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## Loyola Digest

Loyola Law School Los Angeles

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# CONSTITUTIONALLY GUARANTEED INALIENABLE RIGHTS REFLECT THE ABILITY TO USE HISTORY

By Thompson Black

Editor's Note: The author is a graduate of the United States Naval Academy with a B.S. degree, served as a Commissioned Officer with the United States Navy, retired with the rank of Commander.

He undertook graduate studies at UCLA from 1947 to 1954, received an M.A. degree in Political Science in 1949, and Ph.D. in Political Science in 1954. Teaching at Los Angeles State College since September 1949, he is currently a Professor of Government and Chairman of the Division of Social Sciences. His writings include (M.A. Thesis): "Collective Security and Neutrality"; (Ph.D. Dissertation): "Prize Law in World War II," and a recent paper presented to the American Institute of Aeronautics and Astronautics, entitled "Outer Space—The Prospects of International Regimes."

The freedoms and liberties of thought and action which are considered to be among the inalienable rights guaranteed by the United States Constitution reflect the knowledge of and ability to use history possessed by the constitutional draftsmen. Our current obsession with the extent of freedom found in the Bill of Rights has obscured what is without question the greatest protection against autocratic government to be found in that document.

The fact that it is found in the body of the Constitution rather than added as an afterthought gives emphasis to the fact that it was considered essential in the world of 1787, whereas there were many who

confession in open court.

"3. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted. . . ."

The protection found in this section is threefold: first of all, it defines treason and limits it as an offense to periods of actual conflict; secondly, it specifies the procedures necessary to bring about a conviction; and lastly, it attempts to limit the punishment to those guilty, rather than specifically including their family and other relations. One might say, because the conviction of a father is bound to cause serious repercussions in the lives of his wife and children.

In considering the historical implications of the definition of treason we must note that during the entire history of mankind, including today for most of the world, treason has been used to eradicate all forms of political opposition. The crime of treason has been charged not only upon those guilty of taking up arms against their sovereign, but also for those who have the temerity to suggest that a man should have the right to worship God. The phrase "enemy of the people," as used in most forms of totalitarian governments, is sufficiently elastic to cover a multitude of offenses, the most heinous of which is an overt or implied action or criticism against the ruling clique.

One recognizes, of course, that where it is not possible to achieve some measure of social, economic, or religious freedom by means of the ballot that the only redress may be by means of bullets. Obviously, rebellion would be classified as treason, even in democratic societies, but since "suggestions" for changes are treated as treasonable crimes in much of the world, there is a need to ap-

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# LOYOLA DIGEST

Vol. 5 No. 3 LOYOLA UNIVERSITY SCHOOL OF LAW April, 1964



GOVERNOR EDMUND G. BROWN

## LEGALIZED DISCRIMINATION -- A FOUNDATION FOR ANARCHY

By GOVERNOR EDMUND G. BROWN

If it is the function of law to order society, to preserve our human and property rights, then it can be said that the Rumford fair housing act is on the side of law and order and the proposed initiative to legalize discrimination in housing is not.

The language of the initiative itself makes this clear:

"Neither the state nor any subdivision or agency thereof shall deny, limit or abridge, directly or indirectly, the right of any person who is willing or desires to sell, lease or rent any part or all of his real property,

to decline to sell, lease or rent such property to such person or persons as he, in his absolute discretion, chooses."

The key words are "in his absolute discretion." That is not law and order. That is anarchy.

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Thompson Black

did not feel a Bill of Rights gave any additional assurity of added freedom. This greatest of protections is found in Article III, Section 3 under the heading of Treason, which runs as follows:

"1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.

"2. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on



# Editorial

When our president fell victim to an assassin's bullet in Dallas, Texas a few short months ago, a succession of events was triggered-off which sent shock waves crashing through the earth. The almost unbelievable force of violence against the Chief Executive was a very personal tragedy to all Americans and to uncounted millions of men and women throughout the world. There is little that can be added to the millions of spoken words — to the unlimited filmed narration and comments expressing the Nations solemn sorrow for John F. Kennedy and his beloved family. Truly this was the most comprehensive coverage given to any single event of our times.

During the long dark days that followed the death of our President many serious and unquestionably sincere commentators and analysts took the opportunity to urge upon their listeners and viewers a new order of American life based upon what is called "National Unity". The clear and unmistakable, even though unspoken, implication behind some of these comments was that in some way criticism in our country has contributed to national disarray and to the creation of the political climate which lead to our President's death.

It is true that many Americans did not always agree with our late president on some of his policies pursued in his official capacity. This is not to infer that the presidents' critics were right or wrong. The point is made only to emphasize that need for honest dissention.

The all important fact to be borne in mind is that without free debate, criticism and thoughtful and reasoned dissent there can be no freedom. When, if God forbid it ever should, the tragic hour tolls the stillment of dissention — when official acts are accepted without question simply because they bare the word Official—then, after intelligent protest is muffled will emerge the omnipotent totalitarian state.

It is true that today, more than ever before, our country needs to move in a concerted effort toward common goals; but neither tearful exhortation nor the silencing of public debate will achieve this national unanimity among our people. Our history as a Nation and as a people has never been characterized by docile acquiescence to official dictate. Constructive criticism, open debate, searching inquiry and controversy on public issues has marked our course of progress since the days of our Nation's inception.

It does no disrespect to the memory of our departed president to submit that the policies that many opposed in the past were not carried in that solemn cortege from the Rotunda of the Nation's Capitol to a final resting place on the slopes of Arlington National Cemetery. The controversies remain with us, unsolved and unanswered, and only through frank, thoughtful and fair dissent can the answers be found.

**BERNARD ANTHONY MURRAY**

**ERNEST A. VARGAS**

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## President's Message

By VINCENT STEFANO



As the school year draws to an end, the life of the law school building is destined to come to an abrupt halt, taking with it the frustrations and fulfillments of the students and professors who have, at one time or another, had occasion to study or teach here. **What would we hear, could the building relate its experiences?** Certainly, the history of the school lives in the notations which represent student records and in the memorials which hang upon the walls. But the real history of the building and school, affecting a part of many people's lives, is nowhere recorded or memorialized. The class hours, each with its own individual peculiarity, the breaks between classes, filled with hurried talk and cigarettes, the discussions in the student lounge ridden with rumor and fact, the occasional social activities, and the seemingly endless hours of study—this is where the real history of the school and building lies unwritten.

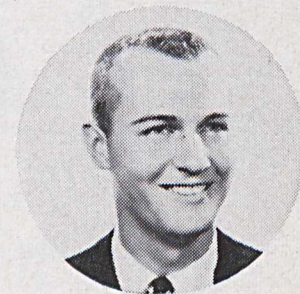
How then shall we account for the past without recorded evidence and without the pitfalls of hearsay?

Though not an easy matter to comprehend, there is a type of recorded history which represents the learning and experiences of those who have come before. The transcripts of trials, the files of cases, the reported appeals, and the judge's written opinions are but a few of the things which are the historical representation of a law school background, both in success and failure.

While the building may go, were there to be no new replacement, there would live on the personification of what it represents. A law school is more than just a building—it is an institution which imparts the tools for the administration of justice. It is in this administration that history is made and recorded so that the law school—the institution—lives, though the physical structure may die.

## STUDENT BAR REPORTS

By LYLE HERRICK



As the scholastic year draws to a close the administration of another BOARD OF BAR GOVERNORS must close its books and pass the LAW SCHOOL'S seat of government to a new group of individuals who, like most students, are unaware of the inner workings of this administrative body. Operating on a budget of \$3,750.00 the BOARD has provided for the many functions carried on for the studentry at large, including, but not limited to, the presentation of the Orientation program, the publication of the Student Directory, Loyola Digest, and Senior Placement Brochure, and membership and representation in the American Law Student Association. A portion of the student funds support the expenses in the Law Wives Organization. A

large portion of the budget was also dedicated to the annual Alumni-Student Dance held at mid-year.

Each year a student is selected by the Board to act as the official voting delegate to the National and Regional Convention and Conference held by the American Law Student Association. A portion of the student funds support the expenses in

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## Student Loan Fund Instigated By ABA

Story Credit:

### AMERICAN BAR NEWS

Three important new programs were approved by the House of Delegates of the American Bar Association in its Mid-year meeting sessions February 17-18 at the Palmer House in Chicago. They commit the Association to:

1—Support of a new plan urging constitutional amendment to deal with the problems of U.S. presidential succession and inability. In following through on this project the Association will conduct a nationwide educational campaign this spring.

2—Creation of a repayable Student Guaranty Loan Fund to assist law students.

3—Appointment of a new committee that will seek written statements from U.S. presidential candidates pledging cooperation with the ABA Committee on the Federal Judiciary on all appointments they might make to the federal bench. State and local bar associations are urged to obtain similar statements from candidates for the U.S. Senate.

**Student Loan Plan**—The new student loan plan will be operated under a Legal Educational Fund within the ABA Fund for Public Education. It is authorized to accept funds from lawyers, law firms, foundations and others with approval of the Board of Governors.

Robert K. Bell of Ocean City, N.J., chairman of the Special Committee to Study Financing in the Field of Legal Education, (Continued on Page 8)

## STUDENT BAR

(Continued From Page Two)

curred in travelling to convention headquarters, which in recent years have been in San Francisco, and Chicago, with New York being scheduled for 1964.

A program which is in its embryonic stages here is that of a Legal-Aid Indigent Defense Committee. (see story page 5) The idea initiated from the suggestion of this year's ALSA representative who was impressed with the program as discussed by other ALSA member schools at the national convention last summer. Enthused with the type of program that would advance legal experience in crimi-

## History Of U.S. Patent Law

# PATENT LAWYERS AIM TO AID SCIENTISTS IN THE LABYRINTH WHERE LAW AND SCIENCE MERGE

By CARL BERGKVIST

1970 — Cape Kennedy — the tension and anxiety that can only be associated with a momentous undertaking dominate the emotions of all present, and indeed all Americans. The apollo spacecraft is about to depart on man's first journey to the moon. There is a particularly gratifying feeling in all those who contributed to this effort, in particular those engineers, technicians, draftsmen, and workers whose relentless endeavors made this feat possible.

Upon the realization of the above described narrative, there will be another group of persons responsible for endless toil in conjunction with this massive scientific effort. Their purpose however, would not have been to directly aid the scientists and engineers, but to protect them from, and aid them through that labyrinth of legality that exists in the overlapping area where the spheres of law and science merge. These are the patent attorneys (also called patent engineers) the legal representatives of science. Their objective is, as it has been for as long as the U.S. has existed, "... to promote the progress of science and useful arts by securing for limited times to authors an inventors the exclusive right to their respective writings and inventions." (Article 1, Section 8, U.S. Constitution).

The task of providing legal protection for the new inventions and processes that emerge in the wake of a project such as Apollo, is staggering. The exact number of patents per project is unobtainable mainly because of the daily increase. This fact is augmented when we observe that currently there are between six and ten thousand patents applied for monthly,

and annual appeals to third year students, the Board set up a committee to investigate the possibilities of including Loyola student barristers on County Bar Association Indigent Defense Committees. Though in a weak early stage, this activity should grow if supported in the coming years.

The student Board is presently negotiating with the Registrar's Office for future registration by mail. Some advances were evident last semester as third year students were permitted early registration during the period of examinations.

The necessity and importance of patent law has always been recognized in the United States. Provisions were made in both the Articles of Confederation and the Constitution. This strong policy can be traced largely to the struggle with England's policies in the early day of the colonies, which reached their fullest fruition in the reign of King George III. It may be stated thus: **England shall remain the great manufacturing center of the world and her colonies shall supply the raw materials for her manufactures. Further the colonies shall be the purchasers of finished manufactured goods thus manufactured in England. No colony shall be permitted to develop its own manufacturing on any appreciable scale, in order that manufacturing and the profits thereof shall be held in the mother country.**

But the positive prohibition against the export to the American colonies of any machinery that could be used for manufacturing had its good effect. It forced the American colonists to become ingenious mechanics, engineers, and inventors in order to provide themselves with the inventions, machinery, and new products of manufacture necessitated by the growing commercial life of the young nation. As a consequence, the record of the Constitutional Convention of 1787 shows no dissent whatsoever to the inclusion of a provision in the Constitution for the protection of inventions.

In his inaugural address George Washington recognized the vital nature of invention and the importance of encouraging manufacturing through invention with these historic words: "... I cannot forbear intimating to you the expediency of giving effectual encouragement as well to the introduction of new and useful in-

ventions from abroad as to the exertions of skill and genius in producing them at home nor am I less persuaded that you will agree with me in opinion that there is nothing which can better deserve your patronage than the promotion of science. . ."

And so originated our now vast field of scientific litigation, where the essential question of what are, and what are not, patentable inventions, must finally be adjudged by the courts. This question cannot be reduced to stated rules. Ever since the Supreme Court, first considered that a machine, to be patentable, must be more than new and more than useful, they have been trying to isolate that "subtle something" whereby skill becomes genius—and with indifferent success.

The reason why the problem is not amenable to fixed standards has been most happily stated by Judge Learned Hand, in saying that efficient comparisons cannot be made in a realm "where there are no absolutes." The reason is that the question of invention or not is like the verdict of a jury.

It is easy to see that patent attorney is in a highly specialized field. Not only must he know the law but also must have working knowledge of science. He must be registered with the Patent Office of the U.S. Dept. of Commerce, and pass a test similar to the bar examination. A person seeking registration is admitted to the examination if he has a degree in engineering of physical science or the equivalent from a college or school of recognized standing. A degree in another field may be accepted where the applicant has completed 30 semester hours in chemistry or 28 semester hours in physics, or a combined total of 40 semester hours in chemistry, physics, and engineering.



## ST. THOMAS MORE LAW SOCIETY AIMS FOR THE CRYSTALLIZATION OF OPINION

By Ronald Radford

Take the office of Chief Justice of the Supreme Court and make it a cabinet position. Further make the incumbent also assistant to the President and give him an annual salary of \$100,000 plus expenses. Now you have some idea of what the Chancellorship of England was like when Thomas More held the post during the reign of Henry VIII.

Suppose further, that you were the holder of that office. The President calls you in and asks you to bend the First Amendment slightly by endorsing a paper which he has just written to be recited by school children. He gives you a choice: if you endorse the prayer you continue in your exalted position with added prestige and double the salary; if you do not endorse the prayer you will be beheaded at dawn. The President makes out a good case. Consider the extent to which you would have to believe in a principle before you could say: "I will not endorse." You have gotten some idea of the Saint Thomas More Society five centuries ago.

It is the sincere desire of the Saint Thomas Moore Society that Loyola Law School will turn out men who, in such a situation, would be able to make a choice based on principles lying outside the severe confines of the above dilemma. The Society expresses its belief in an order of things in the post-graduate world wherein sections of the Restatement will not always provide the answers, a belief in the necessity of principles which cannot be "Shepherdized" or "Digested."

In furtherance of this ideal the group has in recent months been addressed by prominent men of the legal profession on such topics as *Therapeutic Abortion in California*, and *The Ethics of the Personal Injury Judgment*. The next scheduled speaker is an eminent practitioner, Mr. Grant Cooper, who will speak on the *Criminal Law and the Press*. The meeting will be for lunch April 15th, at the *Mona Lisa Restaurant*.

This meeting, like others in the series, can have one of two effects. It may do no more than

expand the sponge many of us use for minds, or, on the other hand, it can be a catalyst for the crystallization of some real opinions and beliefs about life in the world beyond the bar exam.



THOMAS GIRARDI, President of the Saint Thomas More Society, and recent winner of a Fellowship to New York University Graduate School of Law.

## ALSA's 9th Circuit Conference Told Of Changing Areas In Law

By ERNIE VARGAS  
ALSA Representative

San Diego was the site for a three day conference of the American Law Student Association's 9th Circuit comprised of all recognized law schools in the State of California. The gathering was hosted by the University of San Diego Law School, and Fred Tschopp National Vice President of the ALSA.

Aside from the work-shop sessions where student bar activity ideas were discussed and exchanged, prominent speakers from the bench, bar, legislature, and law school deans, spoke before the 40 student delegates ranging from Stanford and Bolt Hall in the north, to Cal-Western University in the south.

The Honorable Robert W. Conyers, Judge of the Superior Court of San Diego County discussed at great length the procedure and law involved in hearing the case of *Greenman v. Yuba Power*, 59 C 2d 57, at the trial level. On appeal to the Supreme Court of California, the case held, as Justice Traynor wrote in the majority opinion, that "A manufacturer is strictly liable in tort when an article he places on the market, knowing that it is to be used without inspection for defects, proves to

have a defect that causes injury to a human being." The case practically does away with the requirement of privity of contract still upheld in California prior to this decision, although extended somewhat in the case of *Peterson v. Lamb Rubber*, 54 Cal 2d 339 which included an employee of the purchaser of a machine within the requirement of privity by including said employee as part of the industrial family which the manufacturer's warranty should protect.

An interesting note to the case is that the actual break from the requirement of privity in warranty cases was made at the Supreme Court level. Judge Conyers admitted that though the decision was upheld, as far as the reasoning was concerned, it may as well have been overruled.

Another highlight of the conference came later in the day when Attorney JAMES E. HERVEY, Esquire, discussed in detail another case which was heard before Judge Conyers, and which might subject said judge to being overruled again in reasoning and final outcome, which makes great advances in the law of **Emotional Disturbance**.

Worth \$100,000 unless overturned, the case stands for the principle that **there will be recovery where there is an intentional outrageous act resulting in emotional disturbance, even though there has been no physical contact, nor resulting outward physical injury**. On appeal presently, HERVEY speculated that the case would be reported approximately in the 63 Cal Reports.

Rounding out the activities for the conference, at an evening banquet, The Honorable Lionel Van Deerlin, rookie United States Congressman from San Diego, and non-lawyer, humorously presented the trials and hardships of the legislator in law-making, and encouraged active participation in politics to

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## DISCRIMINATORY LAW FIRM PRACTICES ATTACKED BY CONFERENCE DELEGATES

The American Law Student Association 9th Circuit Conference, held recently at the University of San Diego School of Law, unanimously passed a resolution, presented by Bolt Hall Law School of the University of California, Berkeley, which speaks out against the discriminatory practices of law firms in this state. Although passed by this body, the resolution will not be heard by the National governing body until August of 1964 at the National Convention to be held in New York, and therefore, cannot be said to be the policy of the American Law Student Association officially as of this time. The resolution is hereby reprinted in full text:

WHEREAS, it has come to the attention of members of this Association that some law firms persist in the practice of discriminating in their employment on the basis of race or religion;

WHEREAS, many of these firms avail themselves of the formal or informal placement facilities of many of the member schools of this Circuit of the Association; and,

WHEREAS, said member schools, the American Law Student Association and the American Bar Association have public policies deploring all forms of discrimination on the basis of race or religion;

Therefore, BE IT RESOLVED:

(1) that this Association urges all member schools, at least once during the placement process, to invite the attention of all firms using their placement facilities (or procedures) to a concise statement of the policy of the school in regard to discrimination on the basis of race or religion;

(2) that this Association through the Office of its National Vice-President publicize the nature and contents of this resolution to every Bar Association within the Ninth Circuit;

(4) that this Association through the Office of its National Vice-President present this resolution (changing the form only as to the national office which shall promulgate the contents) before the next annual convention of the American Law Student Association for its adoption by that body.



## INDIGENT DEFENSE PROGRAM IN ITS EMBRYONIC STAGE AT LOYOLA BAR

By ROGER FRANKLIN

Through the combined efforts of the administration and Student Bar Association, Loyola Law Students will participate in the Indigent Defense Program, now operated jointly by the three Los Angeles law schools and the Los Angeles County Bar Association's Federal Courts Criminal Indigent Defense Committee, which provides second and third year law students an opportunity to assist Bar Committee attorneys in the preparation and trial of cases in Federal District Court.

Under the supervision of the County Bar Committee, students assist at arraignment, interview defendants and witnesses, research statutes and case law, and assist during trial. The chairman of the Committee is Virgil V. Becker, a Loyola graduate of 1955, who believes the Program will "provide law students with heretofore unavailable rapport with the practicing members of the Bar on subjects vital to their education in legal practice and procedure that is generally otherwise unobtainable."

Any member of the Committee requiring assistance notifies Chairman Becker, who, on a rotating basis, selects one of the law school committees which will then select one of its members to report to the attorney needing such assistance.

There are now large groups of law students organized in active and operating committees at Loyola, U.C.L.A., and U.S.C. Schools of Law available to supply research assistance to the attorneys on the Committee in indigent appeals. The coordinators at Loyola are Ernest Vargas and George Moore. Besides Vargas and Moore 12 other Loyola law students have indicated a willingness to participate in the program: Vincent Stefano Jr., Robin McGuire, Howard Dicker, Lyle Herrick, Pete Menjou, Tony Murray, Ed Schlofman, Charles Finney, Charles Liberto, David Gaon, Mako Higuchi, and Nelson Atkins.

The Program permits law students to become familiar with the administration of criminal justice and, at the same time, fulfills an important com-

munity role by insuring adequate representation for indigents in Federal District Court.

Professor Dorsey lauded the idea, calling it a "wonderful program," cautioning, however, "as long as it doesn't over-burden the students with work so as to affect their studies."

## NEW LAW BUILDING TO INCREASE CAPACITY FOR INTELLECTUAL PURSUITS

By Ronald Cohen

Two score three and one half years ago, Loyola Law School was founded as a night school curriculum at Loyola High. It continued to afford a part-time course of study in law subjects until in 1927, according to the Metropolitan News of that year, "Loyola Law School . . . moved to a beautiful modern building at 11th street and Grand Avenue in downtown Los Angeles." In its seven years of existence, it had grown from its embryonic state to a separate institution with an accredited day and evening session. When the American Bar Association rated Loyola as a Class A school in 1937, it certified its academic excellence and lauded its dedication.

Loyola now moves into its most dynamic phase. With its occupancy next fall of a **modern new building**, Loyola will become the foremost Law School in Southern California. The achievements of a school, rather than in its physical structure, is reflected in the reputation it has among the members of the profession, most affected by its alumni. Loyola's prestige and respect has been achieved primarily because of the goal it strives to attain. As Assistant Dean Tevis described it, "we do not try to produce technicians with a mechanical approach to the law, but rather men concerned with professional responsibility and awareness of people and their problems."

The emphasis of the new school will be on education. The facilities, beauty and comfort provided for the faculty and students will greatly increase the capacity for intellectual pursuits. The chapel planned for the new school is an integral part of the philosophy of Loyola and will accentuate the moral and religious understanding demanded by the law. The

## FELLOWSHIPS GRANTED FOUR SENIORS FOR ADVANCED STUDY

Honors were bestowed upon Loyola Law School recently on the announcement that four top ranking third year students have been awarded Fellowships to various Graduate Schools of Law in the eastern part of the nation.

ANTHONY CASE was presented with a scholarship to New York University Graduate School of Law where he will proceed in the specialized study of tax law, achieving the L.L.M. degree.

THOMAS GIRARDI has been awarded a Fellowship also to the New York University Graduate School of Law where he will concentrate in the field of Trial Practice, and achieving also the L.L.M. degree. Girardi will then return to Los Angeles where he intends to practice.

ROBERT JAGIELLO will follow the study of tax law at Yale University Graduate School of Law, which has awarded him a full Fellowship. He has stated he may continue his studies past the L.L.M. degree, and work for his doctorate in jurisprudence.

BERNARD ANTHONY MURRAY will proceed to the Georgetown University Graduate School of Law where he will receive the E. Barrett Prettyman Fellowship in Trial Advocacy. Murray will receive \$4,000 in addition to tuition and book expenses. This Fellowship will require Murray to take and pass the District of Columbia Bar Examination in July as he will have to appear before the courts of that jurisdiction in the defense of indigents, as a fulfillment of 10 out of 20 units credits that he will advance in the obtainment of the L.L.M. degree in Trial Advocacy. He will further be required to write and present a paper of publishable quality.

His credo is the words of Daniel Webster, "The mind is the great lever of all things; human thought is the process by which human ends are ultimately answered."

atmosphere will be one of dedication to the graduation of the complete lawyer.

The men who are Loyola, enter as college graduates whose academic proficiency is evidenced by the scholastic record and performance of the Law School Admissions Test. They have chosen the law as their career for a multitude of reasons and yet they are singularly united, for their success is related to one factor—motivation. This need to know is a facet of personality that is not given, but must be cultivated.

A Law School is more than its building, its instruction, or students. A school impresses in its men a spirit, a reason, an intangible expression of purpose. In the Los Angeles Daily Journal of 1948 in a feature story about Loyola, it was said of the Faculty, "These men bring to the classroom a spirit and energy bred of a strenuous life in a noble profession, and the culture derived from rich experience. In their personality as well as in their teaching, they inspire the student to his best efforts and lead him to desire the highest ideals in his chosen field."

The Lawyer who graduates from Loyola Law School is truly, a man of two worlds. First, he lives with the knowledge that "the law is the last result of human wisdom acting upon human experience for the benefit of the public." Secondly, he is an eternal seeker of knowledge, he strives for the resolution of the human predicament.



# '...those who wrote Constitution were careful students of history.'

(Continued from Page 1)

preciate more fully the protections under which Americans live.

This being a Presidential election year one can look forward to an intense criticism of administration actions and policies. In spite of the fact that this propaganda barrage will contain many vitriolic denunciations of our President, one does not look forward to the spectacle of wholesale accusations and convictions for treason, but rather rests secure in the knowledge that the greatest offense which might legally be adjudged would be for libel or slander.

It should be noted that in the totalitarian nations a statement on policy which is in line with the policy of the government at the time issued may still lead to charges of treason whenever the official line changes. The rule of precedent, which is generally accepted in our Anglo-American judicial system, would not be a protection in modern totalitarian states where there is the idea that the law bears, without reference to the past or future, "the stamp of the moment." Russians even have a proverb to express this concept: "The law is like the tongue of a wagon, it turns whichever way you pull it."<sup>1</sup> Under this type of system, a change of administrations opens the door to the possibility that you may be eliminated along with many others merely because you are unable to or not permitted to recant.

The definition of treason is not a protection in itself. A state of war could open the door to innumerable charges if the procedural safeguards proved inadequate. This was shown historically during the Renaissance when the Church had to deal with attempts by individuals or groups to eliminate enemies or rivals through the machinery of the Ecclesiastical Courts on charges of heresy. At that time, one should remember, heresy was equated with treason since heresy was treason to God.

The necessity for effective procedural restraints on those who would remove their enemies by accusations of treason or heresy is demonstrated by

the following Church pronouncements of the 13th Century:

"... The Apostle enjoins upon us the avoidance not alone of evil, but the very appearance thereof. . . .

"... Lest the innocent be punished for the guilty, or the stain of heresy be imputed to some through the malice of others, we order that no one be punished as a heretic or a believer in heretics unless he has been adjudged such by his bishop or other ecclesiastic who has that authority. . . .

"... The question should not be asked whether anyone may be condemned for this crime (i.e. heresy) on the testimony of one witness and common report. The answer obviously is no. . . . For, especially in a criminal action, the proofs should be clearer than light . . . and for this crime no one should be condemned on presumptive evidence, but should be allowed canonical purgation. . . .

"... You should not proceed to the sentencing of anyone except on his own confession or on transparently clear proofs. For it is better to leave a crime unpunished than to convict the innocent. . . ."<sup>2</sup>

It should not seem strange that the above rules of evidence have found their way into our judicial framework. They express basic ideas of due process which are peculiarly appropriate to the modern Anglo-American judicial system.

Thomas Jefferson was undoubtedly one of those who was particularly aware of the need to protect objectors from charges of treason by effective constitutional safeguards. He stated it thusly: "... The unsuccessful strugglers against tyranny have been the chief martyrs of treason laws in all countries. . . ." Sir John Harrington stated the traditional reason for eliminating opponents on charges of treason in these words "... Treason doth never prosper — What's the reason? If it doth prosper none dare call it treason. . . ."

Thus our Constitution recognizes the need to provide for

appropriate action against those guilty of treason, while at the same time taking due care to protect those who are concerned with governmental actions which may lead to tyranny. Since those who wrote our Constitution were careful students of history it must be assumed that they were aware of the position of the Church as well as of the lack of procedural safeguards in England during most of its history, prior to 1787.

In Elizabethan England, a man accused of treason was not allowed to testify under oath in his own defense and it was not until 1794 that an English trial for treason lasted more than one day.<sup>3</sup> Even the attorney for the accused could not plead for him except where special issues of law were involved. Since the judge could direct a jury verdict, under pain of contempt of court, during most of this time, and the judges were quite responsive to the king as their appointing power, the trial was usually a farcical prelude to conviction.

One concept now thought to be fundamental which was relatively novel, except in the eyes of the Church, was that of individual responsibility. The attainting of blood and forfeiture of rights which the family of a person convicted of treason was usually made to suffer, is forbidden by our Constitution. No longer may the children of such a person be forbidden to hold office because of the actions of their father.

The above emphasis on the significance of our protections under the section of treason does not in any way belittle the importance of the Bill of Rights. The adoption of the Bill of Rights was considered necessary to assure our citizens of rights which for the most part had been officially adopted in England about a century before the ratification of our Constitution, but because of events in the colonies prior to the Revolution the British Bill of Rights had not developed the inherent going power of such a basic concept as property rights.

In current discussions on human rights conservatives occasionally attempt a defense of property rights. Such a basic and natural right is not men-

tioned specifically in the Constitution since it had always been fundamental from an historical standpoint. The Fifth Amendment made provision for compensation when property was taken for public use, because the sovereign frequently neglected to pay for those items which the state required.

In considering which of the first ten amendments have a historical significance antedating the Revolution it is not always possible to state with certitude the significance which some early English customs had on the molding of political opinion in 1789. The necessity for a well ordered militia was probably greatly influenced by the dangers of Indian uprisings, but we can note that similar conditions in early English history had developed a tradition of requiring possession and upkeep of effective arms in Anglo-Saxon times under pain of fines and other punishments.

The right to a speedy and public trial and other provisions of the Sixth Amendment are a protection which dates, in part, to Article 17 of Magna Carta in the provision: "... Common pleas shall not follow our court, but shall be held in some definite place. . . ." It is also related to the English Bill of Rights of 1689 and to many pre-revolutionary conditions in the colonies.

The provisions of the Eighth Amendment dealing with cruel and unusual punishments and excessive fines had many historical factors dating from the Tudors, but is also found in Article 19 of Magna Carta which provided as follows:

"... A freeman shall be amerced for a small offense only according to the degree of the offense; and for a grave offense he shall be amerced according to the gravity of the offense, saving his contentments. . . ."<sup>4</sup>

The cruel and unusual punishments provision had applications to procedures used for many offenses. It probably had reference to punishments for both heresy and treason. The former, after conviction in the ecclesiastical court, was referred to the King's court for issuance of a "writ of haeretico

(Continued on Page 8)



## Governor Brown

## '...all men are by nature free and independent...'

(Continued from Page 1)

It is a sweeping invitation to keep no agreement—no matter how binding—to recognize no authority and to place personal gain above society's moral code and our own constitutional guarantees of equality and freedom.

In the light of man's recent history and the evolving complexity of modern society, "absolute discretion" in personal behavior is an archaic dictum.

Some 200 years ago Blackstone described private property as the "sole and despotic dominion . . . over the external things of the world, in total exclusion of the right of any other individual in the universe."

What a curious ring those words have today. And how they are echoed in the initiative's phrase, "absolute discretion."

For this is the middle of the 20th Century not the 18th, when Blackstone wrote. And the divine right of kings of that era is as ludicrous today as the "despotic dominion" of private property over society.

The California Real Estate Association has proposed its initiative apparently as an extension of "property rights." But the effect of the initiative would be an erosion of property rights, and destructive of the very basis of our society—the concept that our government and the aggregate of property is an arrangement of individuals bound together for common purpose and submissive to certain principles that insure the rights of a minority as well as the majority.

And the exercise of "absolute discretion" in property rights flies in the face of a body of property law that goes back hundreds of years and is reinforced every year by new laws restricting the individual in the market place.

There is the ancient rule against perpetuities, curbing the "power of the dead hand to rule the future"; the law on unlawful restraints on alienation; zoning, rights of way, water and mineral rights, health and safety regulations; prohibitions against creating nuisances. The list goes on and on. And the longer it grows the more clear it is that "property rights" are, above all, a privilege that society grants to an individual subject to human rights.

That is a far cry from the doctrine the California Real Estate Association now would impose on the state through its initiative whose sole purpose is to thwart the Rumford fair housing act passed by the legislature last year, the housing provisions of the Unruh civil rights act of 1959 and all local jurisdictions from enacting laws to protect individuals against discrimination and segregation.

That the purpose of the initiative is to legalize discrimination is clear from the supporters of the measure themselves. On February 12, 1964, William K. Shearer, public relations director of the initiative, is quoted in a story in the Los Angeles Times on a meeting of the Town Hall in the Biltmore Hotel as follows:

"The people have the right to discriminate if they want to. We may question their wisdom to do so, but not their right." Mr. Shearer's comment followed a question on the purpose of the initiative.

If not to legalize discrimination, what is the purpose of the initiative? It gives the people no "rights" that they do not now have, unless it is the "right" to discriminate. If it is to overcome some oppressive law hateful to the people, its backers do not say what that law is. But if its purpose is to repeal the Rumford fair housing act and then go beyond repeal and introduce new sanctions for discrimination, it is clear that "property" rights are not involved but human rights.

And if its true purpose is to sanction discrimination and segregation it is *prima facie* in violation of the 14th Amendment to the U. S. Constitution.

In a petition for writ of mandate in the Supreme Court of the State of California, *Howard G. Lewis vs. Frank M. Jordan, Secretary of State*, it is argued that the initiative "purports to confer upon the owner of real property the right to sell it or decline to sell it at his absolute discretion." The petition goes on:

"Under existing law, an 'absolute' owner of property has an 'absolute' right to use, lease, sell or decline to lease or sell, subject only to general laws. One such general law abridging that absolute right is the Rumford

Fair Housing Act. Another is the Unruh Civil Rights Act.

"The proposal now under attack by plaintiff purports to remove the existing restriction requiring that the use be subject to general laws. Thus it is clear that by this initiative amendment the State of California would be conferring upon private persons an absolute right to discriminate against persons because of race or color in the use of real property.

"In a legal sense, it is quite elementary that the thrust of the prohibition contained in the Fourteenth Amendment was aimed at just such state schemes of racial discrimination. If the state itself, in all its majestic sovereignty, cannot itself discriminate, is it not a crass exhibition of 'absolute' simple-mindedness for anyone to claim that the state could nevertheless erect a constitutionally sheltered arena in which private persons may so discriminate in their 'absolute' discretion? Both common sense and uniform case law suggests a negative answer. *William vs. Howard Johnson, et al, 268 Fed 845; Lombard vs. Louisiana, 10 L. Ed. 2d 338. See also: Nixon vs. Condon, 286 U.S. 73; Smith vs. Allenright, 321 U.S. 649; Terry vs. Adams, 345 U.S. 461.*"

As a lawyer, as a former district attorney, as former attorney general and now as governor I am convinced that this measure violates the U.S. Constitution and would nullify the state's own Constitution, article 1, section 1, which states:

"All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property; and pursuing and obtaining safety and happiness."

It is ironic that the guarantee of "acquiring" and "possessing" property is spelled out in this section.

For the initiative would foreclose or sharply limit for Negroes, Mexican-Americans and other minorities the right to acquire and possess property, a right that many have not yet achieved even under the Rumford act.

Beyond all of the legal and constitutional questions, how-

ever, lies what I think is an even more fundamental question.

It is this: can this state and nation continue to push aside the hopes and aspirations of the Negroes and other minority groups for equality of opportunity in our society?

Can we continue to force them into ghettos, turn them away from jobs, confine them to certain school districts and refuse them housing?

One hundred years ago this nation locked itself in a bloody civil war to establish the principle of freedom and equality for all of its citizens. Every step we have taken since those grim years has confirmed the correctness of the judgment of the original framers of our Constitution that all men are created free and equal.

So it is to our moral beliefs and our consciences we must turn in examining the issue posed by the anti-fair housing initiative.

Let the history of our nation, founded by me who fled persecution for beliefs, guide our national conscience. Let our Christian-Judaeo precepts of brotherhood guide our personal conscience. Let our own daily experience with our fellow men guide our societal conscience.

It is this collective conscience that is the fabric of law, government and society. And the strength of that fabric is the strength of each individual in our society.

It is to our consciences, then, we must turn next November in the solitude of the polling place. And there we must ask ourselves: is this initiative right or wrong? Does it violate our history and our moral code? Is its purpose to harm or hurt our fellow man? Will it produce peace and goodwill or hate and violence?

## CALENDAR

MAY 1—Bar Examination Filing Date  
MAY 11—Instruction ends  
MAY 16-23—Examinations  
JUNE 3—Senior Grades  
JUNE 6—COMMENCEMENT  
JUNE 9—Registration Summer Session  
JUNE 10—Instruction Begins  
JULY 3—HOLIDAY FOR INDEPENDENCE DAY  
AUGUST 20—Summer Session Ends



## Blackstone's Commentaries

Automation is making tremendous inroads into our way of life and living, so much that the economists of our day are working overtime in an effort to figure out what is going to happen to our civilization as it becomes more extensively applied. . . . Mayhap even they might evolve a formula that will hit the problem with the power and accuracy of a nuclear guided missile. . . . No matter what the formula might be, there'll be no quantity in it that's a substitute for the human touch. . . . There simply is no such entity. . . . This is the impress that personalizes human effort, whether it's a canvas glowing with the touch of a Rembrandt, an interpretation of a statute, or a respondent's brief. . . . This it is that identifies you as you are identified as an individual distinct from the rest of the children of men. . . . Competence, industry, and a flaming desire to succeed, direct the route to high achievement and guarantee victory in the survival of the fittest. . . . The records of so many Loyolans confirm this principle—like BUD BRUMBAUGH, '29, the link between the Venice Boulevard era and Third and Broadway . . . who closed his earthly career a short time ago. . . . Many of the "old guard" turned out for the Rosary and had much of the grand and noble to associate with "Bud." . . . In private practice from the beginning of his career in law, he was performing valiantly up to within a day of the end. . . . His was a notable record in the service. . . . Just about to step out of the uniform he wore with distinction in World War II . . . a matter of the theft of Crown Jewels of titanic value and a military nexus therewith, put us in an awkward position before the world. . . . Orders kept him in the service until he solved this matter with justice and finality. . . . Bud's distinguishing characteristics, knowledge of the law and know-how in its application, gave the touch of nobility to his career. . . . And, of course, there's ERNIE SANCHEZ, '58, who followed the formula from the start and left behind a scintillating record that gave him a top priority for employability. . . . His strong assets in Law School were analysis, logic, and expression, oral and written. . . . In practice he still has a monopoly on them. . . . With a heavy program in the Attorney General's office, he was still able to give the participants in the Moot Court Competition the benefit of his wisdom and experience. . . . After five years of superior performance for the State of California, he feels that he has done his duty by his State as a devoted Native Son and is now available at reasonable hours with the firm of Fleming, Robbins and Tinsman, with whom he is associated in the general practice of law. . . . Ernie in character and training, is habituated to giving his best, leaving no place for mediocrity. . . . So we can look forward to more of the same in his new association. . . . LAURALEA FRANCES TRISLER, '63, who never raised her voice here during her four years in the pursuit of knowledge of the law, cracked the sound barrier in the O'Melveny office, and after a hearing and a short effective argument—a sort of "Res Ipsa Loquitur" situation—she was invited to take off her hat and coat and start working. . . . She joins a fellow graduate, BILL KRAMER, '63, who knocked off some honors as top student in the part-time session. . . . He entered the firm immediately after graduation and is already acclimated to the rarified atmosphere of the Eighth Floor of Title Insurance and Trust Building. . . . Tucked away in the northeast corner of the Golden State—where California is about to merge with Oregon—lies Lassen County, whose chief claim to glory is HAROLD ABBOTT, '53, who spent most of his life there. . . . He left it long enough to study law at Loyola. . . . As soon as he was graduated he rushed right back where he started from . . . his training paid off from the start. . . . Today he's District Attorney and Public Administrator of Lassen County. . . . He started carrying more than his load in Law School and stood up handsomely in the procedure. . . . So it's nothing new for him to do double duty as D.A. and P.A. and bring better government to his native county.

## BLACK

(Continued from Page 6)

comburendo" by which the Sheriff was directed to literally burn the heretic alive. Treason was treated equally barbarously in that the convicted person was hung, drawn and quartered. We must remember that under Henry VIII, after his break with the Pope, heresy consisted of refusal, in thought or deed, to recognize the King as legitimate head of both Church and State, and little proof was required if the suspect was considered politically unreliable.

The fact that our Constitution was written with the express intention of protecting citizens in their right to protest against arbitrary or improper actions of their government without fear of undue reprisal is not a perpetual safeguard. Effective constitutional rights are only those which are operative. The citizenry must learn from history that the need for protection against treason was written in the blood of probably millions of objectors to tyranny and that to maintain freedom from wrongful treasonable charges as a workable historical tradition will require vigilant and concerted action in a period when this protection is being challenged by both the left and the right extremists.

<sup>1</sup> Hogan, John: "Recent Developments in Soviet Law," *Case and Comment*, Vol. 59, No. 3, May-June, 1954, page 31.

<sup>2</sup> Evans, Austin B.: "Hunting Subversion in the Middle Ages," *Speculum*, Vol. XXXIII, Jan., 1958, No. 1, page 1.

<sup>3</sup> Weyl, Nathaniel: *Treason*, Public Affairs Press, 1950, Washington, D. C., page 4.

<sup>4</sup> Contentments that which is necessary for the support and maintenance of men, agreeably to their several qualities or states of life.

## ABA Student Loan Fund

(Continued from Page 3)

said the fund will make loans available in an amount twelve and one half times the amount on deposit, i.e., a \$1,000 gift to the fund will make \$12,500 available for law student loans.

The Board of Governors is authorized to appropriate Association funds to establish the project for the fiscal year beginning July 1.

**Presidential Succession**—The plan on presidential succession and inability was drawn by a panel of experts convened by the ABA in January at the Mayflower Hotel in Washington, D. C. It proposes amendments to the Constitution which would permit the powers and duties of the President, but not the office itself, to pass to the Vice President, if the President is disabled, and to assure that the office of the Vice President is always filled.

## ALSA CONFERENCE

(Continued from Page 4)

all followers of the legal profession.

Also present and participating in the events undertaken were General George Hickman, Dean of the University of San Diego Law School and past Judge Advocate General of the Army, and Dean Robert W. Castetter, of the School of Law of California-Western University.

\* \* \*

Other than the above-mentioned ALSA representative, Loyola was represented by Lyle Herrick, Third Year Day Representative.

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