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LOYOLA DIGEST

Vol. I — No. 4

LOYOLA UNIVERSITY SCHOOL OF LAW

May, 1960

Fiore Succeeds Hartley As Student Bar President

Collins, Ambrose, Mountain Fill Other Bar Posts

Third year night student Owen Fiore edged out John Collins, second year day student, for the office of President of the Loyola Board of Bar Governors during the recent student body elections held on Wednesday evening, April 27, 1960.

Fiore, who succeeds graduating senior Les Hartley, was formally installed as Student Bar President during Law Day ceremonies held at Loyola on Monday, May 2, 1960.

Commendation

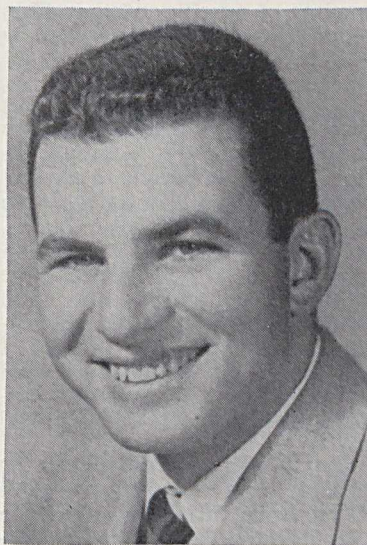
Upon assuming office, Fiore commended outgoing president, Les Hartley, and the student bar officers for initiating the **Loyola Digest** and the Mock Trial this year.

John Collins, newly elected Vice President of the American Law Students Association, was chosen to replace graduating senior Dick Smith as Student Bar Vice President. Running against Collins was first year student Herb Forer.

John Bambrick, editor of the **Digest**, who chose not to run for re-election, was succeeded to the post of Treasurer by third year night student, Jim Mountain.

Elected Secretary, Bob Ambrose succeeds Larry Crispo, fourth year night student.

Others serving on the Board of Governors as elected members are Jack O'Rourke, Art Tantardino, Herb Forer, Dick Kolostian, Darrell Moore, Jim Parker, and Bill Rylaarsdam.



Voting ex officio members of the bar are John Bambrick, as **Loyola Digest** editor, and Tom Viola, as Moot Court chairman. Non-voting members are Lou Caton, Phi Alpha Delta Justice, and the Magister of Phi Delta Phi.

JOHN COLLINS ELECTED TO NATIONAL ALSA POST Ninth Circuit Vice Presidency

Loyola second year student John Collins was recently elected Ninth Circuit Vice President of the American Law Students Association at the Circuit's election conclave held at the University of San Francisco in April.



Collins, who is also a newly elected member of the Loyola Student Bar Association, will resume his official duties in June

of this year, and will continue in office throughout the academic year of 1960-61. He succeeds Al Roensch, of University of San Francisco.

As Ninth Circuit Vice President, Collins represents accredited law schools in California, Arizona and Nevada. Some of the schools within the ninth circuit are Loyola, USF, Santa Clara, USC, UCLA, Stanford, Hastings and University of Arizona.

Twelve Circuits

Composed of 12 circuits, the American Law Students Association includes affiliated student bar associations in 128 of the nation's 130 approved law schools. As an official representative of American law schools, the ALSA provides numerous services to students and school associations.

Graduating in 1958, the new ALSA vice president is an alumnus of the University of Santa Clara. Collins is married to the former Linda Stone, of Los Angeles, and has one child.

EDITORIAL

Notes And Comments

The question has been asked, should there be an editorial in a law school newspaper? Some argue that there is no good reason for outspoken editorials, that it is not the prerogative of a law school newspaper to voice its opinions on controversial subjects, or to criticize, regardless of whether or not the subjects are concerned with law.

Speak

I maintain that an editor should speak when he feels that there has been or will be a miscarriage of justice—regardless of public opinion, or possible antipathy.

Apathy has no place in law, in school, or in a newspaper. I hope that future editors of the **Digest** will be of the same thought.

Ethics

It is interesting to note that segments of the Bar have started to enforce some sections of the code of ethics that have too long remained dormant. If a man desires to run for political office he should resign from the Bench. If an attorney wishes to become an

actor, he should withdraw from the bar. Television and the motion picture camera have no place in a courtroom.

It will be interesting to note whether or not the Bar will withstand pressure or whether Canon 35 will become a thing of the past.

Wishes

I offer my best wishes to the new **Digest** editor, John Bambrick. He has proved himself capable, energetic and sincere in his desire to perpetuate the school newspaper. I thank all who have assisted me in publishing the first issues, and those alumni who gave a helping hand.

—By Ed Masry

Lions' Moot Court Team Set For Meet In Fall

Vies Against USC-UCLA Winner

Loyola's Moot Court team, consisting of Charles Cooper and John Gallagher of the second year day class and James McCarthy of the third year night class, has completed its brief for state moot court competition. And according to John Gallagher, the team will start preparing for the oral competition, which will be held in September at the State Bar Convention.

USC, UCLA and Loyola are entering teams in the competition. USC and UCLA will argue May 13, and Loyola will meet the winning team in September.

Accident Commission

The case being argued in this year's competition involves the

validity of an Automobile Accident Commission which shall have exclusive jurisdiction to compensate for personal injuries arising out of the use of a motor vehicle on the public streets and highway of this state.

A commission such as this has been suggested, and is presently being considered, as a means of reducing the congestion in the courts of this state, and may be a reality within the next few years.

Thus, the question is of considerable interest to lawyers engaging in personal injury trial work and to law students who expect to enter this field.

LAW REVIEW

California Civil Rights Act

By Les J. Hartley

One of the 2195 statutory changes enacted by the state legislature in 1959 is the Unruh Civil Rights Act. The basic purpose of this statute is to extend the scope of protection afforded the individual against discrimination by other individuals. The underlying motivation derives from the concept that the Fourteenth Amendment to the U. S. Constitution prohibits discrimination by the states but not private individuals, **U.S. vs. Cruikshank**, 95 U.S. 542.

Consequently, Civil Code section 51 has been amended to provide that "All citizens within the jurisdiction of this state are free and equal, and no matter what their race, color, religion, ancestry, or national origin are entitled to the full and equal accommodations, advantages, facilities, privileges or services in all business establishments of any kind whatsoever. This section shall not be construed as to confer any right or privilege on a citizen which is conditioned or limited by law or which is applicable to citizens of every race, color, religion, ancestry or national origin."

The Unruh Civil Rights Act also amended section 52 of the Civil Code to provide that "Whosoever denies, or aids or incites such denial, or whoever makes any discrimination, distinction, or restriction on account of race, color, religion, ancestry, or national origin contrary to the provisions of section 51 of this code, is liable for each and every offense for the actual damages and \$250.00 in addition thereto, suffered by any person denied the rights provided in section 51 of this code."

This statute raises several significant legal questions, apart from its social, economic, and political import.

Who is entitled to obtain the available relief? Under the former version, the predecessor of which dates back to 1897, both C.C. 51 and 52 referred to "citizens within the jurisdiction of this state." This language has been construed to apply to residents of California, whether U.S. citizens or not, **Proud v. Gore**, 52 C.A. 458.

The current version of C.C. 51, in establishing the basic policy, retains this phraseology. C.C. 52, however, in creating liability, refers to "damages suffered by any person."

While there are no cases defining "person," within the meaning of C.C. 52 as amended, the generally accepted definition applies to any individuals, including non-residents, and to corporations, whether foreign or domestic, as well as residents. Consequently, there is a problem of statutory interpretation as to whether or not the statute will be enforced on behalf of an individual who is not a resident of California.

Where is the discrimination to be prohibited? Under the former version, protection against discrimination by private individuals extended only to "inns, restaurants, hotels, eating houses, places where ice cream or soft drinks of any kind are sold for consumption on the premises, barber shops, bath houses, theaters, skating rinks, public conveyances and all other places of a public accommodation or amusement." Although this section was to be liberally construed, **Lambert v. Mandel's of Calif.**, 156 C.A. 2d. Supp. 855, such "public places" did not include cemeteries, 130 C.A. 2d. 328, private professional schools, 169 C.A. 2d. Supp. 887, and dentist's offices, 147 C.A. 2d. Supp. 833.

The Unruh Civil Rights Act changes the location of the prohibition against private discrimination to "all business establishments of any kind whatsoever." Consequently, this language creates certain problems of definition. Whether or not institutions are operated in a business-like manner, but not for profit, so-called "private improvement clubs," and the practice of various arts and professions are "businesses," within the meaning of C.C. 51, are questions to be decided on a case by case basis.

Also, whether or not vendors of goods and services whose business does not require a permanent location may or may not be an "establishment."

Can the regulation be imposed upon businesses engaged in interstate commerce? While the greater number of cases involving discrimination in connection with inter-state commerce have concerned segregation statutes, the U.S. Supreme Court has sustained the validity of the Michigan Civil Rights statute which prohibited discrimination on public conveyances, when applied to an excursion boat crossing the U.S.-Canadian border. The reasoning of the court was that the state could regulate foreign or inter-state commerce, which was local in scope, **Bob-Lo Excursion v. Michigan**, 333 U.S. 28.

With respect to the Unruh Act, it would necessitate a significantly serious impairment of foreign or inter-state commerce which is of a "favorable" nature, to outweigh the state's motive in prohibition of discrimination.

If the statute protects California residents only, would a refusal

LIBRARIAN'S CORNER

Shift In Economic Power

By Myron Fink

In the last issue we touched on certain revolutionary changes in our industrial property system: the appearance of a vast aggregate of passive claimholders and the rise of institutions holding large and ever growing blocks of stock. These facts portend a shift in economic power which may be expected to register on legal, as well as political, barometers. There will be pressure on our American legal system to correct any imbalance. In a recent address (15 Business Lawyer 251), A. A. Berle has adumbrated the nature of some of these demands.

"Public Functions"

One point of view described calls for a rethinking of the basic premises of our Constitution. This approach does not confine itself to business corporations but would include any non-governmental association or institution that has power **in fact** over individuals. By virtue of this power, it argues, organizations may be said to conduct "public functions" similar to those of state and federal governments. Hence, the Fifth and Fourteenth Amendments would prevent the former, as well as the latter, from taking property without compensation or denying due process of law. On this view, the same legal net would cover both private economic power and public political power.

The virtues of this theory are twofold: it faces up to the facts of economic life and affords a measure of protection to individuals. To be blacklisted by the corporate community or coerced by arbitrary union action would seem

to many to be a deprivation of property and a loss of liberty. For others, it raises the specter of Pandora's Box. They would insist that it remain closed until other lines of legal protection less radical are fully explored.

Not Academic

The issue is not wholly academic. In 1946, the Supreme Court (326 U.S. 501) decided that a corporate operator of a private town could be held to the same constitutional limits that apply to the government of a public town. Analogizing from privately owned bridges, ferries, turnpikes and railroads, the reasoning of the majority decision was based on the "public function" theory. As to the community at large, Berle has pointed out that corporate units are expected to supply the market at "acceptable" prices and maintain reasonably continuous employment at "acceptable" wages. Both courts and legislatures are sensitive to these and other community felt needs.

One prediction seems safe. There will be more, not less, organized economic power in the future. The individual will, correspondingly, need greater protection against this power.

to protect non-residents violate the equal protection clause? Since the equal protection clause of the Fourteenth Amendment to the Federal Constitution only prohibits discrimination on the part of the state, the only protection available against private discrimination is that afforded by the state statute.

If the Unruh Civil Rights Act only applies to California residents then California must show that this classification is neither arbitrary nor capricious and reasonably related to a legitimate legislative purpose, and that the classification is based on some real and substantially distinctive characteristic, logically related to an evil to be remedied, **Quaker City Cab Co. v. Penn.**, 277 U.S. 389.

Is the objective of the statute basically fair and reasonable, within the concept of substantive due process, as established by the Fourteenth Amendment? While the individual desires freedom of access to public places and other business establishments, without regard to race, color, or religion, the businessman desires freedom of choice in the selection of his customer, patron, and clientele. Both these freedoms are claimed as rights and must necessarily be considered.

The U.S. Supreme Court, in upholding the validity of C.C.53-54, which prohibited racial and religious discrimination in connection with admission to places of public amusement, stated that the statute was "just," **Greenberg v. Western Turf Assn.**, 204 U.S. 359.

Since the Unruh Civil Rights Act repeals C.C. 53-54 and changes the scope of protection from "public places" to "business establishments," the only remaining problem is whether or not the doctrine should be extended. One of the distinguishing factors is that many "business" situations include not only the relationship of buyer and seller of goods and services, but also encompass the possibility of personal services, instructor-pupil relationship, and the confidential relationships of several professions.

In the last analysis, it is quite likely that the Unruh Civil Rights Act, as most other aspects in the area of civil liberties, will provide a basis for vigorous and controversial litigation.

Blackstone's Commentaries

The struggle for existence goes on apace and whether it's for security at the social level or for preeminence at the professional summit, it's, after all is said and done, the "survival of the fittest." Just now the interior of the Grand Avenue Maison is experiencing a tremendous output of energy,—not only from the kilowatt hours burning deep into the night but from the concentrated efforts of eager youth slavishly following the formula that leads to the mystic legal-know-how, whereby the fragments gathered during the year, can be assembled into the recognizable likeness of the reasonable man.

This is no new adventure in the acquisition of knowledge but a proven operation with results guaranteed . . . In law as in learning, short-cuts lead only to mediocrity . . . It's no problem to confirm this theory by examples . . . There's **BALDO KRIS-TOVICH '38**, lead-off man on the Aggeler Plaque and a trusted public servant of competence and distinction for over twenty years . . . Just appointed Public Administrator by the Board of Supervisors,—quite in line with his Aggeler Award,—"for superior scholarship and noteworthy achievement." . . . Another who followed the formula to successful completion was the Aggeler Scholar of 1943, **GEORGE ELMENDORF**, who carved an honored niche in the upper levels at 433 South Spring . . . George was one of the old guard at the University Club dinner meeting of the Law Alumni recently . . . The word is out that a swank soiree is planned to honor the Supreme Court when it assembles here for its June sitting . . . This ought to bring out the boys with the Wilshire Country Club the rendezvous and libations poured out on the altar of friendship . . . **LANDON MORRIS '29**, current President of the Law Alumni, is burning the candle at both ends,—one way to make ends meet,— between keeping his clients happy and conceiving new concepts to present to his Board of Governors . . . And are they responding to the call . . . This depression graduate got the full treatment at Loyola, —from High School through Law— with a table d'hote diet all the way . . . He accepted the formula, followed the prescription, and was undismayed in facing the lean years of Twenty-Nine in the habiliments of a Bachelor of Laws . . . It was Spartan training then and the survivors of the system threw down the gauntlet to the challenge of the empty brief case and the devaluated dollar . . . News trickled in recently from **HAROLD ABBOTT '53**, who took off for his old habitat in Susanville, Lassen County, as soon as the ink was dry on his diploma . . . He performed valiantly in serving his native county professionally and achieved a record of splendid performance . . . His practice was a carbon copy of his work in Law School . . . Rumor has it that he may come this way and make the local community the beneficiary of his rich experience in his home county . . . Spreading the wealth is a noble practice if it's the coin of the realm, honestly acquired and equitably distributed . . . **TOM BAGGOT, HODGE DOLLE, JERROLD FADEM** are only a few of those who are doing just this in the program of Continuing Education of the Bar . . . Having learned by doing the intricacies of Eminent Domain at the expense of Caesar, they are in a position to protect the citizenry against the encroachment of the Sovereign. An accolade to them for participating in the program of enlightenment . . . **TOM SMITH, III**, after doing his stint for three years in the D. A.'s office in San Bernardino, is now in private practice in the same area . . . **MYRON GARON**, not content with being engaged in full-time practice, is doing a fine squeeze job as President of the Wilshire Bar Association . . . The Wilshire beat includes everybody on and off Wilshire from Figueroa to Beverly Hills . . . Another Loyolan, who doesn't let his practice take up all his time is **W. "MONTY" JONES**, recently inducted as President of the Glendale Bar Association.

Bambrick Appointed Editor Of Law School Newspaper

Succeeds Masry

Newly appointed editor of the Loyola Digest is second year student John Bambrick, it was announced last week. Succeeding graduating senior Ed Masry, Bambrick assumed the school's "Fourth estate" helm with today's issue.

Bambrick assisted outgoing editor Ed Masry and first year night student Larry Avers in organizing the Digest, and saw it through the first three issues.

Policy

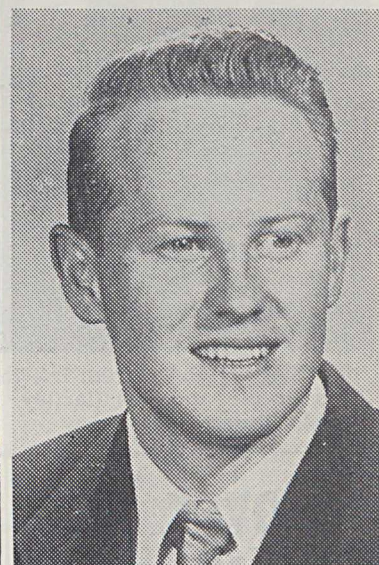
Commenting on the newspaper's policy for the upcoming year, Bambrick said, "We plan to concentrate on the law review column and the feature page. Reviews such as Skip Prante's commentary of the Koenigsberg appeal, Norm Hanover's 'Defaulting Vendees' and Owen Fiore's discussion of morality in the movie industry, have met with much favorable comment from the students and friends of the law school."

Continuing, Bambrick said the Digest plans to have a book review column, topical editorials, and wider news coverage. Blackstone's Commentaries and the Librarian's Corner, both regularly contributed, have been popular

and will be read again next semester.

Former Editor

The second Digest editor, Bambrick was formerly editor-in-chief



JOHN BAMBRICK

of the weekly Loyolan, the Loyola University student newspaper, in 1953.

Associate editors are Larry Avers and Mary Flanagan.

ANNUAL REPORT

President's Message

By Les Hartley

President, Board of Bar Governors

An essential right of corporate shareholders is to receive an annual report of the year's affairs; so, too, is the student body entitled to be informed as to the accomplishments and prospects of the Board of Bar Governors.

Achievements

This year's most significant achievements have been the expansion of the Orientation Program in supplementing the annual Smoker with seminars by outstanding students on how to succeed in the study of law; the establishment of the **Loyola Digest**; and the inauguration of the Mock Trial.

Consequently, I would like to express my appreciation to the outgoing Board of Bar Governors, and especially to the Committee Chairmen and Officers, for their meritorious efforts.

Activities

If the Bar Association is to fulfill its purpose, it must continue to develop activities capable of furthering the interests of the students and the Law School. If this is the case, your newly elected officers must provide sound and courageous leadership.

In this regard, the greatest single objective is the realization of a program which will achieve recognition of each individual student as a potential member of the legal profession and accordingly enable him to become a capable and constructive member of the legal community.

Leadership

Thusly, problems of student government concern each of us, because, in a democracy, everyone, regardless of his interests, "holds office"; everyone is in a position of responsibility, and in the last analysis, the kind of government we get depends on how we fulfill these responsibilities. We, the individual members, are the "boss", and we get the kind of student leadership that we demand and deserve.

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PICTURED above from left to right are seniors Owen Fiore, Norm Hanover, Edward Masry, Skip Prante and Les Hartley. All five students were presented awards for their work on the *Loyola Digest*.

Hanover Wins Digest's Best Writer's Award

Norm Hanover, graduating senior, took top honors last month, winning the *Loyola Digest's* Best Writer Award, for his law review article, "Equitable Relief From Defaulting Vendees." The contest and award, initiated this year, will continue annually. Hanover's article appeared in the March issue.

The contest was conducted by Loyola Law School professors J. Rex Dibble, A. Marburg Yerkes, and Myron Fink.

Finalists

Finalists in the contest were seniors Skip Prante, who wrote "Comedy of Error," a review of the Koenigsberg appeal; Owen Fiore, writing "What's Free About Immorality," a review of motion pic-

ture cases, and Les Hartley, whose article "California Civil Rights Act," may be seen on page 2 of this issue.

Contestants

Students who wish to enter the law review contest next semester should inform the Digest either by letter addressed to the editor or by leaving a note with the administrative office any time before examinations or during Summer school.

Topics must be assigned. Unsolicited manuscripts will not be acknowledged. Only students with averages above 75 will be eligible.

Two students will be selected this summer to prepare manuscripts for the fall issue.

Magana Speaks At PAD Banquet

On April 9 Ford Chapter installed the newly elected officers at an installation dinner-dance held at the Knickerbocker Hotel in Hollywood. Attorney Raoul Magana who was the featured speaker of the evening, was ably introduced by Professor F. Tevis. Outgoing Justice Ed Masry presented Owen G. Fiore with the Ford Chapter annual outstanding active award.

Three dollars a day is not enough to pay jurors, says Presiding Justice Bernard Botein of New York City. It makes lower-income jurors "live in dread of being called for jury duty." An increase to \$7 is under consideration, but Justice Botein says it should be \$11.

Fifty New PADs

Ford Chapter, Phi Alpha Delta on March 25 initiated the new actives including new initiate of Ford Chapter, Professor A. Marburg Yerkes.

The initiation was conducted at the Hall of Justice. Immediately following the initiation a dinner was held at the Redwood Room. Professor Yerkes spoke on the meaning of a law fraternity and legal ethics.

Approximately 50 new actives were greeted by Los Angeles Alumni Chapter President Sandy Rae, Supreme Secretary Frank Gray and Professor Bill Tucker.

Lou Caton

Elections of officers for the coming semester were held recently. Newly elected officers are Justice Lou Caton, Vice-Justice Jim Mountain, Secretary Jim Parker, Treasurer Tavey Sanfilippo, Marshal Joe Barron.

Uniformity of rules in the Municipal, Circuit and Superior Courts of Chicago has been substantially achieved by the adoption effective January 1, 1960, for the Municipal Court, of revised rules which incorporate the uniform rules of the Circuit and Superior Courts as adapted or modified for Municipal Court practice.

Electronic recording is being used for court reporting in all of Alaska's new superior courts. Officials claim the recordings are tamper-proof and satisfy the requirements of due process.

LOYOLA DIGEST

Editor John Bambrick

Associate Editors Larry Avers, Mary Flanagan

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Opinions expressed in the *Loyola Digest* are those of the writers and do not necessarily reflect the views of *Loyola Digest*, the University, the Law School or the Student Bar Association.

SUMMER SCHOOL SCHEDULE

June 14 - August 25

DAY SESSION

Course	Instructor
Persons	Mr. Tevis
Wills	Mr. Yerkes
Procedure II	Mr. Maupin

NIGHT SESSION

Course	Instructor
Property II	Mr. Schauer
Criminal Law	Mr. Maupin
Administrative Law	Mr. Ogren
Corporations	Mr. Becker
Agency	Mr. Yerkes
Creditors Rights	Mr. John Brink

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