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Issues taking shape in election trial

The key isn't fraud, it's meaning of law

By BUD O'BRIEN

After three rather uneventful weeks of testimony, the undercurrent of tension broke into the open this week at the trial to determine if more than 450 votes were cast illegally in last November's Santa Cruz City Council election.

Accusations that some of the witnesses were being "coached" and outbursts from witnesses who questioned the motivations of those challenging the election occurred during the week.

The trial, being held in Superior Court Judge Harry F. Brauer's court, is of a lawsuit brought by a group of conservative Santa Cruz political activists challenging the legality of 472 votes cast — mostly by students — at UC-Santa Cruz precincts in the November election.

Their aim: to invalidate the election of progressive Jane Weed to one of the four seats that were up for election and to replace her with Bill Feiberling, a conservative. If that were to happen, majority control of the City Council would pass from the "progressive" camp to the "conservative-moderate" forces. Right now, the progressives hold a 4-3 edge.

The conservative challenge is a culmination of a longtime suspicion among certain political factions that the predominantly liberal-progressive votes cast on the UCSC campus might be vulnerable to legal assault. After the November election, these suspicions were conveyed to the county Grand Jury, which, using its subpoena powers, concluded that 472 votes had been cast at campus precincts by voters who didn't live on the campus. The Grand Jury flatly called those votes illegal. Whether they were or not, however, is a decision that must be made by Judge Brauer, and perhaps ultimately by higher courts.

To those on the progressive side, and particularly to those connected with UCSC, the attempt to overturn the election

is just one more effort by old-line political power brokers, who resent the infusion of political liberalism that entered the once-conservative community along with the university, to discriminate against the students.

Supporters of those challenging the suit don't deny that they resent the "knee-jerk" pattern of voting on the campus — the votes on the campus in November went to the progressives by a 9-1 margin — but contend that the lawsuit is aimed only at making certain the election laws are not violated.

Motivations aside, there is no question those challenging the election have at the very least uncovered a soft spot in the state's laws having to do with what constitutes a voter's residence ("domicile" is the word employed in the election codes) and consequently where he/she can cast a ballot.

What should also be emphasized amidst the flood of words and mutual recriminations is that this is NOT a question of voter fraud. Nobody is being accused of intentionally breaking the law. There is no suggestion that outsiders were bussed into the city or campus to vote for one slate or another.

In fact, the vast majority of the challenged voters lived within the city when they voted last November. Their violation of the law, if there was any, was in not notifying the county elections office of their new addresses, which would have resulted in their being assigned precincts off the campus in which to vote. Since the November ballot was the same for all precincts in the city, these challenged voters would presumably have voted the same way no matter in which particular precinct they actually cast their ballots.

From that perspective, as the students' defenders note, invalidating their votes because they voted in the wrong precinct would amount to throwing out the votes of otherwise quali-

fied voters because of a technical violation of the elections code. In this case, those fighting the lawsuit maintain, that would amount to transforming Santa Cruz city government on a technicality.

But it's really not that simple. There is, after all, the law. And the law says without equivocation that a person must vote in the precinct in which his/her "domicile" is located.

That's clear enough, but what isn't precisely clear is what constitutes a "domicile." Here's a definition in the law: "The domicile of a person is that place in which his or her habitation is fixed, wherein the person has the intention of remaining, and to which, whenever he or she is absent, the person has the intention of returning. At a given time, a person may have only one domicile." (Italics ours).

In trying to determine what the domicile of the students whose votes are being challenged is — or was at the time of the election — the question of "intent" on their part obviously plays a key role. More than 150 of them have testified in the first three-and-a-half weeks and, while there are many circumstances and situations involved, a pattern that fits most of the cases can be traced.

In most cases, the students lived on campus for the first year or so of their matriculation at UCSC, and that's where they registered to vote. Later, they moved off campus, and in most cases lived in several different "residences," usually with other students as housemates and usually (by no means in all cases, however) within the city.

They did not bother to change their registration from the campus to any of their off-campus living quarters. Some said they intended to return to campus; most said they didn't. (Since in order for any but freshman students to live on campus, it is necessary to sign up for a "lottery" system of housing allocation, there is a record of those students who made an attempt to obtain campus housing.)

Most of the students testified that they didn't think about the need for re-registering when they moved off campus. They testified that their lives centered on the campus, that they had mail-boxes at the colleges they attended (all students have such mail-boxes) and that, in general, they believed it was just "more convenient" to vote on the campus.

Defense lawyers Mitchell Page, Robert Taren and Gordon Salisbury have tried in their questioning to establish that while most of the students' off-campus residences were transitory, the campus was the real center of their lives.

(There is another section of the elections code which states: "A person does not gain a domicile in any precinct into which he or she comes for temporary purposes merely, without the intention of making the precinct his or her home.")

But Tim Morgan and John Bohrer, lawyers for those pressing the lawsuit, insist there's nothing in the law that would allow the students to claim the university as their domicile once they had left it with no intention of returning. They might, Morgan has noted on occasion, more reasonably claim their original homes (their parents' homes) as their "domiciles" and hence have voted there. Under questioning, a large number of the students have testified that they use their

hometown addresses on their drivers' licenses and frequently for other purposes.

Judge Brauer has given little indication so far as to which direction, if any, he is leaning. He has dampened hopes, however, that somehow "convenience" or "interests" will be accepted by him as reasons for keeping one's voter registration in a particular place. He noted more than once that voter's rights in this country "attach to residence" and not one's business interests or convenience.

Brauer refused early on to give a sort of "advisory ruling" on one student's status, indicating he was prepared to hear testimony from them all and that he might in the end make a case-by-case determination of the validity of the votes.

The judge has indicated that his chief concern

as the trial goes on is that the students testify with complete candor and not try to shade their testimony toward what they perceive as most favorable to their cause. To that end, the judge admonishes each witness not to discuss the case with other witnesses.

Defense attorneys have also said that they have scrupulously avoided "coaching" witnesses because of their belief that it might undermine the credibility of the witnesses and incline the judge in the wrong direction from their viewpoint.

They were thus embarrassed, and somewhat angered, earlier this week when one witness admitted to having been "coached" on the meaning of domicile by one of the investigators for the defense. The witness also admitted to discussing the matter with other witnesses outside the courtroom.

Defense attorney Page lectured the witnesses for their impropriety, implying that the defense case could only be damaged by such collusion, no matter how innocent it might actually be.

Until this week, nearly all trial observers had agreed that the students had made a strong impression as being not simply intelligent, as might have been expected of university students, but candid and honest in their testimony.

With an estimated five-to-six weeks remaining in the trial, there is hope that the atmosphere of trust that had prevailed earlier can be restored.

When the testimony is completed, and the lawyers have finished their arguments, Judge Brauer will be faced with making a decision with almost no previous cases from which to draw precedent. His burden will be made heavier by the fact that under the law, his decision will not be subject to being enjoined while the decision is appealed, no matter which side wins. Since appeals always consume a great deal of time, that means that Brauer's decision will, for practical purposes, decide the makeup of the City Council for the next two years at least.

The judge, of course, can make any one of several judgments. He can rule that the challenged votes were in fact legally cast, leaving things as they are.

Or he can rule that the votes were cast in technical violation of the law, but that he won't overturn the election results.

Or he could rule that the votes were cast illegally and are thus invalid and then apportion out the loss of the 472 votes on the ratio that votes were cast in the precincts involved. That would cost Ms. Weed enough votes to unseat her and give her seat to Feiberling.

Or, he could rule the votes invalid and invalidate the entire election, which would force the city to hold a new election.

None of the parties involved expect the case to result in a new election.

What it may eventually result in, however, is a reform in the state elections code that will clarify the bothersome "domicile" issue. That, in fact, is what Grand Jury Foreman Julius Defosset said is the ultimate goal of the Grand Jury's investigation.