

10-17-1952

## Bisno v. Leonard [DISSENT]

Jesse W. Carter  
*Supreme Court of California*

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ernment by whimsy of man. We are fighting governments of that type now. I would not debase our own to that level.

For adequate discussion and documentation of the constitutional principles upon which I stand reference is made to my dissenting opinion in *Fujii v. State of California* (1952), *supra*, 38 Cal.2d 718, 753 et seq.

In conformity with constitutional government, the judgment should be reversed.

Shenk, J., and Spence, J., concurred.

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[39 C.2d 888; 249 P.2d 267]

[S. F. No. 18348. In Bank. Oct. 17, 1952.]

HERBERT BISNO, Petitioner, v. J. PAUL LEONARD,  
as President of San Francisco State College et al., Re-  
spondents.

PROCEEDING in mandamus to compel officers of state college to reinstate an assistant professor discharged for failure to take oath prescribed by Gov. Code, §§ 3100-3109. Writ granted in part.

Wayne M. Collins for Petitioner.

Edmund G. Brown, Attorney General, H. H. Linney, Chief Assistant Attorney General, and Herbert E. Wenig, Deputy Attorney General, for Respondents.

THE COURT.—This original proceeding in mandamus was brought by an assistant professor at San Francisco State College who did not have teacher's tenure but held his position by appointment from year to year. The issues raised are identical with those in *Pockman v. Leonard*, *ante*, p. 676 [249 P.2d 267], this day decided, and on the authority of that case petitioner is entitled to payment of compensation for services rendered up to and including 30 days following October 3, 1950, the effective date of sections 3100-3109 of the Government Code (Stats. 1951 [3d Ex. Sess. 1950, ch. 7] p. 15), but, having failed to take the required oath, he is not entitled to compensation for any subsequent period.

Insofar as petitioner seeks payment of salary or other relief for any period subsequent to 30 days after October 3,

1950, the application is denied. Let a writ of mandate issue for the limited purpose of directing payment of petitioner's salary up to and including 30 days after October 3, 1950.

CARTER, J.—I dissent.

For the reasons stated in my dissenting opinion in *Pockman v. Leonard*, this day filed, *ante*, p. 676 [249 P.2d 267], I would issue a writ of mandate as prayed for in the petition.

Petitioner's application for a rehearing was denied November 14, 1952. Carter, J., was of the opinion that the petition should be granted.

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[39 C.2d 889; 249 P.2d 290]

[S. F. No. 18347. In Bank. Oct. 17, 1952.]

JOHN HOROWITZ, Petitioner, v. LOUIS G. CONLAN,  
as President of San Francisco City College et al., Re-  
spondents.

PROCEEDING in mandamus to compel officers of city college to reinstate a teacher discharged for failure to take oath required by Gov. Code, §§ 3100-3109. Writ granted in part.

Wayne M. Collins for Petitioner.

Benjamin Dreyfus, Francis J. McTernan, Jr., Norman Leonard, Jonathan Rowell, Laurence R. Sperber, William B. Murrish, Hugh B. Miller and Charles R. Garry, as Amici Curiae on behalf of Petitioner.

Dion R. Holm, City Attorney (San Francisco), Walker Peddicord, Deputy City Attorney, Irving G. Breyer, M. M. McCaffery and Frank P. Mack, Jr., for Respondents.

THE COURT.—This original proceeding in mandamus was brought by a teacher who was employed by the San Francisco Unified School District and had teacher's tenure. The issues raised are identical with those in *Pockman v. Leonard*, *ante*, p. 676 [249 P.2d 267], this day decided, and on the authority of that case petitioner is entitled to payment of compensation for services rendered up to and including 30 days following October 3, 1950, the effective date of sections 3100-3109 of the Government Code (Stats. 1951 [3d Ex. Sess. 1950,