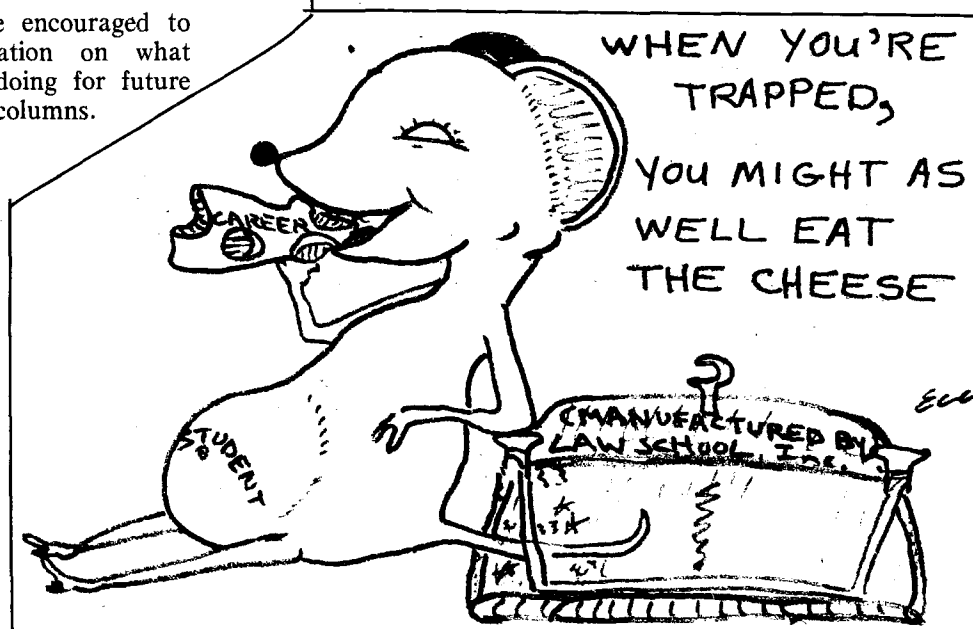
Michele's advice to law students is to gain practical experience (the legal kind) while in school, either clerking or volunteering, and to remember that there is normalcy after law school!

Alumni are encouraged to send information on what they're now doing for future *Dicta* alumni columns.

Quote —

A woman has a much better chance than a man of acquittal on a murder charge. Of course, if she happens to be a blonde, her chances rise about 45%. With attractive women, whose chances are much better again, juries sometimes have to be restrained from handing them a medal for their crimes.

— Dr. John McGeorge, Australian psychiatrist
Quote, March 12, 1960



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