

points of view

'Governmental immunity' alive and well

AS 'DOCTRINE,' "governmental immunity" is ancient. The king can do no wrong," they said in bygone centuries.

But it's a living concept in today's state Court of Appeals decisions.

"Governmental immunity" is the notion that government isn't liable for civil wrongs (torts) committed by officials when they occur in the performance of public or governmental functions.

Dr. Richard Baker unsuccess-fully sued the doctrine to get a medical malpractice suit against him dismissed.

Marie Douglas, a patient in Pontiac General Hospital, fell off a cart in the emergency room. "Apparently the treating physicians, who were under defendant Baker's supervision, failed to detect the bone injury, and the patient was discharged without treatment for the fracture," said

Judge David H. Sawyer.

The injury was discovered later, and surgery was performed, but the woman died of complications from the surgery. A survivor sued.

OAKLAND CIRCUIT Judge Robert Thompson (Tomlin) said Douglas sued on grounds of governmental immunity, the hospital being a subdivision of the city of Pontiac.

Incorrect, said the Court of Appeals last week. Dr. Baker wasn't an employee of the hospital but "a physician in private practice with staff privileges at the hospital" with an obligation to supervise resident physicians, without compensation.

It sent the case back to Oakland Circuit Court where one assumes it will be tried or settled.

The same issue arose only a year ago. Pontiac General contracted with an entity called Emergency



Tim Richard

Services — North Oakland, P.C., a private corporation operated by Dr. Joseph Schirle.

The appeals court held that the corporation and Schirle weren't entitled to the defense of governmental immunity "since they were independent contractors rather than governmental employees."

A NASTIER case stemmed from the six-year-old shooting death of Martin D. Chivas by two escaped

prisoners.

In 1987 Oakland Circuit Judge Robert Anderson ruled against Chivas' estate and in favor of Perry Johnson, director of the state Department of Corrections, his deputy, three wardens at Marquette and two guards.

The prisoners had been in a maximum security program, but a warden transferred them to a minimum security farm, from which they escaped and went on a crime spree, killing Chivas and others. The case has been up and down the court ladder for years.

LAST WEEK Judge Glenn S. Allen Jr. wrote the appeals court decision:

• Director Johnson and deputy

Robert Brown Jr. had "absolute immunity," as do judges, legislators and the highest executive officials.

• The wardens don't qualify for absolute immunity, but "the decision to transfer the inmates to the minimum security facility was similarly a matter involving a high degree of personal deliberation, taking into account the numerous factors provided by the rules." They were entitled to immunity.

• The two guards, who were watching over 90 prisoners at the farm, were akin to police officers. "A police officer's duty is generally owed to the public, and not to a specific individual," Allen wrote. So the guards are protected by the doctrine of governmental immunity.

AND SO the doctrine of governmental immunity, born in the days of kings, continues to be refined. It can't be applied to independent contractors working in a city hospital but is applied to prison guards.

"The life of the law has not been logic; it has been experience," wrote Oliver Wendell Holmes in his landmark 1881 lectures on "The Common Law."

"The law embodies the story of a nation's development through many centuries," said the law professor who was later to become the U.S. Supreme Court's "great dissenter."

"In order to know what it is, we must know what it has been, and what it tends to become."

Tax-cut plan's author defends his proposal

The writer, Patrick L. Anderson, is co-chair of the Patterson-Anderson Proposal Committee. He's a Farmington Hills economist at Alexander Hamilton Life Insurance Co.

OVER THE years, I have come to appreciate the Observer & Eccentric's editorials. While I occasionally disagree with them, they are normally thoughtful and well-reasoned.

Thus, I was doubly shocked by your poorly researched and crassly written editorial condemning the "Patterson-Anderson" property tax limitation amendment.

"Every other editorial that I've seen about our tax limitation proposal has discussed Michigan's high property tax burden, and how the proposal would reduce that burden. However, instead of talking about the focus of our proposal, the O&E editorial entertained readers with these petty remarks:

"I work in a building 'overlooking a suburban freeway,' which you derisively call an 'ivory office tower.'"

guest column

• Four years ago I advised two Republican candidates for governor, and neither of these two men had ever been members of the state Legislature.

• A description of our proposal was two whole pages in length, and the paragraphs were single-spaced.

• Neither L. Brooks Patterson, co-chair of the drive, nor I have ever been state legislators.

THEN, TO my astonishment, you conclude that you "do not deem" us by raising the issue of our "inexperience" in "a legislative area."

Mr. Editor, the reason we are doing this is precisely because the Legislature and the governor have not been doing their job.

You will recall the Legislature offered us two school finance proposals last year — both major tax in-

creases — and that Brooks and I worked to defeat them. Our fellow citizens overwhelmingly agreed with us, not with Lansing.

We cannot wait any longer for the Legislature and the governor to reduce property taxes and reform school finance. It's up to the citizens to do the job.

THE REAL people you demean with this editorial is your readers. They deserve a thorough airing of this citizens' proposal. Your editorial writer apparently didn't even read our petition. What little you mention about our proposal inaccurately describes the school aid provisions.

Furthermore, your editorial writer appears ignorant of Article IX of our constitution, which already regulates taxes and tax elections in ways your editorial says "doesn't belong in a constitution."

When you next write about our property tax limitation proposal, please call our toll-free line, 1-800-BITE-TAX, and get a copy of the petition. Even better, come and discuss it with me. I'm right up the street in my ivory office tower.

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Latin teacher cared deeply, set standards of excellence

TODAY IS THE IDES of March. I'm writing about it because of a letter I received from my former high school Latin teacher, Edith Kovach, who recently moved to Bloomfield Hills.

Dr. Kovach wrote for a couple of reasons. One was she liked two of my columns. I felt like I had just received an A.

And as a student of classics, she wanted to lightly foretell a future error about those Ides.

It seems that one of our reporters wrote a story referring to the Ides of February and looking ahead to the Ides of April and tax day.

According to Dr. Kovach, in the Roman calendar "the Ides were a holiday each month, but on the 15th only in March, May, July and October. On the other eight months, the date was the 13th.

"Please," she pleaded, "don't let anyone write about the Ides of April as taxpaying day."

No, I didn't look up the Ides to verify whether her information was correct. I believe her. Just as I believed everything this scholarly woman said, as I ducked behind the student in the seat ahead of me so she wouldn't call on me to stumble over a passage from Julius Caesar.



Judith Doner Berne

I WASN'T a language student.

I ducked because I didn't want to show my ignorance — or to disappoint her. She was a teacher in the truest sense — one who set standards of excellence, who had depth of knowledge and cared deeply that her students absorb the lessons she taught.

Actually I feel proud that she would remember me at all — since I had her for just that year and was such an average student. She should know that although I dropped Latin after two years and went on to French, that I extolled it (it will help you with your writing) to my children, only to find that West Bloomfield High School didn't offer it.

However, all was not lost. One of my children is finishing his second year of college Latin on the way to a degree in philosophy and a wish to be a writer. Another took Greek (actually, it nearly took her) to fulfill her requirements for a master's degree in English. So perhaps Dr. Kovach had the desired effect after all.

LATIN, WHICH was dropped from many high schools, is coming back. A survey of the public school districts in our coverage area shows that Plymouth-Canton has programs in both high schools, as do Birmingham, Bloomfield Hills, Southfield and Troy. Farmington offers it at one high school and students from the other two can parake.

Latin isn't taught in the districts of Avondale, Clarencville, Garden City, Livonia, Redford Union, Rochester, South Redford, Walled Lake, West Bloomfield or Westland.

But back to Dr. Kovach. I guess it really wouldn't matter what she taught, although at the same time I can't imagine her teaching anything else.

Tracy Kidder's school-year-long work of non-fiction "Among Schoolchildren" opens with: "...a. Clarence, Mrs. Zajac knows you didn't try. You don't just hand in junk to Mrs. Zajac. She's been teaching an awful lot of years. She didn't fall off the turnip cart yesterday. She told you she was an old-lady teacher."

Dr. Kovach, too, had those standards of excellence. You didn't try to fool her. She didn't fall off the cart yesterday.

Judith Doner Berne is assistant managing editor for the Oakland County editions of the Observer & Eccentric Newspapers.

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