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Loyola Digest

Loyola Law School Los Angeles
EUROPEAN SCHOLAR JOINS FACULTY

Mr. Louis F. Goldie, Loyola's most recent faculty addition, was born in England, and educated in England and Australia. After service in the R.A.A.F. during World War II, he received his LL.B. and LL.M. at the University of Sydney. Admitted to practice as a barrister-at-law in 1948, he engaged in private practice until 1952, when he commenced teaching.

JUDGE CHANTERY

Thursday evening, March 7th, the Honorable Kenneth N. Chantry will present a lecture to the students of the Law School dealing with the functions and procedures of Department 65, Writs and Receivers, of the Los Angeles Superior Court.

The Judge was graduated from Stanford University with an A.B. degree. He received his LL.B. from the University of Southern California after completing the first part of his legal education at Stanford University School of Law. He was admitted to the practice of law in California in 1930. Judge Chantry maintained a private practice until his appointment to the Superior Court in 1956. He is a past President of the Los Angeles County Bar Association.

Tony Murray Wins Scott Competition

Second Year student Tony Murray emerged victorious from the final round of the annual Scott Moot Court Competition, held Saturday, February 16 at the County Courthouse. Murray was trailed closely by runners-up Chuck Finney and Chuck Liberto, followed by Marty Gilligan, Tom Stockard and Henry Seligsohn.

The problem argued this year concerned a Federal Aid to Education statute and its constitutionality under the First Amendment. The audience particularly enjoyed the ease with which Murray and his counsel found the GI Bill unconstitutional.

The program was enhanced by the return to Scott Competition of former competitors Al Ebright, Joe McLaughlin and Bill Rylaarsdam, this time in the role of Judges. They were ably aided by John Leary and Presiding Judge Gordon Ringer.

IN MEMORIAM

At the age of 50, on the threshold of a brilliant career as a teacher and legal scholar, death cut short the life of Albrecht Marburg Yerkes, Professor of Law at Loyola University. On January twentieth, 1963, he succumbed to a heart attack leaving his stunned colleagues and many friends with a sense of loss difficult to describe.

Marburg was a man fired by a vision of quality education. He strove constantly to find new depth and significance in his teaching and sought every opportunity to instill in his students his fine sense of professional responsibility. Above all, he was devoted to the future of Loyola Law School and, in his last years, threw his considerable talent and energy into planning for the day when Loyola would be able to expand its programs in a new building.

Those of us who worked closely with Marburg knew his many fine personal qualities. He was gentle, kind, considerate — a gentleman in every sense of the word. We will miss him.

—MYRON FINK

A native of New York City, Professor Yerkes was born June 28, 1912, the son of Hubert Agnew and Wilhelmine (Marburg) Yerkes. He attended Collegiate School in New York City where he received an A.B., Washburn College (LL.B. 1941), and Stanford University (LL.M. 1942).

He was admitted to the Kansas Bar in 1940 and engaged in the practice of law in Topeka, Kansas from 1941 to 1944. Admitted to the California Bar in 1944, Professor Yerkes practiced law in Beverly Hills and Los Angeles from 1944 to 1956 and in Costa Mesa from 1956 to 1958. His occupation of the Loyola Law Professorship was preceded by a period of lecturing at Northwestern University from 1945 to 1956.

Professor Yerkes numbered among his associates membership in the American Bar Association and the American Judicature Society. A member of the American Academy of Political Science, Town Hall, Phi Alpha Delta, he was pre-tested the outstanding Alumnus of the year 1962, by Ford Chapter, Loyola.

He contributed as a lecturer to California's Continuing Education of the Bar program and was a member of the National Panel of Arbitrators of the American Arbitration Association. He was actively associated with the American Boy Scout movement and, at the time of his death, held the post of Commissioner.

He is survived by his wife, Martha Stewart and his two sons, Robert Stewart and William Marburg.

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Blackstone's Commentaries

No, it wasn't a picket line that was mobilized in front of 217 W. First St., early last month... Twas just the overflow crowd determined to edge into the Assembly Hall in the lobby of the State Bldg., where the State Bar Court was solemnly sitting in the process of admitting to practice in the Sovereign State of California, the successful candidates in the 1962 Fall Bar "X"... 1440 took the Fall Bar "X"... 908 in Los Angeles.

The percentage of successful candidates was 63.4... the highest since the memory of man runneth not to the contrary almost... Figures generally leave us jarred and jolted... a natural consequence of the explosive population centered here... This is normal procedure but with the percentage of successful candidates zooming to 63.4, there is hope of positive betterment on the quality side of candidates for the legal profession.

If every candidate for admission had the entourage of JULIE SETTERHOLM to witness the proceedings... her parents, six children, innumerable relatives, prospective employers, et al., the Sports Arena would be hard pressed to accommodate the assemblage... And by the way, this heroic young lady has a further achievement to record... She's practicing law in Santa Monica and loves it... With MARY FLANAGAN in the office of Forster, Gemmill and Farmer, the other successful Loyolan in the '62 class on the distaff side, is accounted for... JOHN V. GALLAGHER '61, down where Wilshire starts its trek to the ocean for the past year, threw his lot in with GERRY SPERRY '61, and is located in Panorama City, in the general practice of law under the firm name of Gallagher and Sperry... JIM THOMPSON, who graduated a year later is associated with them... JOE MORRIS '59 and JOHN YATES '59 are teamed up in an enterprise that was given him by his army career with definite solidity and turned in his bardoele for a bribe... They are carrying on a lucrative practice and have offices in Sherman Oaks and Glendale... They solve the problem of bilocation by commuting between these thriving communities.

Recent word came to us that BILL JENNINGS '50, for the past several years associated with Western Air, resigned and is joining the Administrator's Staff of the Federal Aviation Agency... You can be sure that whatever Bill does or wherever he goes, he'll turn in a splendid performance, Washington not excluded.

It took SAM ARKOFF fifteen years to get around to having a reunion of the day class of '48... But when he did, there was no doubt it would qualify for the major event of '63... An almost inaccessible half acre in the Hollywood Hills was the situs of the gathering... his hideout, by the way, when he's not commuting between Hollywood Boulevard and the Appian Way... And, of course, there's an occasional stopover in Rome beyond the usual limits, to knock off a picture or two, you see, he's President of American International... Rumor has it that he was preparing to make Pictures his life work when he was following the case-method during his two years of law training... He was a G.I. and pushed through in two calendar years... Nor was he scared out by scholarship requirements from seeing at least one movie every day throughout the two calendar years of law study... With all the success that accompanied the peripatetic Sam, this procedure is not recommended in the year of Our Lord, 1963... The response in the Party was tremendous... two only of the class were unaccounted for... and when achievement and income were checked, the group balanced out high in the success bracket and, of course, a couple of Judges, JIM TANTE and RAY ROBERTS — added a touch of dignity to the '48 vintage...

MULLIN MANOR out San Marino way was buzzing with everything that makes for happy parties... It was the first meeting of "THE ADVOCATES" not a few of the Law School Graduates who are pledged to give aid to likely looking ambitious law students who have everything to bring to fulfillment their training except the wherewithal to finance it.

Liberations were poured out on the altar of friendship and the shrine of fellowship glazed with ardor and loyalty... MARK MULLIN '42, Lord of the Manor, was ably assisted by JIM COLLINS '34, President of the Alumni, and kept the party moving at a tempo in the better tradition of San Marino...

TOM McCARRY '33, came all the way from Long Beach... Gossip has it that he dropped in on the way from his way home from the University of Southern California... And by the way, this heroic young lady has a further achievement to record... She's practicing law in Santa Monica and loves it... With MARY FLANAGAN in the office of Forster, Gemmill and Farmer, the other successful Loyolan in the '62 class on the distaff side, is accounted for... JOHN V. GALLAGHER '61, down where Wilshire starts its trek to the ocean for the past year, threw his lot in with GERRY SPERRY '61, and is located in Panorama City, in the general practice of law under the firm name of Gallagher and Sperry... JIM THOMPSON, who graduated a year later is associated with them... JOE MORRIS '59 and JOHN YATES '59 are teamed up in an enterprise that was given him by his army career with definite solidity and turned in his bardoele for a bribe... They are carrying on a lucrative practice and have offices in Sherman Oaks and Glendale... They solve the problem of bilocation by commuting between these thriving communities.

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Criminal Cases

COLLATERAL ATTACK ON FEDERAL JUDGMENT OF CONVICTION

By FRANCIS C. WHELAN, UNITED STATES ATTORNEY

To all California lawyers who do not actively engage in federal criminal practice in its several phases, Section 2255 of Title 28 of the United States Code may well have little or no significance. To those lawyers in criminal practice who have clients that have been convicted and incarcerated as a result of a federal criminal proceeding, this section has become increasingly more and more familiar, for it permits a federal prisoner to move the sentencing court at any time to vacate, set aside or correct the sentence, even though the sentence of conviction may have long since been upheld on appeal, and in the event the trial court denies relief then to appeal from the order of denial to the Circuit Court of Appeals and upon certiorari to the Supreme Court of the United States.

To the offices of the United States Attorneys throughout the country Section 2255 means that increasingly more time must be spent by members of such offices' staffs in the restudy of transcripts of trials wherein prisoners have been convicted and in the consideration of the conduct of such proceedings, such consideration being given frequently by lawyers who had no connection whatsoever with the long past trial's conduct or proceedings leading up to conviction. Sometimes to those offices it would appear that after conviction of a defendant and affirmance of his conviction, this particular prisoner has filed several applications under Section 2255 as well as various petitions for writ of habeas corpus; in each instance the prisoner sought to reverse the orders of the district courts denying him relief by appeal to the upper courts. In each instance his appeals were unsuccessful and in every instance, there were many, his applications for writ of certiorari to the Supreme Court were denied.

In a recent opinion of a district court denying relief to the prisoner just mentioned, the court stated with respect to applications by prisoners seeking to collaterally attack judgments of convictions under which they had been sentenced, "unles some procedure is devised to prevent prolonged and repeated piecemeal litigation of a convict's postconviction complaints, the burden of these postconviction proceedings may become intolerable in districts where penal and medical detention institutions are located, as well as in the districts in which the convictions occur. The pendancy of endless postconviction complaints tends to suspend consideration of executive clemency and parole procedures, and by their very mass tend to obscure the petition having merit." While the courts have spoken of the burden of these postconviction proceedings, there has been a feeling upon the part of some penologists that these proceedings by convicted and incarcerated prisoners have a value to the prisoners themselves; the value is spoken of as a "therapeutic" value. While it may well be true that the opportunity on the part of a prisoner to file and refute motions of the trial courts denying motions without hearing and then later, perhaps, from orders of the trial courts denying relief after hearing. There may also be subsequent motions from the same prisoner which must be given the same judicial attention when new grounds for relief are set forth in such subsequent motions.

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Francis Whalen

(Continued on Page 8)
THE PITFALLS OF ADVISING JOINT TENANCY

By ARTHUR G. BOWMAN
Associate Counsel, Title Insurance and Trust Company

Much has been written about joint tenancies, and inevitably, it seems, the articles intimate, if not conclude, that joint tenancies are a disadvantage and should not be recommended. However, there are advantages as well as disadvantages, and the difficulties that are encountered in connection with this type of ownership arise from a failure to understand the ramifications and uniform consequences of joint tenancies. From my experience, prudence dictates that joint tenancies should not be created without the advice of an attorney. In practice, this is not done, with unfortunate results as some of the cases hereinafter discussed will illustrate.

A joint tenancy may be defined briefly as a single estate which is held by two or more persons in equal shares, and which upon the death of one, vests in the survivor or survivors, and is the title? A judicial determination was necessary. This means that the will of the joint tenant who dies first has no effect of joint tenancy property. Thus, the testator loses control over disposition of such property and sacrifices flexibility in planning his estate. An exception to the rule regarding testamentary disposition applies in the case of simultaneous death; in this situation the advantage of survivorship is lost with the consequent need of probating the estate of each joint tenant. Where joint tenancy is advisable, the owners should always be recommended reading, are "Joint Tenancy: a reappraisal," (1955), and "Joint Tenancy, Tax-wise and Otherwise," 40 30 Calif. State Bar Journal 504 Cal. L.R. 501 (1952).

3. Disposition by will.

As a general rule, joint tenancy property is not subject to testamentary disposition. See Estate of Resler, 43 C.2d 726. (Continued on Page 5)
JOINT TENANCY

(Continued from Page 4)

One day from date of recording before insuring a transfer or conveyance by the husband.

5. Severance of interest.

Subject to the qualification of paragraph 5 above, either joint tenant may transfer or encumber his interest without the knowledge or consent of the other. Thus, there is no assurance that the main purpose and advantage, i.e., survivorship, will be effected. As stated in Lazzarevich v. Lazzarevich, 39 C.2d 48, in the absence of a waiver, a joint tenant is entitled as a matter of right to have his interest severed from that of his cotenant.

6. Voluntary liens.

The interest of a joint tenant is subject to attachment by his creditors. A judgment lien attaches to a joint tenancy interest. An execution sale of the interest will terminate the joint tenancy. These matters are of particular concern where a joint tenancy is created between a widow, for instance, and her child or children. Usually in such cases it is not intended that the child have an interest until the death of a parent.

7. Effect of bankruptcy.

If a joint tenant is adjudicated a bankrupt or his interest, unless exempt, transfers by operation of law to the trustee in bankruptcy, causing a severance of the joint tenancy. In a husband-wife situation, it is a distinct disadvantage to hold the title in joint tenancy where the wife alone is adjudged a bankrupt. Where the husband alone is adjudged a bankrupt, a joint tenancy ownership may be advantageous, unless there is proof, available to the trustee in bankruptcy, that the property is in trust and fact community property.


I have received numerous inquiries as to the procedure to include joint tenancy property as part of the probate estate, usually to obtain tax advantages. If the property is in fact joint tenancy property, it can’t be done. If the ownership is in fact contrary to the record, and there is sufficient proof to that effect, then it may be accomplished. The apparent surviving joint tenant should execute a deed to the heirs or devisees of the deceased joint tenant for the purposes of administration in his estate. Proceedings to terminate the joint tenancy should not be undertaken, such as recording an affidavit of death of joint tenant or filing a petition to establish the fact of death, as this would be inconsistent with the contention that the ownership was other than that in joint tenancy.

A recent inquiry on this point disclosed a case of real frustration—at least the surviving spouse probably wished that he had never heard of joint tenancy. In this case a husband and wife owned property as joint tenants. The wife died intestate. The husband desired to probate the property upon proof that it was in truth community property, and certain tax advantages could be obtained. But if it were community property it wouldn’t be subject to probate, since title would vest in the surviving spouse pursuant to the laws of succession (Probate Code Section 201), and probate proceedings would not be required. A deed from himself as the apparent proprietor dikcd the propri- ety, and his weight in his intention to distribute to his children.

10. The missing joint tenant.

A disadvantage of joint tenancy ownership of real property is sometimes encountered where one of the joint tenants disappears and his whereabouts is unknown. The other joint tenant desires to sell the property and again we are encountered with a serious problem in frustration. There is no express procedure set forth for terminating the joint tenancy under such circumstances, and a solution in a particular case may depend upon numerous factors, including the relationship of the parties, the duration of the disappearance, and the competency and cooperative attitude of heirs or devisees of the missing joint tenant. The following cases are illustrative:

(a) A father and daughter owned real property as joint tenants. He disappeared during World War II. She was the sole heir. Ten years after her father’s disappearance she sought to sell the property as the surviving joint tenant. The father owned no other property. The sections of the Probate Code relating to administration of estates of persons missing over seven years (Sections 280-294) would not apply in the absence of property over which the Probate Court has jurisdiction, and joint tenancy property as such is not subject to administration. In order to have an estate subject to administration, the daughter broke the joint tenancy by deeding her one-half interest to a third party who then deeded it back to the daughter, thereby creating a tenancy in common. Her father’s one-half interest as a tenant in common was administered upon it the missing person’s estate proceedings, and eventually distributed to the daughter as the sole heir. Where a joint tenancy or trust deed property is attached, and, the action of the court could award only one-half of the property to a purchaser. Had there been other heirs or devisees, this procedure, of course, would have been available without obtaining deeds from the other claimants.

(b) Husband and wife owned real property in joint tenancy. The husband disappeared five years ago. The wife desires to sell the property. What procedure is available? In some cases a divorce has been obtained wherein it was established that the property, although standing in the names of the parties as joint tenants, was in fact community property, and was awarded to the wife where the grounds of divorce was extreme cruelty or some other ground which permits an award of all of the community property to the innocent spouse. A divorce on the ground of desertion would not be sufficient, since the court could award only one-half of the property to the innocent spouse.

(c) Another problem is presented where the joint tenants are unrelated and one of them disappears. A procedure has been by virtue of the obligation of the missing joint tenant to contribute to the other co- tenant making such payments for his proportionate share of taxes, maintenance, repairs, fire insurance, etc. These contributions, including trust deed payments, in time will be substantial. A procedure which has been used is an action for money, wherein the missing joint tenant’s interest in the real property is attached, and, the action being quasi in rem, an order for service by publication is obtainable. After judgment is entered, an execution sale of the missing joint tenant’s interest in the property is made may be sufficient to eliminate his interest when time for redemption has expired.

(Continued on Page 8)
Should Experts Be Court Appointed?

**PRO**

By RICHARD DAWSON

The law of evidence requires the most reliable sources of information to be used as the basis for decisions in trials. An example would be the Opinion rule which provides that a witness may testify to facts which he has observed and not opinions flowing from such facts. This is considered the province of the jury to listen to the testimony relating to facts and then make its decision concerning what inferences are to be drawn from them.

However, in today's changing and growing society more and more of the jurors are finding it hard enough to decide what shaving blade or toothpaste to buy based on the facts attested to them by Madison Ave. let alone deciding whether a man who killed his wife because a voice told him to do so is insane under the right or wrong test.

Because of the incompetency of the jury to draw inferences from facts relating to areas of specialized knowledge the courts admit the opinions and inferences drawn by people who are skilled or possess knowledge of the specialized area and whose opinion will aid the jury in its search for truth.

Under our adversary system it is the responsibility of the opposing parties to find and present their proof. So when they have a question calling for the opinion of an expert they each go out and round up their expert to testify and when he is through pay him his fee. This practice is what the argument is concerned with. Should such a practice be retained, the writer answers no.

The criticism of such a practice is obvious the parties will not bring into court the best expert but rather the best expert who will be the most favorable witness. The end result of such testimony will not aid the jury in its search for the truth but merely adds another barrier which the jury must circumvent before it reaches its final destination.

Of course it is always easier to criticize something. The problem is what to replace it with. The answer is the appointment of experts by the court with certain safeguards left to the parties.

The inherent power of the trial judge to call and examine witnesses has not been used with great frequency but it did serve as a basis for statutory solution to our problem. In 1937 the Model Expert Testimony Act was approved by Commissioners on Uniform State Laws and embodied in the Uniform Rules of Evidence. This act provided for the appointment of experts by the court on its own motion or request of the parties.

Under our statute a refusal to appoint is within the trial judge's discretion even if the experts are in disagreement. Also a party may examine the expert as though he was called by an adverse party. The judge fixes the expenses compensation and it is apportioned among the parties in the courts discretion and their own additional experts.

It should be pointed out that under the Model Act and Uniform Rules they expressly provide that the Jury is to be told that the court's expert was so appointed and his testimony would usually carry the most weight. While C.C.P. 1871 has no express provision as the Model Act does, it is presumed it would be construed comparably.

The courts are currently using a practice which does not aid the trier of facts in search for truth but conversely only begets confusion in particular cases and contempt for our court system as a whole. Under C.C.P. 1871 and other comparable California statutes we have the周岁 to embark on fairer and more just grounds of procuring evidence by using court appointed experts.

Therefore we have the solution to the archaic system presently being used in our courts. We must utilize statutes such as C.C.P. 1871 to their fullest extent. We should make it known to the judiciary that we want them to use the powers given by our legislature. The judges should be informed that public opinion is in favor of the changes as exemplified by our statute relating to expert testimony.

**CON**

By THOMAS MCDONALD

The plaintiff presents his case with the aid of an expert witness selected by it, and the jury listens and is impressed by the expert testimony; the defendant then cross examines the plaintiff's expert and makes it clear to the jury that the expert they have heard is retained by the plaintiff and selected because of the favorable testimony he gave. The defendant then presents his own expert and again the jury is impressed by the testimony, and again it is pointed out to them that the defendant's expert was retained because of the testimony he would give favorable to the cause of the defendant. The jury is thus confronted with two experts who are purportedly spokesmen of the truth of the matter in issue, and yet, contradict each other; the jury wants to believe one expert and yet is urged by another expert to adopt a contrary view.

At this point the above rules allowing a court appointed expert could be invoked and a super expert could be brought in to resolve the controversy. Were such an expert appointed, the credence given his testimony would more than likely be decisive, and especially so when it is pointed out to the jury that the court appointee is not accountable to either the plaintiff or defendant, i.e., that he is a neutral expert, and therefore, his version of the facts must be correct.

The vice of the procedure is precisely that undue weight is given to the testimony of the court appointed expert.

Inherent in such procedure is the assumption that the partisan experts were not experts at all or that they were deliberately caused to color their testimony to aid their respective causes. A further assumption is that the court appointee is more learned in the field and possesses an insight not shared by the conflicting partisan experts. It is a fact of history (known, however, only to the writer)
TRESPASS BY PIGEONS IN STATE OF LOYOLA

By CLEMENCE SMITH

One morning after Equity class, I stepped down into my Corvair and noted it needed a wash job. I remembered that I had spent ninety-nine cents at the “World’s Largest Car Washing and Polishing Center” in Pasadena only three days before. I reflected on pigeons. In particular, on our pigeons. Were these dismal grey birds, like smog, to gall us forever? Or could we do something about them? Something tough and legal? An injunction, perhaps? Thoughts of this possibility occupied my drive home. They even reconciled me to a tie-up on the off-ramp.

Our Loyola doves were encouraged to hang about the area of the other pigeon lady. They never showed up on the days I lay in wait in the parking lot while I pretended to be cleaning out my glove compartment.

But the other one, Mrs. Alberta Burke, met almost too easily. One bright afternoon I jaywalked across Grand Avenue and there she was, a spunky little figure in a neat black coat. She never showed up on the days I lay in wait in the parking lot while I pretended to be cleaning out my glove compartment.

The lady who feeds the birds on our side of the street proved elusive. As though sensing my design to interview her, she never showed up on the days I lay in wait in the parking lot while I pretended to be cleaning out my glove compartment.

But the other one, Mrs. Alberta Burke, met almost too easily. One bright afternoon I jaywalked across Grand Avenue and there she was, a spunky little figure in a neat black coat.

Pigeons, making a soft grey sound, flowed about her feet like grey surf on a tranquil day. I introduced myself. Bright-eyed, she responded. And, again almost too easily, I was at the door of her apartment.

"I'm eighty," Mrs. Burke said, challenging belief. Her voice was clear and steady. Her back was as straight as a boy’s.

She pointed to her breast, “I had a shillelagh. If anybody ever got too smart with me, I just snapped a dish towel at him. The other one is very shy.”

“I was born Irish," Mrs. Burke said, “and I married Irish. I never missed anything.”

The walls of the apartment bore a collection of pale photographs and an enlargement of the face of Governor Brown. Mrs. Burke had campaigned the neighborhood on his behalf. She also liked Garry Moore, and she had to go out and pick up some things at the cleaners. I offered to walk with her to the corner of Twelfth Street. Pigeons flowed about us.

“See that sidewalk,” Mrs. Burke said. “Clean as a whistle.”

“I kept a hotel too," Mrs. Burke said. “All you had to do was register.”

Once more on my drive home I thought about the birds. Our only hope for success, I decided, lay in Mrs. Burke's hiring a competent lawyer. For if she ever appeared on her own behalf, we surely wouldn’t stand a chance. Why all she’d have to do was snap a dish towel.

(Continued from Page 6)

that a sanity hearing was conducted for Christopher Columbus in 1486. At that hearing Christopher conducted his own defense and contended that since ships appear on the horizon mast-first, the world must be round. The opponent contended, by an expert witness, that such a contention was incredible. Christopher was able to prevail by means of superior advocacy, but what would have happened had an impartial, disinterested expert witness been introduced? The only other experts would probably have been flat-worlders and would have entered the proceeding with an aura of infallibility not necessarily in accord with their knowledge.

In a controversy of partisan experts credence for their opinion may be induced by the use of unsupported or only partially supported hypothetical questions. Is the adversary responsible for pointing out this fact to the jury? Where the experts disagree is it not incumbent upon the party to establish that his expert is more entitled to belief? Where an opinion is slanted or only partially true cannot the opposing counsel make this clear to the trier of fact? Is the adversary system incapable of dealing with the problem?

The battle of the experts should continue, and it should be resolved by the advocate in pointing out that his expert is closer to the truth than his opponent’s, under the particular circumstances. Third party, neutral experts, appointed by the court, should not be permitted to enter the proceeding because the jury adopts the attitude that, at last, here is an expert, forwarded by the court, which we can believe.

Reasonable men can disagree, reasonable experts can also disagree (in re doctors see: 31 St. Johns L.Q. 164, 166 (1956)), and they should be permitted to continue to disagree, rather than have their controversies resolved by a third party, who, because of the circumstances of his entry into the matter, carries unwarranted weight.

CAROLYN M. FRILAN
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Joint Tenancy
(Continued from Page 9)

11. Effect of murder or manslaughter.

A person convicted of the murder or voluntary manslaughter of a decedent is not entitled to succeed to any portion of the estate (Section 258, Probate Code). What about murder or voluntary manslaughter by a joint tenant? There is no express statute covering this point, but the same principle is applicable. In a recent California case, that of Abbey vs Lord, 168 C.A.2d 499, it was held that a joint tenant cannot succeed to the entire property by his wrongful act. However, the “surviving” joint tenant is still entitled to his percentage of the joint tenancy property, and thus, in a sense, benefits from his wrongful act.

Cases in other jurisdictions have wandered in several directions with regard to a manslaughter charge against the surviving joint tenant. Prior to 1955, Section 258 of the Probate Code provided that no person convicted of murder could succeed to any portion of the estate of his victim. The contention was made that a person convicted of manslaughter should also be precluded from succeeding. In Estate of Lysholm, 79 C.A.2d 467, the court held that it could not insert the word “manslaughter” nor read it into said Section, and refused to do so. The case held that when death is the result of an accident or even gross negligence so that the surviving joint tenant is guilty of involuntary manslaughter, he may still succeed to the estate of the deceased joint tenant. The 1955 amendment to Section 258 was intended to include voluntary manslaughter, undoubtedly as a result of the holding in the Lysholm case.

One of the latest cases on this subject is the case of Williams vs Bell, Los Angeles Superior Court Case No. 700790, opinion rendered January 28, 1960. This opinion can be found on page 17 of the Los Angeles Daily Journal Reports Section, dated April 25, 1960. In that case, the defendant husband had so severely beaten his wife that she died as a result of the beating. The Court initially found the defendant husband guilty of second degree murder and, subsequently, the Court reduced the charge from second degree murder to manslaughter. Since the title to their real property stood in husband and wife as joint tenants the question arose as to whether or not husband would take all of the property as the surviving joint tenant. The trial court—in the current case above last referred to, held that since this was, obviously, a case of voluntary manslaughter the husband would not be precluded from taking under the general law of survivorship and held that husband owned one-half as his separate property and that he held the other one-half in trust for the benefit of the heirs of the deceased wife.

12. Conclusion.

To summarize, reference is made to the article appearing in 30 Calif. State Bar Journal 507 at page 512 where it is stated: “Joint tenancies are not beneficial in their entirety. They possess certain disadvantages and subject each of the owners to certain risks. Every joint tenant, like every tenant in common, owns an equal share of the property. He has full power to convey or mortgage his interest during his lifetime. Likewise, his interest in the property is subject to seizure by his creditors. Either occurrence will cause a severance of the joint tenancy and a consequent destruction of the right of survivorship. This is a risk which every joint tenant should be made to understand clearly in advance of creating a joint tenancy. The creation of a joint tenancy is no assurance of itself that the joint tenancy will continue to exist. Acts or dealings by either of the joint tenants, even if unknown to the other, may operate to destroy the joint tenancy.

Also, many people do not fully realize that they cannot dispose of their interest in joint tenancy property by will. The right of survivorship with respect to a joint tenancy existing at death is paramount to a testamentary disposition. Either joint tenant, of course, could terminate his joint tenancy by conveyance during his lifetime and then proceed to make a testamentary disposition of it. Every joint tenant should clearly understand the effect which owning property in joint tenancy will have upon his testamentary plans.”

LAW WIVES

Loyola Law Wives will host the First Annual Get Acquainted luncheon on Saturday, March 16th at Michael’s Restaurant for the wives of the three law schools. Mrs. Charles Ibd, chairman of this affair, has called a meeting at the home of Mrs. Eugene Topel on Monday, March 11th to make decorations for a St. Patrick’s Day theme. This should be an enjoyable event and we are looking forward to meeting the wives from UCLA and USC.

April is election time! Mrs. William Rylaarsdam is making preparations for this important function and we hope that the entire membership will attend to select their officers for the coming year.

A tour of the Court House is being planned by Mrs. Ronald McQuoid and her committee for a week day in late April. Lunch will be served and several trials will be attended.

Our Legal Aid project for the spring is to provide Easter baskets and decorations for the children’s nursery. Mrs. Samuel Meyerhoff and her committee are working on the plans.

Our program will be completed in May with a luncheon at which time installation of the new officers will be held.

By BARBARA SOLOMON

Collateral Attack
(Continued from Page 3)

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