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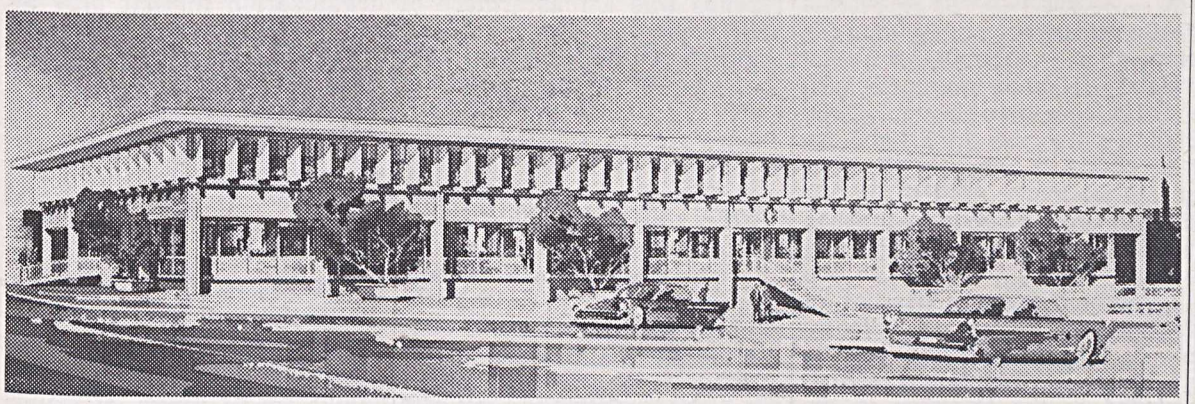
Loyola Digest

Loyola Law School Los Angeles

LOYOLA DIGEST

Vol. 4—No. 4 LOYOLA UNIVERSITY SCHOOL OF LAW May, 1963

NEW LAW SCHOOL TO BE COMPLETED IN 1964



Loyola University has announced plans for a new School of Law building on the south-east corner of 9th and Valencia Streets near downtown Los Angeles. The 56,000 square foot, two story structure will be completed by the Summer of 1964. According to Dean J. Rex Dibble, the building will have five classrooms, two conference rooms and a moot courtroom-auditorium. In addition to faculty and administration officer, there will be offices for student organizations, two student lounges, faculty lounge, a small chapel and a legal research room.

Utilizing a natural grade to support most of the sloping classroom floors, the architects have also included a partial basement.

Planned, designed and engineered by Albert C. Martin & Associates, the building will have interesting roof overhangs doubling as primary architectural elements and as solar control devices for the second floor library. Plans call for a generous indention of the first floor to provide sun protection for the faculty, administrative and student offices, moot courtroom and classrooms on that level.

Exterior walls will be concrete wainscote with glass and aluminum mullions above.

The entrance for the faculty parking will be from Valencia. The main student entrance will be from the rear parking area, opening on Albany Street and accommodating more than 125 cars.

Some 75 rooms are planned for the fully air conditioned structure. Interiors will have quarry tile, vinyl and asbestos floors, along with flourescent lighting fixtures recessed in suspended acoustical tile ceilings. Colors will be egg shell and champagne with accents.

The new building has been designed to permit 50% expansion to the south in the future.

Jackson Bros. of Los Angeles is the general contractor.

INITIATION DINNER MARKS ANNIVERSARY

Phi Delta Phi, international legal fraternity, the oldest professional fraternity in the United States, celebrated its 93rd anniversary April 10th.

An initiation ceremony presided over by alumni members of the California Supreme Court and the California District Court of Appeals was conducted for new members from Loyola, USC and UCLA law schools. The annual dinner for members and alumni followed the initiation at the University Club.

Carl Lowthorp, past magister of Aggeler Inn of Loyola, was present to represent the group. Those initiated from Loyola were: Victor Hansen, Jr., Timothy Sargent, Ernest Vargas, Terry Bridges, Robert Charbonneau, James Waldorf, Richard Distefano, Richard Danson.

Senior Luncheon And Graduation Set For June 9

The 1963 graduating class will celebrate the culmination of their legal education with their family and friends on Graduation Day, Sunday, June 9.

Baccalaureate Mass at 12 noon will begin the day, followed by the traditional luncheon to be held in the Loyola University dining room, overlooking the Del Rey Campus. The highlight of the day will be the awarding of the treasured "sheepskin", representing the hard won LL.B. degree at 4 o'clock.

At the luncheon, Dean J. Rex Dibble will unveil the plans for the new law school building. The "Putting Hubby Through" awards will again be presented by Father J. J. Donovan to the wives of the graduates.

The event, which is always well attended by the faculty, will also feature the presentation of the awards to the outstanding students and graduates of the law school.

Friends and family of the graduates are cordially invited to attend all of the events for the day.

Board Elects Vince Stefano As President

Second year day student Vincent Stefano Jr., of Burbank, was elected as President of the Law School Board of Bar Governors at their election meeting April 6. Mr. Stefano did his undergraduate work at U.S.C. where he was prominent in student

Vincent Stefano

government. The new President will assume his office in September and promises to work for closer communication between the faculty and students, and to generate more interest among the students in the work of the Board.

Also elected to Board posts were: Randall Wenker, third year night student, as Vice President; Ernest Vargas, second year day, Secretary; William Wagner, first year night, Treasurer; and Ernest Vargas and Bernard Murray as Co-Editors of the DIGEST.

The election meeting was conducted by out-going President Joseph Barron.

Blackstone's Commentaries

When Easter comes can exams be far away . . . is a query that has been agitating those locked in the struggle for knowledge of the law, ever since the case-method has become the accepted system of acquiring this know-how . . . Time it seems is the one thing necessary to satisfy the test of competence . . . Anything for an extra hour of this priceless commodity . . . Actually, the morrow will be mortgaged for an extra sixty minutes, to be paid back in the dying days of September . . . It's been ever thus . . . "The Heathen Chinese" says it well, "It's later than you think," and the Wisdom of the Scripture, "Night is coming on, when candle-light surrenders to darkness and no man can work" . . . **AL FELIX,** '47, who invested his time well,—made every minute count,—finished the course in two calendar years—fortified with an LL.B., was admitted to practice in Hawaii forthwith . . . He was in the midst of things from the start . . . elected County Attorney of Hilo and later on the Bench where he is performing valiantly in calling them as he sees them . . . He can't go wrong if he continues to follow in the footsteps of another Loyolan, **GERALD CORBETT,** '21, who became domiciled in the Paradise of the Pacific over forty years ago and has been an honor to the Bench for twenty years and more . . . An interesting bit of professional gossip . . . Loyola is the only law school in Western Civilization that has more than one of its graduates on the Bench in the Fiftieth State . . . A sort of double or nothing deal . . . A recent sumptuous noonday gathering at the Beverly Hilton left no doubt in the minds of those fortunate to be among the elect, what people thought about **JOE SARFATY,** '58 . . . The only ambiguity . . . was it a tribute to his farewell selling TV packages in the grand manner, and making it easier for his competitors . . . or was it the accolade of high regard and superior judgment sending him forth into the practice of law . . . In either case it was a great demonstration for a richly deserving citizen, who with **JOE BAROUGH,** '58, and **LOU LITWIN,** '57, make three . . . They are available in the upper reaches of Beverly Hills where the atmosphere becomes more rarified as you approach their eminence . . . **FRANK X. MARNELL,** '50, took to the Bench as though he were custom built for it . . . In fact, its so much a part of him, that he has been sitting pro-tem on the Superior Court and doing nobly . . . Superior identifies everything of a judicial nature that has to do with this recent appointee to the Court . . . **BILL MacFADEN,** '36, who amassed a magnificient record on the Municipal Court in the South Bay area, the move upward was the only adequate way to reward him . . . Expressions of high regard for his integrity, competence, understanding sympathy and judicial mien from Bench and Bar highlighted the ceremonies of his induction into office . . . **TOM LeSAGE,** '37, gave the benefit of his rich experience in the practice, to the members of the St. Thomas More Law Society at a recent dinner meeting . . . His particular theme was the "Professional Responsibility of the Lawyer" . . . His duty to his conscience, to his client and to the Court . . . Of the same vintage,—twenty-five years ago, there is **J. HOWARD SULLIVAN,** '37, didactic, argumentative, polemical and definitive . . . always stimulating and making a great contribution to the jurisprudence of California and the nation . . . **NORMAN STOLBA,** '58, has such a volume of clients that he has opened a second office in San Bernardino . . . thus overcoming the need of bilocation always a problem to negotiate . . . **SCOTTY McDONALD,** '41, House Counsel for U.S. Borax and Chemical Corporation, is following the lead of the front office and re-locating out on Wilshire . . . The "Twenty Mule Team" still identifies their product but modern methods of transportation deliver it . . . 'Tis well that it is so, for what congestion of traffic would be involved if the old way were still in effect . . . **JOE WOOLRIDGE,** '38, after serving two distinct terms,—intervals between,—as District Attorney of Kern County, is quite happy to give his name to one of the more prominent firms in Bakersfield . . . **ROGER KELLY,** '39, after twenty years of hectic practice, is still the only lawyer in Western Civilization who plays in the low 70's without detriment to his clients.

President's Message

By JOSEPH C. BARRON

For the Ninth Circuit ALSA Leadership, **Fred Tschopp** from the University of San Diego was elected as Circuit Vice-President during the regional conference which was hosted by USC on the last weekend in March. This conference was a masterpiece of organization in that only an hour or so was devoted to the delegates business session and the balance of the conference involved practical presentations illustrating the realities of the practice of law. **Dean Evans** welcomed the delegates to USC and briefly traced the interesting history of the USC School of Law. Mr. **John W. Miner,** Deputy District Attorney, Los Angeles County, spoke after lunch concerning the "Phillips Case-A Dimension in Murder." This was followed by the Examination of a Medical Expert, **R. R. Merlis,** M.D., by Mr. **Mitchell Levy** and Mr. **Daniel Cathcart** who are associated with the Los Angeles firm of Magna, Olney, Levy, Cathcart and Gelfand. This presentation was held in the USC Moot Court Room, **Judge Aubrey N. Irwin,** Superior Court, Los Angeles, presiding.

The final panel of the conference was the Federal Criminal Law Practice Seminar. The panelists were Mr. **John K. Van de Kamp,** assistant U.S. Attorney and Chief of Criminal Complaints, Los Angeles Unit, and Mr. **Authur S. Bell, Jr.,** attorney at law and Chairman of the Los Angeles Bar Association committee for Federal Courts Criminal Indigent Defense. During this discussion Mr. **Van de Kamp** exhibited the third issue of the LOYOLA DIGEST for 1963 and referred the delegates to the article by Mr. Whelan, U.S. Attorney concerning Federal Criminal procedure.

The banquet speaker was Mr. **Shelden D. Elliott,** Professor of Law, NYU, Past President, Association of American Law Schools and former Dean of the USC law school, spoke about "Tomorrows Lawyers." Mr. Elliott found himself surrounded by delegates after the banquet and spent several hours discussing various interesting developments and subjects in the field of law with students from the Circuit schools. Mrs. **Caroly Heine,** Assistant to the Dean and the Placement Officer for the University of Southern California, School of Law, was in attendance at the conference sessions and contributed to the formal workshops and informal discussions with the delegates.

A Student Bar Administration Seminar was lead by **Gene Bambic** from the University of San Diego and the portion devoted to the Publication of a Law School Newspaper was directed by **Joe Barron** with the aid of a twenty minute presentation by LOYOLA DIGEST EDITOR **Carolyn Frlan** and the assistance of **Norman Narwitz,** ALSA Representative from LOYOLA.

The retiring Circuit Vice-President, **Richard Beacom,** was responsible for one of the best years in national competition had by the NINTH CIRCUIT and certainly he directed the most useful and interesting conference this writer has attended.

I would be remiss to close this final report without thanking Mr. **Earl Hagen,** Director of the Law Student Program for the American Bar Assn. for his consideration and help. This busy gentleman took time to write letters of encouragement to individual officers and the Loyola Bar Assn. as an Association on several occassions, including Loyola's 100% individual membership program and our timely publication of the Placement Brochure.

New Pre-Trial Rules Told By Hufstedler

Superior Judge Shirley M. Hufstedler lectured at Loyola Law School on April 19. The subject of Judge Hufstedler's address was "The New Pre-Trial Conference Rules."

Judge Hufstedler is the chairman of the Discovery and Pre-Trial Committee of County Superior Court judges, and presided in the Pre-Trial Conference Department for several months.

Prior to her election to the bench in 1962, Judge Hufstedler was associated with the firm of Beardsley, Hufstedler & Kemble. She was graduated from Stanford University School of Law and was the editor of the Standard Law Review in 1947-49.

Court Reaffirms Rule Against Mental Suffering Liability In 4-3 Decision

By MICHAEL J. MALONEY

It seems apparent from the historical development of the issue of mental distress, coupled with the 4 to 3 decision in the **Amaya v. Home Ice, Fuel & Supply Co.** accompanied with the strong dissenting opinion, that the law in this area will be subject to further change in the near future. When the specific issues presented by the Amaya Case are subjected to the factors of the Majority's weighing process it is evident that a plaintiff in Mrs. Amaya's position will be allowed recovery.

In a recent decision, the California Supreme Court reiterated the general rule that no cause of action accrues for negligently induced mental distress (with consequent bodily illness) which is proximately and solely induced by the plaintiff's apprehension of negligently caused danger or injury to her infant son.

Mrs. Amaya, the plaintiff in **Amaya v. Home Ice, Fuel & Supply Co.** (1963), 59 A.C. 310 (Cal. Rptr.), was seven months pregnant at the time of the accident. She was standing near her infant son of 17 months, watching over him, when she observed the defendant negligently driving a truck and bearing down upon her child. She shouted a warning to the defendant, but he failed to stop the truck and ran over the boy. The plaintiff was exposed to the situation of observing her infant son being run over and seriously injured while forced to remain in a position of utter helplessness. **She alleged that as a result of defendant's negligent operation of his truck she "suffered an emotional shock and great mental disturbance . . . and became violently ill and nauseous (sic) and was hurt and injured in her health, strength and activity, sustaining injury to her body and shock and injury to her nervous system and person. . . ."**

After reviewing the judicial history of negligently induced mental distress resulting from injury to a third person the Supreme Court's opinion written by Justice Schauer with Traynor, J., McComb, J., and White, J., concurring, analyzed the basis of the non liability rule which has been continually upheld. The Court based the rule on the absence of a duty of care owed by the alleged wrongdoer to the person injured, or to a class of which she is a member. In the majority opinion Justice Schauer states that the determination of whether or not a duty exists is a question in the first instance for the court, not for the jury. Recognizing that the foreseeability of a risk is of primary importance in the duty determination, the Court pointed out that, frequently, situations arise involving a foreseeable risk where no duty arises. Consequently, foreseeability is not the sole determinant of duty. Other factors must be considered, all of which are incorporated into the Court's conclusion of the duty issue. Among the many factors the Court lists are, "the extent to which the transaction was intended to affect the plaintiff, the foreseeability of harm to him, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, and the policy preventing future harm."

In the resultant weighing process the Court couched the issue of the possible duty owed Mrs. Amaya in general terms: "whether liability may be predicated on fright or nervous shock, with consequent bodily illness induced solely by the plaintiff's apprehension of negligently caused danger or injury to a third person." In this generalization of the plaintiff's cause of action the majority of the Supreme Court found the weapons with which to halt the advance of liability in cases involving mental distress.

Discussing the "Administrative Factor" in determining the defendant's duty, the Court points out that any extension of liability from intentionally induced fright, as seen in **State Rubbish Collectors Association v. Siliznoff** (1952), 38 Cal.2d 330 (240 P.2d 282), would open the way to fraudulent claims.[1] And further, the Court claims that the problem of setting a limit to such an extension of liability would be overwhelming.

(Continued on Page Seven)

From The Editor's Desk

Carolyn M. Frlan

The most closely guarded secret around these hallowed halls is the date for the completion of the new building. The summer of 1964 has been conservatively announced, but the actual opening should be in advance of this time. Our present building has already been sold. . . . Being the last issue of the DIGEST, it is traditional for the Editor to express his (or her) thanks for all those who have been so helpful. This is not just a routine matter for this Editor, for I have had the benefit of being assisted by the most diligent and talented staff—to whom I am deeply grateful. With such capable, energetic and enthusiastic assistants as **Norm Narwitz** and **Tom McDonald,** it has been a pleasure being Editor this year. Thanks go to President **Joe Barron** who was never too busy to help; to **Rev. Joseph "Blackstone" Donovan** who humorously kept us posted on the alumni news; to the faculty members who so graciously consented to contribute articles, especially our librarian **Myron Fink;** to the members of the third year day class who more than shouldered their responsibility of writing articles; and to the printers at the **Daily Journal** who spent many a lunch hour working on the DIGEST. To all these people and those that I unintentionally neglected to mention, I give a sincere "Thank You" for making this such a successful year. . . . The alumni organization, under the leadership of President **James E. Collins,** is continuing its drive for scholarship funds with excellent success. Those agreeing to contribute $100 a year to the fund become a member of the exclusive ADVOCATES group. Results of the drive and other information on the new school will be sent to the alumni in the semi-annual report of **Dean Dibble** this month. . . . Seniors **Carl Lowthorp** and **Ted Pala** have taken the proposal for the elimination of the interlocutory decree which is pending in the California legislature as the basis for the Pro-Con article on page 6. This proposal has been before the legislature before, but its re-occurance has led many to believe that it is gaining favor among the lawmakers. . . . President **Joe Barron** has been a decisive leader of the Student Bar this year, especially as liason officer between students and administration. He will be a hard president to follow, but President-elect **Vince Stefano** has already exhibited some of the characteristics that could make him as effective a president as Joe.

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CALIFORNIA GUN LAW—CAN YOU BEAT THE EXPERTS?

By THOMAS L. McDONALD

The following test was given to several policemen, detectives, and deputy sheriffs. Their highest score was 60%, while the average score was between 40% and 50%.

TRUE—FALSE

NOTE: "Pistol" and "revolver" as used herein apply to and include all firearms having a barrel length of less than 12 inches.

1. A license is required to purchase a pistol or revolver.
2. A person not a citizen of the United States may purchase a pistol or revolver so long as he has not been convicted of a felony.
3. A license is required to openly carry a pistol or revolver in an automobile.
4. No person may openly carry a pistol or revolver in his automobile for general purposes of self-defense unless he has a permit to do so.
5. A hunter or fisherman may not carry a pistol or revolver concealed on his person or concealed in his autobile while on a hunting or fishing trip unless he has a permit to do so.
6. A member of an organized gun club may not carry a pistol or revolver concealed on his person or concealed in his automobile without a permit to carry a concealed weapon.
7. A licensed dealer may display pistols or revolvers or placards describing them in his show-windows.
8. A licensed dealer may deliver a pistol or revolver to a purchaser so long as 24 hours have lapsed from the time of application for the purchase.
9. A private individual may sell a pistol or revolver to another person so long as he believes the other person to be of good moral character.
10. A private individual selling a pistol or revolver to a personal acquaintance may make immediate delivery of the weapon.

1. FALSE **No license is required to purchase a pistol or revolver.** However, a dealer in such firearms is required to keep a "Register of Sales" (Penal Code 12073), and the purchaser is required to sign the register (Penal Code 12076). The register, however, is not a license, it is an informational device—a record of the transaction. The requirement of signing the register does not confer the right to make the purchase. A qualified purchaser already possesses the right, but it is a **conditional** right which can only be exercised after performance of the incidental conditions. Therefore, a purchaser of a pistol or revolver is not required to be licensed, but he is required to comply with the conditions for making the purchase.
2. FALSE **An alien may not purchase a pistol or revolver.** Penal Code 12021 states that ". . . any person not a citizen of the United States . . . who owns or has in his possession or under his custody or control any pistol, revolver or other firearm capable of being concealed upon the peron, is guilty of a public offense."
3. FALSE **A license is not required to openly carry a pistol or revolver in an automobile.** Penal Code 12025 indirectly provides this by stating that ". . . any person who carries . . . **concealed** within any vehicle which is under his control or direction . . . any pistol (or) revolver . . . without a license . . . is guilty of a misdemeanor." The statute does not in terms say that one may openly carry a pistol or revolver in an automobile, but that is the only logical construction of the section. Were such open carrying not allowed, a person would be unable to purchase such a weapon and and take it home in his automobile, or take it in his automobile to show to a friend. Therefore, no license is required to openly carry a pistol or revolver in an automobile **unless** it is carried **concealed.**
4. FALSE **A person may openly carry a pistol or revolver in his automobile for general purposes of self-defense.** So long as the reason for openly carrying a pistol or revolver in an automobile is a lawful one, it is not prohibited. As a general rule, the only problems which arise in carrying a pistol or revolver are found where the carrying was **concealed without a license,** whether on the person or in an automobile. Open carrying, on the person or in an automobile, is not prohibited, and Penal Code 12025 states that "Firearms carried openly in belt **holsters** are not concealed within the meaning of this section."
5. FALSE **A hunter or fisherman may carry a pistol or revolver concealed on his person or concealed in his automobile, without a license, while on a hunting or fishing trip.** The general rule is that no person may carry a pistol or revolver concealed on his person or concealed within his automobile, without a license to do so. However, an exception to the general rule of Penal Code 12025 is found in Penal Code 12027 which provides that "Section 12025 does not apply to or affect any of the following: . . . (g) Licensed hunters or fishermen while engaged in hunting or fishing, or while going to or returning from such hunting or fishing expedition."
6. FALSE **A member of an organized gun club may carry a pistol or revolver concealed on his person or concealed in his automobile without a license to do so.** Another exception to the general prohibition of Penal Code 12025 is found in Penal Code 12027 what states that "Section 12025 does not apply to or affect any of the following . . . (f) Members of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while such members are using any of the firearms referred to in this chapter upon such ranges, or while going to or from such ranges."
7. FALSE **A licensed dealer may not display pistols or revolvers or placards describing them in his show-windows.** Penal Code 12071 provides for the licensing of dealers in firearms, subject to certain conditions, one of which is "No pistol or revolver, or imitation thereof, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside."
8. FALSE **A licensed dealer may not make delivery of a pistol or revolver to a purchaser if only 24 hours have lapsed from the time of application for the purchase.** Penal Code 12071 provides for the licensing of retail dealers ". . . subject to the following conditions, for breach of any of which the license shall be subject to forfeiture . . . (3) No pistol or revolver shall be delivered . . . within three days of the application for the purchase."
9. FALSE **A private individual may not sell a pistol or revolving to a purchaser if he only believes the other person to be of good moral character.** Penal Code 12072 provides that "Where neither party to the transaction holds a dealer's license, no person shall sell or transfer any such firearm to any other person within this State who is not **personally known** to the vendor." Therefore, a belief that a stranger is of good character is not sufficient, the purchaser must be **personally known** to the non-dealer vendor.
10. FALSE **A private individual selling a pistol or revolver to a personal acquaintance may not make immediate delivery of the weapon.** Penal Code 12072 states that "No person, corporation or dealer shall sell, deliver, or otherwise transfer any pistol, revolver, or other firearm capable of being concealed upon the person . . . to the purchaser thereof within three days of the application for the purchase thereof."

Disordered Development Is Key To Unlawful Behavior

EDITOR'S NOTE—Dr. Tobias was asked to comment on how the psychiatrist views the reasons for abnormal behavior as manifested in disordered, illegal acts. Dr. Tobias who has his office in Los Angeles, graduated from the Rush Medical College. He served as Volunteer Assistant, Pirquet Clinic in Vienna; Czerny Clinic in Berlin; to Prof. Ludwig Meyer in Waisenhaus and Kinderasyl, Berlin. He is Director, Integrating Child and Society (In. C. A. S.) and conducts research in Los Angeles County school districts.

By MILTON TOBIAS, M.D.

Law and jurisprudence govern the integration of Man and his society. Preparation for the social, emotional, educational and physical adjustment to contemporary society requires a long formative period, the apprenticeship of Man we call childhood. Man is the only mammal with a long childhood and adolescent state. While your profession is concerned with the circular relationships, the interactions of Man and his society, my pediatric specialty evaluates and treats the non-achieving and non-conforming child and disordered growing up. Law and order are essential for both.

To assure the reproduction of Man, the fertilized egg contains a general outline, a blueprint which unfolds during the period of childhood in a very orderly way. This pattern was engendered with creation of Man. It is primal. To bring this primal pattern up-to-date, to fashion and fit, to match the human animal to the kind of a world in which he must exist, requires the stimulation, conditions and challenges of our contemporary society. This we call the present. The primal and the present then collaborate by unceasing interactions to inculcate learning, inhibitions and controls which are social, emotional, intellectual and physical, into the developing human brain and body. The conscious and subconscious mind have their inception at birth when the child is first exposed to conditions of living in its outside world. From now on and throughout childhood law and order govern this open ended system of becoming an adjusted human being.

In other words, contemporary Man starts his development as a general outline which embodies the capacities and potentials which are contributed by his heredity. The realization of these capacities and potentials and fitting of the human being to contemporary society is Man's responsibility. Man is responsible for his own destiny. When the developing child and his inseparable world interact in a well balanced and orderly way, information is programed, inhibitions and controls are learned and all become part of the developing human brain. Man and his inseparable environment are one, a whole, to make it possible for the adult to adjust to his world in a lawful, predictable manner.

Should any part of the whole, the child and his encompassing world, be disordered and out of balance, the whole is disturbed. Here we find the non-achieving and non-conforming child in conflict with its immediate environment.

It is an interesting fact that the complexity of animal life and also of its social state have developed in a parallel increasing organization. From the time of the original one cell which was engendered, cells formed colonies, and the colonies became loose, animal states. Animal life became much more complex and mechanism of integrating one part of the body with another and all organs developed from animal life in the sea, to Man on dry earth. As Man learned to make tools, to make fire, to roll things that were round, to develop contrivances of portage, he could migrate at will. As he produced more than he could use, storage became necessary and a more stationary mode of living followed with family, eventually the home, and a more highly integrated society through barter and exchange. Society became more highly complex as Man became an environment changer, an organ adder, tooling machines to extend his own capacities, and he could write and read as well as relate. In this way, he perpetuated his accomplishments and inculcated them into the skills and mental development of his offspring, immortalizing his achievements through mobility, mechanization and population concentration in the urban state, and laws, inhibitions and controls of necessity became more complex and elaborate.

Isolation Results In Disorder

The animal and its society are a circular integrated mechanism, interdependent. When an animal is isolated from the society, rejected by it, whether it is a one cell paramecium or Man, the animal becomes a renegade. This type of social depravation will change a simple one cell paramecium into what is called a butcher paramecium, one who kills. Return him to his society and he becomes a peaceful one cell animal. The domesticated cat, when abandoned, becomes a wild animal. The child, who is rejected by his peers, his school, his home and his society, likewise becomes in a sense an isolate and lashes out and is in conflict when he is not capable of conforming. Such disordered growing up is preparation for a disordered adult state.

The interplay, or the circular disordered relationship between a child who is out of order may manifest itself by murder, robbery or malicious mischief, etc. In such children I have found a constellation of disorders which include immaturities, visual imbalances, a lack of unity in a functioning of body chemistries as well as impulsive, unpredictable, anti-social behavior and academic retardation. Because they cannot conform and function in a predictable way, they upset the environment. Because they cannot conform and achieve in a predictable way, they, too, are disturbed.

Brain Wave Imbalances

Eighty-four per cent of a large series of non-achieving and non-conforming children in the pre-adolescent era and also in the child under probation during adolescence had brain wave imbalances which made these youngsters unpredictable to themselves. The controls during the period of growing up were short circuited. The development of the human brain through learning, and learning here is social and emotional as well as academic and physical skills, are part of the cortex of the brain. They are acquired. They serve to inhibit and control the basic animal drives for self-preservation.

These disorganizations mentioned can be restored to order using various techniques, medical as well as psychological and social. In a high percentage of cases during the formative period, the incidence of favorable results is significantly high. Once the formative period is over, change, that is the establishment of orderly functioning in both the individual and its environment, within the whole, is not easily obtainable, especially when the person has been frequently in conflict with society. In our changing culture, becoming more and more complex and specialized, becoming more mobile and more adult centered, the incidence of malicious mischief, vandalism and unlawful behavior on the part of the adolescent has increased rapidly. The incidence of crime, likewise, has increased quite rapidly in our current era, which is characterized as one of possession-minded people.

Psychological and social science have failed in the prevention or prediction of those children who were out of balance with their world primarily because they have forgotten a child is involved as the host factor in disordered relations. The whole is reality and the whole must be balanced before development and maturation and the formative period has reached its completion of development.

Awareness of the significance of orderly body performance in the child who is growing up and becoming a Man needs collaboration of the lawmaker, jurist and attorney with the doctor and medical as well as biological science.

In Re Divorce
THE INTERLOCUTORY WAITING PERIOD SHOULD BE ABOLISHED

PRO

By THEODORE S. PALA

In the year 1897 the California legislature enacted section 61 of the Civil Code. This provision prohibited remarriage of the divorced parties (except to each other) during the year immediately following the divorce. The theory of this enactment was that since the desire to remarry was one of the prime motives for divorce, a remarriage ban would reduce the number of divorces. The fallacy in this reasoning has been shown in statistical analysis which indicate that the desire to remarry is not the motive for divorce in even a substantial number of cases (Cahen, **Statical Analysis of American Divorce,** 1932). In fact it has been found that states which include remarriage bans in their divorce law have not succeeded in lowering their divorce rate. As Ploscowe **(The Truth About Divorce,** 1955) has so authoritatively argued, an absolute ban on divorce leads only to increased desertions, adultery and illegitimacy.

The ban was easily avoided by remarrying in another state since even the state granting the divorce would have to recognize the new marriage if it were otherwise valid under the law of the state of remarriage **(Estate of Wood,** 137 Cal. 130, 1902). As a result of the judicial interpretation of Civil Code Section 61, which eliminated its extra territorial effect, the legislature enacted the present provisions of the divorce procedure which calls for an interlocutory decree and, a year later, a final decree to be entered. An attempt to justify this procedure was advanced which maintained that the enforced continuance of the marital status after trial would result in an increase of dismissals based on reconciliation.

Does Not Promote Reconciliation

The most recent statistics this writer has been able to find consists of a survey of New York County divorce proceedings during 1952; "Interlocutory Decrees of Divorce," 56 Columbia Law Review, 228, 249-50. A total of 2032 matrimonial actions were commenced. Of these, 517 never came to judgment, reconciliation having occurred prior to trial. Of the 1408 interlocutory decrees of divorce or annulment entered in New York County only 3 were vacated during the interlocutory period and only one of these on grounds of reconciliation. Needless to say, the effectiveness of the interlocutory period as a device to promote reconciliation in New York County has been a grand failure. It is doubtful that conditions in other jurisdictions would be so unlike those in New York County as to render the statistics atypical.

The Uniform Divorce Law as promulgated by the National Association of Women Lawyers rejects the waiting period following divorce and contemplate final decrees. Several states which have rejected the use of the interlocutory device (including Washington which abandoned its use after recognizing its ineffectiveness) have concluded that such provisions give rise to more harm than good, create uncertainty as to status, are punitive in nature, and would be superfluous where reconciliation machinery is provided before divorce.

A Wait Before Trial

A pre-trial "cooling-off" period would be more effective and, at the same time, would not create the problems of the interlocutory scheme. By shifting the waiting period to before the trial, the status of the parties will not be confused, and the law will not so readily create invalid marriages, illegitimacies, confusion as to property dispositions, tax problems, etc.

The Conciliation Court of Los Angeles County, often called an "Instrument of Peace," would have its greatest effectiveness during the period prior to commencement of the trial. Presently, once a divorce proceeding has been commenced, a petition to the Court of Conciliation will not stay the proceedings. In addition, it would certainly be more effective to attempt to save the marriage be-

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CON

By CARL LOWTHORP

This writer contends that the present requirements of the interlocutory decree of divorce and one year period before entry of final should be retained.

It has been generally stated that the justification for the interlocutory decree of divorce rests on two propositions: (1) Since the desire to remarry is the prime motive for divorce, the interlocutory requirement is an inhibiting force on the commencement of divorce proceedings and (2) Enforcing the continuance of the marriage after trial will result in an increase of dismissals based on reconciliation. **Interlocutory Decrees of Divorce,** 56 Columbia L.R. 228

The interlocutory Decree as an Inhibiting Force on Divorce

The main attack on this justification for the interlocutory requirement is that the prime motive for divorce is **not** remarriage. The attackers in so concluding point out that widowed persons remarry sooner than divorced persons. **Divorce Legislation,** Lichtenberger, 160 Annals 116. But this as a reason for abolition of the interlocutory falls wide of the mark. Conceding remarriage is not the prime motive for divorce in a majority of cases, it can hardly be argued that it is not a prime motive in numerous cases. As pointed out by the Honorable Roger Altan Pfaff of the Superior Court of Los Angeles in a report before a interim committee of the California State legislature, numerous divorce actions are commenced in the heat of passion and the couples settle their differences even before the clerk has time to formally file the complaints. Thus as Judge Pfaff further remarks, it is reasonable to infer that the realization of the stringent requirements of the interlocutory does discourage a party, who at the time may think he desperately needs a divorce from actually commencing legal action.

Continuance of Marriage after Trial Results in Increased Dismissals Due to Reconciliation.

The critics of the present California system make a three pronged attack on this justification. They argue that the enforced one year continuance is not effective as a reconciliation mechanism because (a) the majority of reconciliations come before trial and (b) the chance for reconciliation after trial is slim because the parties are further alienated by accusations made during trial and by the general contentious nature of the trial proceedings. The third prong of their attack evolves as a suggested "cooling off" period between filing and trial in lieu of the enforced one year continuance after entry of the interlocutory.

A. The Majority of Reconciliations Come Before Trial

The only statistics that this writer could find which are relevant to this contention are figures garnered from a survey of New York County matrimonial actions begun in 1952. Of the 1,408 interlocutory decrees entered, three were vacated during the interlocutory and only one of these on grounds of reconcilation. Of the total 2,032 actions begun, 517 never had final judgements entered so that whatever reconciliations took place must have occurred before trial. 56 Columbia L.R. 228 (supra).

On its face, these statistics appear insurmountable, but one must remember this is only a study of one year's experience—hence not conclusive. Further it can be argued that the very cause for these numerous dismissals prior to trial was the realization by the filing party that his application was hasty, the realization being stimulated by the stringent requirements of the interlocutory.

B. The Chance for Reconciliation After Trial is Small Due to Contentious Trial Proceedings.

In answer to this assault, the question must be asked, is this an attack on the interlocutory decree or a castigation of our practice of allowing the divorce to be an adversary proceeding? There are numerous writers

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Court Reaffirms Rule

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Therefore, in generalizing the issue, the majority of the Supreme Court eliminated Mrs. Amaya's defense to the court's two primary Administrative problems. In defense of a possible fraudulent claim the plaintiff's specific contention was the obvious foreseeability of fright and mental anguish resulting from a mother seeing her infant child run over by a truck negligently driven by the defendant. Secondly the parent-child relationship presented in the instant case is a self-evident preliminary limitation on the extention of liability to Mrs. Amaya's injury.

The majority's final argument against the extension is based upon "Socio-Economic and Moral Factors." Pointing out that liability for an activity cannot extent ad infinitum, the Court again relies upon its general statement of the issue involved. In weighing the utility of the general public's right to drive an automobile in our society, against the probability and gravity of the risk involved in causing mental distress induced from the apprehension of a risk to a third person, the Court states that "to extend liability to spectators who were not themselves in danger would place an unreasonable burden upon users of the highways." The Court considered the point of considerable importance in deciding that a stopping point for the negligent defendant's liability must be established no further than the extent of the moral blame attached to the defendant's conduct. In quoting the Wisconsin case of **Waube v. Warrington** (1953), supra, fn. 1, 216 Wis. 603 (258 N.W. 497), the majority of the California Supreme Court approved of the statement that **"the liability imposed by a doctrine of recovery 'allowed for the negligently induced mental distress resulting from apprehension of danger or injury to a third person' is wholly out of proportion to the culpability of the negligent tort-feasor."**

A strong dissent was voiced by Justice Peters with Gibson, C.J., and Peek, J., concurring. Objecting to the majority's broad generalization of the issue, Justice Peters stated the issue as involving the **mother** of a 17-month-old **infant child.** Thus, it is conceded that liability may be denied for negligently induced mental distress resulting as an outgrowth of an injury to a third person. However, this determination does not solve the dilemma presented to the Court by Mrs. Amaya. She asked relief as a **mother** who had incurred physical injuries resulting from emotional shock caused by fear for her **infant child** who was negligently run down by the defendant's truck in the presence of the **mother.** In Justice Peters' words, "The fact that, morally and legally, there should not be liability in any such general situation is no reason for holding that, morally and legally, there should not by liability in the limited situation."

In reviewing the judicial history of mental distress Justice Peters observed that shock and fright were not recoverable items of damage. As with other non-liability maxims the strictness of the rule bred exceptions to the injustice which it produced. California with many states, began limiting the rule by allowing recovery for shock accompanied by impact. This later resulted in liability being extended to all those within the "zone of danger". This meant that if the plaintiff could show a fear for his own safety, coupled with fear for his family's, then he could recover for both. Finally, the non-liability rule was further limited in that a plaintiff could never recover for shock caused by the infliction of an intentional tort on a third person member of the family, even though the plaintiff was not in the "zone of danger."

Justice Peters resolved that from the historical development, as stated, the time has come for the next logical step, i.e., recovery for a mother who sees her child negligently run down and as a result suffers emotional distress (with consequent bodily illness).

[1]See also Waube v. Warrington (1935), 216 603 (258 N.W. 497), where the Court stated that the right to recover for negligently induced fright, without impact, which has produced a physical injury, is limited to situations where the inducement was out of fear for one's own safety, not a third person's.

AND/OR—WHAT DOES IT MEAN?

In **Employer's Mutual Liability Ins. Co. v Tollesen,** 219 Wis. 434, 263 NW 376 (1935), the court said: "It is manifest that we are confronted with the task of first construing "and/or"' that befuddling, namelsss thing, that Janus-faced verbal monstrosity, neither word nor phrase, the child of a brain so some one too lazy or too dull to express his precise meaning, or too dull to know what he did mean, now commonly used by lawyers in drafting legal documents, through carelessness or ignorance or as a cunning device to conceal rather than express meaning with a view to furthering the interest of their clients. We have observed the "thing" in statutes, in the opinions of the courts, and in statements in briefs of counsel, some learned and some not."

American General Insurance Co. v Webster, 118 SW 2d 1082 (Tex. Civ. App. 1938) was a case involving the propriety of overruling a demurrer and the court stated: "We overrule appellant's contention that plaintiff's petition did not allege an unconditional cause of action. The portion of the petition complained of is set out above. As we read it, it charged death from "heat prostration as aforesaid and/or the drinking of said foul and unwholesome hot water that had been provided by the employer." The defendant leveled no special exceptions at the petition but relied solely upon its general demurrer. Resolving all reasonable intendments in favor of the pleadings as we must do against a general demurrer, heatstroke was alleged as a ground for recovery. The drinking of unwholesome water was alleged as a contributing cause to the heatstroke, and not as an independent ground of recovery."

In City Nat. Bank & T. Co. v Davis Hotel Corp. 280 Ill. App. 247, the court concluded its opinion with: "One other matter which appears from the pleadings filed in the case deserves attention. In many cases filed in this court hitherto we have condemned in unmeasured terms the pollution of our language through the use of such combinations of words as 'and/or' and 'was/were.' The use of these has been condemned by this court in (citing cases). We hoped it would not be necessary to again refer to the use of such symbols by the legal profession in this district. In the order appointing the Chicago Title & Trust Co., a corporation, receiver, we find in tiresome and vain repitions these further abominations: 'it/he', 'its/his,' 'it/him,' all worthy of barbarian genesis. In view of the fact that the receiver was a corporation, the use of 'he,' 'his,' and 'him,' indicates a confusion of thought not to be tolerated. And/or, was/were, is/are, it/he, its/his, it/him - - - so do bad habits grow."

"Incidentally, we will remark that we would probably be warranted in considering that part of the sentence following "and/or" as meaningless, for to our way of thinking the abominable invention, "and/or", is as devoid of meaning as it is incapable of classification by the rules of grammer and syntax. But if it can be given any meaning at all, it is subject to the construction which we have given it."

PAD Initiates 21 New Members

Ford chapter of Phi Alpha Delta Fraternity initiated twenty-one new members on April 16. The solemn ceremony was held at the Courthouse with the annual stag initiation dinner following at Fon's Chinese restaurant.

Attorney Robert Brimberry of Los Angeles was the featured speaker of the evening. Mr. Brimberry entrusted the group of future lawyers with many of the trade-secrets from his years of experience as general counsel and personal injury practitioner.

Among the initiates were: David P. Ammons, Randall C. Bacon, Clayton J. Beaver, Luc P. Benoit, Lawrence de Coster, Samuel R. Groot, Jeremy D. Hass, Warren L. Hernand, Charles R. Ibold, Laurence M. Jacobs, Charles J. Liberto, Hugh J. Luongo, Jr., Michael J. Maloney, John J. Miller, David E. Monahan, Norman F. Montrose, Richard L. Moomau, Neal Perreira, Edward A. Schlotman, Mitchell B. Smith and William J. Sullivan.

Seven other men, who were unable to attend the initiation, will be initiated at a later date.

PRO

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fore the parties are further alienated by a trial during which either or both may be accused of being adulterous, cruel, or some equally serious charge which is certain to linger in the mind of the accused.

A plan which is considered to be a great deal more effective than the present interlocutory system has been formulated and is here presented. When the parties to a marriage seek a divorce and one of the parties files a formal complaint, the machinery of the courts is put into motion. Within a one month period (a shorter interval is advisable if the courts are able to handle the volume of filings) a preliminary hearing shall be conducted at which time temporary orders for support, child custody, visitation rights, and other pertinent matters, will be made. This hearing should be handled in such a manner that each party will be given the opportunity to present his or her version to the presiding judge without the other party being present. The judge shall evaluate the situation and make whatever orders he considers appropriate. The orders shall be capable of modification upon proper showing.

Six Months "Cooling-off"

From the date of the preliminary hearing an integrated "cooling-off-waiting" period of 6 months duration shall extend. The parties, during this 6 month period, would be availed of the marvelous services offered by a conciliation court procedure similar to that which presently exists in Los Angeles County. At the termination of the 6 months, and in the event the parties have not reconciled, then a date shall be set for the trial which will result in a final divorce decree.

In conclusion, and with direct reference to the interlocutory device, a statement of Justice Holmes is found to be very apropos.

> "It is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past."
>
> The Path of the Law, 10 Harvard LR. 454, 469

CON

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who propose that divorce be a conciliatory matter of family dissolution instead of a contentious litigation.

Assuming this is more importantly an attack on present California requirements, recent experience in the Los Angeles County Conciliation Court emasculates this assault. Of the applications In that court, **after** the interlocutory decree, reconciliations averaged 55 per cent —the same average realized in filings **before** entry of the interlocutory.

C. "Cooling Off" Period Before Trial In Lieu of Enforced Continuance After Trial.

The rationale of this third attack is that a required waiting period before the trial would be more advantageous than the present system since the couple would have a chance to reconcile before they were pushed even further apart by the contentious nature of a trial.

As has already been pointed out, recent experience shows the trial not to be as disastrous to reconciliation as the critics of the interlocutory contend.

But a more compelling argument against the so called "cooling off period" is that made by Judge Pfaff in his committee report (supra). He points out that a family can't just be suspended for this period—that of necessity there must be some temporary orders made where a couple has separated and especially so where minor children are involved.

Thus accepting the logic of Judge Pfaff's argument and realizing the litigation surrounding the granting or denying of such temporary order will itself be contentious in nature, it is easy to see that the "cooling off" period is not a valid substitute for the interlocutory period.

In conclusion, it is contended that the justifications for the interlocutory period are sound and that California's experience with the system require its retention.

Books: CURRENT AND CHOICE

Corporation Lawyer—Saint or Sinner? By Beryl Harold Levy. Chilton, 1961. 174p. Service to client in mid-20th century calls for awareness of new roles that the lawyer is called upon to perform. The emphasis in this book is on the spectacularly striking emergence of the office lawyer and a shift in center of gravity from courtroom to conference room. What the lawyer is expected to achieve for his client, big or small, is a clear and steady working accommodation. Hence, according to this book, the pith and substance of today's legal work lies in the skills of negotiation, draftsmanship and knowing more than what is found in statute books or appellate opinions.

Added attractions in this work are the well-written glimpses of departmental law office factories and a short section called "Social Sense" which neatly capsulizes law school curriculum problems and their effect on the contemporary legal mind.

* * *

The Elements of Law. By Thomas E. Davitt, S.J. Little, Brown, 1959. 370p. An empirically-based examination of the main bodies of substantive law in the United States in terms of the analytical techniques of Catholic philosophy. However, the aim of this book is not primarily to acquaint the student with the law as it is but rather to make the student more aware of the relation between problems in law and their non-legal assumptions.

Freedom and Responsibility in Broadcasting. Edited by John E. Coons. Northwestern Univ. Press, 1961. 252p. A record of a conference held in 1961 in which fifteen experts in broadcasting debate how much control is good for the mass media.

* * *

The Professor and the Commissions. By Bernard Schwartz. Knopf, 1959. 275p. In every legal system there is a variance between theory and reality—between law in books and law in action. In this book, a shocked professor of administrative law discovers the gap to be wider than he had imagined. Particularly instructive is a section devoted to "Facts [actual operations] and Fictions (congressional intent] in the 'Big Six.' "

* * *

Ex-Communist Witnesses; four studies in fact finding. By Herbert L. Packer. Stanford Univ. Press, 1962. 279p. This book poses the question: Were our legislative committee, courts and administrative tribunals equal to the task of eliciting and testing information about communist penetration in the United States? After an examination of the testimony of four key witnesses —Whittaker Chambers, Elizabeth Bentley, Louis Budenz and John Lautner—the conclusion is that "competing pressures of policy and the lack of a properly equipped and sufficiently disinterested organ of inquiry combined to frustrate the goal."

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