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# Goodbye, Mr. Pip

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## GOODBYE, MR. PIP

*Gideon Kanner\**

### LOYOLA'S BILL COSKRAN RETIRES

An era ended when the Spring 1995 law school semester came to an end. Professor William G. Coskran of Loyola Law School, having faithfully served this legal community for over a quarter of a century, was duly put out to stud.

The occasion was celebrated, but in truth it was cause for mourning. True, Bill still surfs (hey man, this is California), and he cuts a dashing figure in his immaculate Pontiac GTO convertible (top down, of course, rain or shine). He will no doubt continue to enlighten perplexed students and practitioners on a part-time basis. But make no mistake: he won't be replaced. Not ever. They just don't make 'em like that any more, and they never did. Bill Coskran was, and remains, one of a kind.

Of course, I'm biased. Bill was my role model, as the currently fashionable neologism goes. I was in private practice in 1968, beginning to get tired—in Mr. Dooley's immortal words—of “makin' a mighty poor livin' be shoutin' at judges who made less.” I was wondering if I could switch to the academic life, when I learned that Bill left O'Neill, Huxtable & Coskran and did just that, demonstrating that a practitioner could indeed find repose in the groves of academe.

That isn't all. Years later, when Loyola's then Dean, Arthur Frakt, decided to engage in scholarly discourse by threatening to punch me out in a faculty meeting, Bill rose to my defense, and though I never did think that his Deanship was stupid enough to throw an actual punch, it was comforting to have a muscular Irishman standing by my side.

I joined Bill on the Loyola faculty in 1974, and in short order learned what an honor it was to teach in his shadow. You have to understand that these days law school is, well . . . different than what grown up lawyers may recall. In 1990 there was an actual dispute in the pages of the *Journal of Legal Education* as to whether there even is such a thing as a wrong answer to a legal question. But not in Bill's classes; he actually knew and taught law. Every year, when the

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student faculty evaluations were toted up, Bill was on top of the heap. He was not one of these folks who increasingly populate today's law schools, who tend to go on about the influence of Kant on the critical studies movement or somesuch, even as their befuddled students are surprised to learn that Kant was a person, and otherwise wonder what the prof is talking about.

When practicing lawyers needed advice, they knew who had the straight poop. Bill was an institution in bar activities relating to property law. He served as chairman of the L.A. County Bar Association Real Estate Section, and vice-chairman of the State Bar counterpart. He was consultant to the California Law Revision Commission, and his work led to the reform of statutory law governing subleases, lease restrictions and assignments.

But all that is mere achievement. Bill's knowledge went beyond that; he had a keen understanding of the diminishing role of property law in the legal scheme of things in California, and an eye for judicial foibles in eroding that institution. To illustrate, let me tell you about Bill, his students, and the *Berk* case.<sup>1</sup>

To make a long and complicated story short, Oscar and Shirley Berk acquired land lying in Torrance and Redondo Beach; part of it came from the County. Before closing escrow, Oscar Berk did his due diligence—or so he thought—and ascertained that he could build as of right, without variances. Though he had been in close contact with the local government entities, no one let on that there would be any problem with his planned construction. Ah, but this is California, man. When the Berks applied for a building permit, the local NIMBYs screamed, and the County, as well as the cities of Torrance and Redondo Beach sued, alleging that the Berks could not build because there was a Gion<sup>2</sup> easement for public recreation on the subject land, since it had been used by the public during the preceding five years.<sup>3</sup>

*Gion*, or *Gion-Dietz* as it is sometimes referred to, was the bombshell case that out of the blue held that where the public had used private land for over five years in a belief that it had a right to

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1. *County of Los Angeles v. Berk*, 151 Cal. Rptr. 879 (1979), *vacated*, 26 Cal. 3d 201, 605 P.2d 381, 161 Cal. Rptr. 742 (1980), *cert. denied*, 449 U.S. 836 (1980).

2. *Gion v. City of Santa Cruz*, 2 Cal. 3d 29, 465 P.2d 50, 84 Cal. Rptr. 162 (1970).

3. See Michael M. Berger, *Nice Guys Finish Last—At Least They Lose Their Property*, 8 CAL. WESTERN L. REV. 75 (1971) (commenting on *Gion*, 2 Cal. 3d at 29, 465 P.2d at 50, 84 Cal. Rptr. at 162).

do so, without interdiction by the land's owner, that gave rise to a conclusive presumption that the land's owner had dedicated a recreation easement to the public. Of course, in the *Berk* case there was no such evidence. But, hey man, why quibble over details when principle is at stake. As Justice Bernard Jefferson would later explain, in *County of Los Angeles v. Berk*, the existence of such a belief was, though required by *Gion*, "immaterial."<sup>4</sup> But I'm getting ahead of the story.

Anyway, at trial, Judge Richard Schauer ritualistically voiced his unhappiness with his own ruling, but ruled against the Berks even though there was no evidence that the public disporting itself on their land held any belief that it had a right to do so. In fact, there was evidence that "the public" in question would take flight at the sight of a police car. But evidence or no evidence, Schauer's ruling elevated criminal trespass to the status of civic virtue, transformed the Berks' land into a "public recreation" preserve, and caused them to lose the now-useless land by foreclosure. In fact, the injustice of this ruling was so raw that a law review article was promptly written, criticizing Schauer's decision.<sup>5</sup> Poor Oscar Berk died of a heart attack shortly thereafter, and his widow pressed on with an appeal from this outrage.

The Court of Appeal reversed. Though Justice Jefferson's majority opinion approved Schauer's legal rulings, it simply could not swallow the unconscionable result. The majority opinion concluded that Mrs. Berk should at least get the purchase price back, since the cities and the County could have—but did not—act promptly to assert their claims in a timely fashion, and had they done so the Berks would not have bought the subject property. But Justice Arthur Alarcón, then on the state court of appeal, was unmoved. Justice, schmjustice—he dissented and voted to turn Widow Berk away with nothing.

When the news of that decision reached the law school, Professor Coskran, who had duly taught his students that in California property law no good deed goes unpunished, found himself confronted by a roomful of agitated students who gave him what for. California courts, urged the youngsters, were not inhuman to property owners after all—Justice Jefferson's *Berk* opinion had proven Coskran wrong.

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4. *Berk*, 151 Cal. Rptr. 879, 887 (1980).

5. John V. Gallagher et al., *Implied Dedication: The Imaginary Waves of Gion-Dietz*, 5 SOUTHWESTERN U. L. REV. 48, 50-51, 78 (1973).

A lesser man might have backed down. But not Bill. Legend has it that he faced the students squarely and offered to bet a can of beer to each who would take the bet, that the California Supreme Court would take the case and dump Widow Berk. As history records, it did, and it did, Justice William Clark dissenting.<sup>6</sup> Legend has it that William G. Coskran, professor of law, won his bet to the tune of 95 cans of beer. Legend further has it that he posted a sign on his office door that in its entirety read: "Make it Lite."

And so, let there be Lite! Here's to your good health and happiness, Bill. God bless you and keep you, and to paraphrase your people's saying, when the time comes to catch that ultimate wave, may you be in Heaven long before the Devil hears about all that beer.

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6. *County of Los Angeles v. Berk*, 26 Cal. 3d 201, 224, 605 P.2d 381, 396, 161 Cal. Rptr. 742, 757 (1980), *cert. denied*, 449 U.S. 836 (1980).