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Retirement of John R. Hetland

Pete Wilson
TRIBUTE

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Governor Pete Wilson†

For three decades, John Hetland taught generations of California’s future lawyers at Boalt Hall. I had the privilege of being one of his students.

As a teacher he was among the best—capable, expert, skilled, and accomplished. He brought out the best in his students, challenging us to think critically and clearly as he guided us through the rigors of the law.

His goals were unselfish—always extending to what others could achieve. Behind those three decades of teaching are countless individuals whose minds have been sharpened and whose goals have been inspired. John’s unselfish dedication to teaching and to the law has helped launch many successful careers.

Professor Hetland exemplifies the true scholar by bridging the gap between the theoretical and the practical. His active role as a litigator and consultant has enabled him to base his scholarship upon experience and observation, and through his writings he has had an immeasurable impact on the development of wise and judicious law in the area of real estate secured transactions.

Oliver Wendell Holmes stated, “Every calling is great when greatly pursued.” In a time when the legal profession has come under fire, John Hetland represents our finest. Throughout his career he has upheld the dignity, honor, and proud tradition of the law.

I thank John for his many years of service and wish him happiness in his retirement.

† Governor of the State of California.
Richard C. Maxwell†

Over a long career Professor Hetland has practiced and balanced the roles of scholar and advocate with consummate skill. This accomplishment has brought a litigator's edge to his teaching and has produced a penetrating, practical scholarship that has had a unique impact on cases involving real property security law in the California courts.

The citation of academic authorities in judicial opinions is common, but the attention paid to Professor Hetland's ideas by the judiciary is of a different quality than the usual reference of this kind. In his frequent role as amicus curiae, his arguments are often treated as though they were coming from one sitting with the court rather than standing before it. Thus in *Roseleaf Corp. v. Chierighino*, one of Justice Traynor's great opinions dealing with California's complicated array of antideficiency statutes governing debts secured by real property, the opinion states: "It seems clear, as Professor Hetland, amicus curiae herein, contends, that section 580d was enacted to put judicial enforcement on a parity with private enforcement."

Again, in *Honey v. Henry's Franchise Leasing Corp. of America*, Chief Justice Traynor restates in a long paragraph the thesis of amicus curiae (Hetland) "that the remedies for breaches of land-sale contracts should be reconsidered in the light of the distinct purposes such contracts serve." What a frame for a scholar's thought! That the opinion goes on

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1. This statement, so far as it refers to the law school classroom, is based on reputation evidence. I have, however, heard Professor Hetland's humorous and erudite lectures on secured real property transaction given under the auspices of California Continuing Education of the Bar. They are justly famous.
3. *Id.* at 102.
5. *Id.* at 835. Traynor continues:

[Amicus curiae] points out that remedies that are appropriate for the breach of a buy-sell or marketing contract may not be appropriate for the breach of an installment contract entered into primarily as a security device. Since rules precluding forfeitures and antideficiency legislation have put the latter type of contracts substantially on a par in many respects with mortgages and deeds of trust, amicus curiae suggests that the law governing those security devices should be adopted with appropriate modifications in determining the remedies for breaches of installment contracts. On the vendee's breach, neither the vendee nor the vendor would have an election to rescind the contract, on the ground that rescission in effect converts a debt secured by the property into a lease of the property, a result not contemplated by either of the parties. In his view, the appropriate remedy is a judicial sale of the property, which will afford the vendor the benefit of his bargain to the extent not precluded by the prohibition against deficiency judgments (Code Civ. Proc., § 580b) and return to the vendee any excess of his part payments over the damages caused by his breach.

*Id.*
to conclude that given the posture of the case no reconsideration of reme-
dies is necessary is a minor disappointment.

John Hetland's work has received this level of judicial attention in
many of the landmark cases that California's hectic pace in real estate
financing has produced in recent decades. The intricate and mature stat-
utory structure within which such financing must operate and the com-
plexity of the rules that the common-law process working with them has
generated have continued to offer great opportunities to a brilliant legal
analyst. Professor Hetland has been more than equal to the challenge.

In Walker v. Community Bank, Justice Sullivan wrote on the diffi-
cult matter of the impact of California's one-action rule when a creditor
judicially forecloses on personal property collateral without also foreclos-
ing on real property collateral securing the same debt. The majority
began its analysis by setting out Professor Hetland's "excellent summary
of the rule." Having laid this foundation, the court stated the question
before it: "[I]s section 726 still applicable where there is both real and
personal property security?" The majority then moved to its primary
authority: "Professor Hetland has answered this question as follows:
. . . ." It is hard to imagine a greater tribute to the clarity, quality, and
practical nature of a scholar's work than its use in this fashion by the
Supreme Court of California.

Even in those real property financing cases in which John Hetland is
not given a starring role, evidence of his work is almost always present.
In Cornelison v. Kornbluth, for example, Justice Sullivan's opinion on
the effect of a full credit bid at foreclosure of a deed of trust on causes of
action for breach of covenant and waste cited Hetland five times.

The extraordinary attention paid to the ideas of John Hetland con-
tinued in the eighties and into the nineties. The California Supreme
Court, in Petersen v. Hartell, imposed equitable limitations on what can
be characterized as an equity of redemption for defaulting vendees in
installment land contracts, and Chief Justice Bird, concurring and dis-
senting to the majority opinion of Justice Reynoso, noted the majority's

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7. CAL. CIV. PROC. CODE § 726(a) (West 1991).
8. Walker, 518 P.2d at 331 n.2 (quoting at length from JOHN R. HETLAND, CALIFORNIA REAL
ESTATE SECURED TRANSACTIONS § 6.18, at 257-58 (1970)).
9. Id. at 333.
10. Id. (quoting at length from JOHN R. HETLAND, CALIFORNIA REAL ESTATE SECURED
TRANSACTIONS § 6.18, at 260-61 (1970)). On legislative developments intended to address, among
other issues, the situation in Walker, see John R. Hetland & Charles A. Hansen, The "Mixed
Collateral" Amendments to California's Commercial Code—Covert Repeal of California's Real
Property Foreclosure and Antideficiency Provisions or Exercise in Futility?, 75 CALIF. L. REV. 185
12. See id. at 987, 989, 992, 993.
failure “to discuss the cogent arguments raised by Professor Hetland, who appeared as amicus curiae for plaintiffs.”

Real property security litigation in the nineties began with a challenge in Security Pacific National Bank v. Wozab to the existing wisdom regarding the appropriate sanction to impose under the one-action rule when a bank, acting as mortgagee, sets off a debtor’s unencumbered bank account prior to foreclosing on the property securing the debt. Not surprisingly, Professor Hetland’s views regarding the scope of the one-action rule sanction were a key point of contention between the majority and dissent.

John Hetland has not lived his professional life as a scholar remote from the fray. He has been a litigator, expert witness, and consultant for most of the years he has served as an academic. His scholarship and his advocacy have continued to exhibit the analytical depth, the integrity under pressure, and the clarity of expression that have made him preeminent in his field. I have found no American word that properly describes John’s professional status at this point in his career. “Jurist,” in its bland use in the United States, will not do. In England, however, it means one who has “made outstanding contributions to legal thought and legal literature.” As so used it is the right word in the present context.

It is fitting that “jurist” is the term John Hetland used to describe Chief Justice Traynor in a tribute. He wrote of a judge who not only

14. Id. at 243 (Bird, C.J., concurring and dissenting). Chief Justice Bird’s opinion goes on: “Professor Hetland argues that the installment land sale contract, when employed as a security device, is the functional equivalent of a mortgage or deed of trust and should generally be subject to the same rules. This view has much to recommend it.” Id.


16. Much of the existing wisdom was based on Bank of America v. Daily, 199 Cal. Rptr. 557 (Cal. Ct. App. 1984), in which the California Court of Appeal, relying heavily on and quoting from Professor Hetland’s authoritative 1970 treatise, effectively held that the proper sanction to impose on the bank was loss of its rights in the security and in the underlying debt. The now-famous quote from Hetland reads:

“The classic sanction against the creditor who fails to exhaust all his security for the same debt in a single action is harsh, yet it follows inescapably from the availability of but one action to the creditor—he waives the balance of the security and he waives any claim to the unpaid balance of the debt.”

Id. at 559 (quoting JOHN R. HETLAND, CALIFORNIA REAL ESTATE SECURED TRANSACTIONS § 6.18, at 258 (1970)).

17. Writing for the majority, Justice Eagleson characterized Daily’s “brief quotation [of Professor Hetland’s treatise] regarding the debt” as “clearly dictum.” Wozab, 800 P.2d at 565; see supra note 16. In dissenting from the majority’s conclusion that the exercise of the setoff did not result in the one-action rule sanction of loss of the balance of the debt, Justice Broussard quoted the same proposition from Hetland as the appropriate way to avoid what he regarded as “the untoward consequences” of the majority decision. See Wozab, 800 P.2d at 571 (Broussard, J., concurring and dissenting). For a concise and persuasive analysis of the scope of the sanction for violation of the one-action rule, see Hetland & Hansen, supra note 10, at 205-06.


decided cases with clarity and style but whose opinions looked to the ongoing health of the legal structure. It is remarkable that John Hetland, a lawyer who has won overwhelming respect as an advocate, could have carried on his work in such a manner as to warrant the same accolade.

Edward C. Halbach, Jr.†

I come neither to bury John nor to praise him. He is far from ready for burial, for we are dealing with a change to emeritus status rather than retirement. And the praise will take care of itself if I simply tell it as I see it, based on over three decades as a Boalt Hall colleague of this gifted practitioner and scholar.

Almost from the time we arrived here from the Midwest as beginning teachers in the summer of 1959, it was evident to me that John was a kind of person I would treasure as a colleague. Readily recognizable was that special mix of qualities that have proved to make him both an outstanding professional and a wonderful friend. A knowledgeable, thoughtful, and stimulating colleague, he has an imagination and a speculative turn of mind that have been as obvious in his sense of humor as in discussions of serious legal issues. Reserved, soft-spoken, and courteous by nature, he is able to be blunt and assertive when necessary. He is hard working and intense, yet I have always found him to be fun-loving, considerate, and extremely generous. Distinctly conservative in general political outlook, John is genuinely liberal in the best and truest sense of that word—hopeful, caring, and sincerely receptive and warm even to those with whom he tends to differ.

John came to the Boalt Hall faculty from private practice in Minneapolis, three years after receiving his law degree at the University of Minnesota. Unassuming but confident as he was even then, I couldn't help but wonder when he first realized that difficult things just came to him more easily than to others. Of course, in every law school every year someone leads the class academically as John did, and usually that person is also an officer of the law review as John was; but rather than taking a judicial clerkship upon graduation, as many such people do, John clerked for the Minnesota Supreme Court during law school because—as a classmate of his once put it—John needed something to keep himself busy. Despite his early and continued enthusiasm for academic life, this need for more and varied challenges, together with the excitement and gratification he had found in law practice, may have been what led to his

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eventually deciding to divide his career between academia and private practice.

Following his first and second years of teaching, John presented his initial set of Continuing Legal Education (CLE) courses during the California Continuing Education of the Bar summer program for lawyers, then offered alternately here at Berkeley and at UCLA. His quick mastery of real property law and finance, and his gift for communicating his knowledge and practical advice to a mixture of seasoned and unseasoned practitioners, became immediately apparent in the program evaluations. This success was also reflected in the ensuing demand for his services not only as a lecturer but also as a consultant.

Even in those early years John realized how much of lasting value a young scholar could gain from continuing to confront the real-world problems of CLE audiences, and particularly how much he would learn about the profession and the legal system from the feedback that would inevitably come if he captured the confidence of thoughtful practitioners. I recall as well his belief in the importance of returning to the practicing profession some of the research product and expertise academicians are subsidized to develop.

Clearly all of the expected benefits and satisfactions have materialized for John through his years of active involvement in advanced professional education and through his extensive work in consultation and eventually in private practice. The learning and enhanced craftsmanship have been and continue to be reflected in law school teaching materials, in articles and in texts, and in John’s various contributions to law improvement over the years. Particularly impressive in his early career were scholarly contributions, as court-invited amicus curiae in a series of important cases, to the work of the California Supreme Court in clarifying, modifying, and developing the law of real estate finance and security.

I suppose it was inevitable that John’s professional exposure and popularity would lead to his being offered nonacademic opportunities that would be both financially and professionally rewarding. This was compounded by the gratification he found in doing litigation. Even as his abilities and insights as teacher and scholar were enriched by his professional pursuits, his time for academic life was diminished. His resulting decision to reduce his faculty appointment to half-time was undoubtedly, both for him and for the University, an appropriate resolution of the competing career pulls he felt. Yet, to those of us who had the opportunity to know John well and to value the full measure of what he had to offer as a colleague, this shift in his commitments and interests was a great loss from a selfish personal and institutional point of view. And I wish my younger colleagues could have the same opportunity I have had
to know, enjoy, and benefit from John's extraordinary personal and intellectual qualities.

Of course, it is not fair to fault John for making a decision he is perfectly entitled to make about his own skills and life, and no doubt his clients and the bar receive in our place the benefits that flow from the other half of his time and from his tremendous talent for and devotion to the law. But I am just the type of narrow-minded person who derived no consolation a year or so ago from knowing that the 49ers' loss was the New York Giants' gain. As one who probably will never be ready for the coming of free agency, I keep thinking that what universities need most is a good reserve clause to confine gifted people like John to the academy against their will.

Just a few weeks ago, during a very nice faculty occasion at the Hetland home, I was reminded once again of what a special contribution John and Anne have made and continue to make to the quality of life within the Boalt Hall community. It is comforting to know that this can be expected to last about as long as I can.

Harry D. Miller†

While we pause to recognize the retirement of John Hetland as a professor of law we can reflect on his professional accomplishments, but more importantly on the effect he has had on his profession, the law he has studied and taught, and on his friends. My comments reflect my admiration for John as a professional and a scholar and my appreciation of his friendship.

When Dean Prosser hired John Hetland, a young, talented attorney from Minnesota, he could not have predicted the future effects his prodigy would have on California real property law. John was the best in his law school class and had already made a name for himself as a proficient trial attorney, but he was brought West to teach civil practice, not real property law. It was not until he arrived at Boalt that he assumed the only open position as the new real property professor.

It did not take long for the new arrival to make his mark. In 1963 he published the definitive article on California secured transactions,¹ which is still cited as persuasive authority by the courts. He followed that article with three books written for the California Continuing Edu-

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cation of the Bar\textsuperscript{2} that became the bibles for the bench and bar in explaining the complexities of California real estate transactions. Very few leading decisions in California on the subject of secured transactions have failed to cite and rely on John's analysis contained in these treatises.

John's writings have always displayed the highest standards of legal scholarship. His latest effort, in conjunction with Charles Hansen, offers insight into the intricacies of the new mixed-collateral statute with a persuasive analysis of the statute's unforeseen inconsistencies.\textsuperscript{3} This article is certain to be a guiding light for the bench and bar as they attempt to unwind the possible ambiguities produced by this legislation.

John's legacy has extended far beyond his writings to his influence on the leading decisions on California foreclosure and antideficiency law. He has appeared as counsel or amicus in thirty-eight reported decisions, including one in the United States Supreme Court,\textsuperscript{4} seven cases in the California Supreme Court, one matter in the Federal District Court, and twenty-nine decisions of the California appellate courts. There is little doubt that John's analysis had considerable influence on these decisions. If the courts did not accept his position, they showed special deference and respect to him by providing an explanation of why they disagreed with his analysis.

The retirement of Professor Hetland will be a great loss to the faculty of Boalt and its students. His proficiency as a professor is as impressive as his talents as a scholar, writer, and advocate. As a renowned professor at Boalt he has produced three generations of lawyers with a knowledge and understanding of the difficult subject of California secured transactions. Few lawyers who have not had the benefit of his instruction have as deep an understanding of the intricacies of real property transactions as he.

When my firm hires new lawyers, a key criterion is whether they have taken Professor Hetland's classes at Boalt. We believe that if they have benefitted from his instruction they not only have the knowledge but also the understanding of the interrelationships and complexities of secured transactions and antideficiency legislation necessary to succeed as a real property attorney in California. No one sees the big picture of secured transactions as well as John.


The real estate marketplace is constantly changing. This keeps the practice of real estate law interesting and challenging, but it also tests the continued vitality of accepted legal principles. John's forte has been his ability to analyze traditional concepts in the context of unique transactions for the sale, lease, and financing of real estate. Not surprisingly then, many of the theories and innovative developments in real property secured transactions fostered by the bench and bar during the last thirty years have been the result of analysis propounded by John Hetland.

I have often relied upon his analysis in summarizing legislative and judicial precedent in my treatise on California real property law. On numerous occasions I have read a decision or statute and arrived at my own conclusions, then referred to John's writing to discover new and unseen ramifications that I had not recognized on my first reading. On other occasions John has freely discussed issues that were unclear in my mind from reading a case or statute, and it was only after he patiently explained their true meaning that I understood what it said and could perceive its future effects. I will always be indebted to John for the encouragement and assistance he has given to me in writing my treatise.

John has been counsel to me on many legal issues, but we have also been involved in matters where we were on opposite sides of the issue. John is a formidable opponent who instills justifiable concern in his adversaries. As an opponent, I must always do extra preparation when opposing John in anticipation of combatting his keen analytical ability and persuasive demeanor.

It is traditional to review accomplishments of a retiring professor, but it is also fitting in John's case to discuss him as a companion and friend. On occasion I have sought his counsel on matters of a personal nature. He has always been available to provide valuable insight, advice, and support. When I informed him of my interest in teaching law, he immediately responded by locating a teaching position for me at the University of San Francisco. When I debated the wisdom of writing a newsletter, John's comfort and support was the deciding factor in persuading me to tackle the project.

I also have enjoyed many social occasions with John and his wife, Anne, that have been removed from the law—from sharing their lovely home, to Big Game parties, to relaxing in Lake Tahoe where we have spent time away from the pressures of school and office. He is a delightful companion with a good sense of humor and relaxed conviviality. It was on these occasions I came to appreciate the human side of the legal scholar.

6. MILLER & STARR REAL ESTATE NEWSALERT (Bancroft-Whitney).
Although John may be retiring from his position as an educator, his influence will continue to be felt for many years. It is not merely that he has written books and articles, nor that his works are often cited by the courts; it is the insight from his analysis that sets John apart from others who teach and write. He has provided guidance to the courts and both understanding and creativity to the bar, and it is certain that he will continue to do so. Future generations of students may have lost a great educator, but the rest of us will continue to receive the benefit of his scholarship and friendship.

Edward S. Washburn†

Given his renown as a legal scholar, his tenured professorship at Boalt Hall, and his erudite writings and lectures on various complex legal matters, one might surmise that John Hetland is something of an academician, above the determined joust and parry that constitutes the everyday practice of the law. Having had the opportunity to work with John on a number of occasions, I know that such is not the case.

I first became acquainted with John when, in the mid-1960s, a spate of class-action cases known as the “impound cases” were filed against a number of large financial institutions, one of which was Great Western Savings. As in-house counsel of Great Western, I engaged Professor Hetland to represent Great Western in the massive legal battles that lay ahead. There were five class actions filed against Great Western in five different counties, each involving one or more “live” plaintiffs purporting to represent all borrowers paying impounds to Great Western.

In what I regard as a brilliant display of persuasion, cajolery, and even some veiled threats, after a period of intense negotiation, John convinced the five plaintiffs’ attorneys to combine forces, concentrate on only one of the cases, and choose a lead counsel from amongst themselves. Having successfully focused his adversaries’ efforts to his liking, John then swiftly negotiated a proposed settlement on terms very favorable to Great Western. There is no doubt that John thrived in the trenches.

A long history of spectacular trial work parallels John’s pretrial successes. I vividly remember one case that John tried in which I acted as a consultant and testified for him as an expert witness. The matter involved one of John’s favorite subjects, California’s antideficiency law. As counsel for the debtor, John was put to the daunting task of convincing the judge that under the current state of the law, the bank waived all rights to collect on a $27,000,000 debt when it seized a mere $600,000

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from the debtor's checking account without first foreclosing on the real property securing the debt. Not surprisingly, the bank's counsel worked to paint John's client as an opportunist seeking to benefit from the bank's ignorance of a highly controversial and technical rule of law.

Exercising consummate skill and powers of persuasion, John appeared to convince the judge that the huge debt should be erased. Recognizing defeat, the bank settled the case for a small fraction of the outstanding debt at the conclusion of the trial before the judge rendered a decision.

While many know only of Professor Hetland, the academic, I know much of John Hetland, the litigator. With John's retirement Boalt Hall is losing a superb intellect and a gifted orator. I only hope this does not signal his retirement from active practice, for if it does, the bar will have lost one of its most skillful, persuasive, and effective practitioners.

Charles A. Hansen†

It is possible that something about how law is made can be gleaned from reflecting on the career of a teacher, writer, and practitioner whose name is, to many and probably most California judges and practitioners, virtually synonymous with the field of real estate secured transactions. The extent and depth of John Hetland's impact on his field is particularly remarkable and intriguing since the law in his field is largely based on statutes enacted either in the 19th century or during the Great Depression. How did John manage to so profoundly and thoroughly shape the application and interpretation of statutes, the basic versions of which were in place long before John set foot on California soil?

The simplest answer, of course, is that John had the good fortune to teach a difficult and somewhat esoteric body of law for over three decades to Boalt classes containing some of the finest new legal talents. The rapid rise of John's former students to leadership in the bar and on the bench is undoubtedly one reason why John's familiar practice works continue to be cited by courts and practitioners years after they have gone out of print.

There is, however, more to it than John simply being well positioned to put his stamp on professional opinion. John's work in the secured transactions area also derives tremendous force from its appeal to the basic human need for system and order. In writings frequently cited and quoted in seminal California cases, John has shown how the California

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antideficiency and foreclosure statutes contain subtle and reciprocating remedial checks and balances that allow broad latitude to secured creditors in enforcing their rights, while still protecting the legitimate interests of debtors. It is open to doubt whether the legislators who voted for the mortgage and antideficiency statutes so many years ago fully understood or intended—at least in any literal sense—those intricate trade-offs. Yet, largely as a result of John’s work, California’s antideficiency and foreclosure scheme is an elegant clockwork mechanism in which every rule has a reason, every choice a consequence, and every disadvantage a corresponding advantage.

I believe that there is still another, almost ineffable, reason for the power and durability of John’s work in mortgage law and debtor-creditor relations. The reason is that John’s work has captured the spirit of the law at a profound moral level. Although John has done virtually all of his academic work in an era of unprecedented affluence, John’s intellectual and moral roots are in Minnesota, with its unique history of civic-mindedness and farmer-labor business populism. John’s intellectual origins and his personal background—which was not economically privileged—may explain why he has returned again and again to issues of deficiency liability, forfeiture, and the use of disguised security devices. I believe that John understands, at a deeper level than many who came of intellectual age after the Great Depression, that one of the roles of law in a free enterprise economy is to ensure that private obligations are vigorously enforced but in a way that mitigates harshness and prevents the grinding down of obligors whose default may be the result of market conditions that, as we have all learned recently, can trip up even the most prudent and industrious businessperson, farmer, or wage earner.

Those who have had the pleasure of John’s professional acquaintance undoubtedly remember him from slightly different perspectives. Many will recall him as a teacher who demanded the most of his students and stretched their analytical powers, but always with a liberal helping of kindness and humor. Some will have known him as a Friend of the Court whose briefs have been accorded unprecedented weight in shaping California law in the secured transactions area. Others have known John as a sinuous but always gracious opponent in his roles as counsel or expert witness. A fortunate few will recall John as a colleague. John’s career, however, is greater than the sum of these parts. He is, as Professor Maxwell has so eloquently said, a jurist in the most profound sense of that term, and he stands and will long continue to stand at the pinnacle of his profession.