CAVEAT VENDOR

By MELVIN M. BELL
of the San Francisco and Hollywood Bars

Messrs. William T. Fleet and Samuel P. Semple were partners in the "business of vending drugs by retail." In compounding a rather exotic nostrum of "Snake Root and Peruvian Bark" for their customer, they mistakenly included in their compound a third commodity, more erotic than exotic: "Spanish Flies!"

Hollenkamp sued Messrs. Fleet and Semple for a "permanent condition" (as the Court was later to characterize his pathology, but of which pathology of "permanent condition" the Court did not further describe, enlarge upon or otherwise report). Such "permanent conditions" they vended.

An "aphrodisiac" "Spanish Flies" when arrived at by his ingesting the anabolic "Spanish Flies" when all Mr. Hollenkamp really bargained for was the anabolic Peruvian Bark and Snake Root!"

Anyhow, way back in 1852 in Fleet and Semple v. Hollenkamp, 52 Ky. 219, a law report so ancient as to report within the same volume warranties and bills of sale of slaves, the Kentucky Supreme Court handed down an opinion as modern as the concurring opinion of Traynor, Justice, in Escola v. Coca Cola, 24 Cal. 2d 543, 150 P. 2d 436 (1944), (see also Dalehite v. U. S., (1953) 346 U. S. 15, dissenting opinion Mr. Justice Jackson), holding druggists Fleet and Semple absolutely liable for the untoward effects of the commodities they vended.

Justice Hise for the Court said:

"As applicable to the owners of drugstores or persons engaged in vending drugs or medicines by retail, the legal maxim should be reversed. Instead of caveat emptor, it should be caveat vendor. This is, to say, let him be certain that he does not sell to a purchaser, nor send for any purpose, one drug for another, as arsenic for calomel, cathartics for, or mixed with Snake Root or Peruvian Bark, or even one innocent drug, calculated to produce a certain effect, in place of another sent for and designed to produce a different effect. If he does these things, he cannot escape civil responsibility, upon the alleged pretext that it was an accidental or innocent mistake; that he had been very careful and particular, and had used extraordinary diligence in preparing or compounding the medicines as required, etc. Such excuses will not avail him, and he will be liable at the suit of the parties injured for the damages at the discretion of a jury."

Undoubtedly Gilbert and Sullivan could have set to delight music this modern observation of Justice Hise, "Caveat Emptor has become Caveat Vendor today." But in lieu of such light opera, we may more seriously accept this expression from the learning of a Judge over a century ago as being the most noticeable trend in modern law: "Caveat Vendor." It expresses the trend which in 1940 years bids to achieve fruition that the fabricator of any commodity is absolutely responsible for the "un wholesomeness" or the defects of his product to

From The Editor's Desk

Once upon a time a Wise Man approached the king with a palm full of air. He said to the king: "To a fool this is nothing; to a Wise Man it is a statue." And the king, not wanting to appear a fool exclaimed, "What a beautiful statue!"

Few questions concerning human society have been asked with such persistence as the question "What is law?" Just what differentiates laws from orders backed by threats? In the past distinguished minds have responded with varied answers: "What officials do about disputes is the law itself."—Llewellyn. "The prophecies of what the courts will do are what I mean by the law."—O. W. Holmes. "Law is an ordinance of reason for the common good."—Aquinas. "Law is merely positive morality."—Austin. One particular legal itch has persisted through the ages: Is law discovered or made? Cardinal McIntyre and Dean Roscoe Pound are certainly not insensitive to this provocative query.

One of the more effervescent areas in the law involves the intriguing concept of liability without fault. In particular, in the arena of Products Liability intense battles have been fought. Here there is little opportunity for "... blind imitation of the past." We have a new problem. Gladiators Melvin Belli, Scott Conley and Edwards Saunders may have terminated round one, but the contest is far from concluded. How appropriately has an eminent jurist observed that "... each opinion and belief lies open to criticism and attack and is entitled to survive only if it can hold its own in the open combat of ideas. In such combat lies the hope of future progress." The courts will soon have to make a decision in this fiercely fought contest. It is hoped that it will be a decision establishing rational guide lines for the future.

Every man has his prize, Louis Nizer has reassured the law graduate that few other professions afford such scope to realize the "... spontaneous energy of one's soul." Another patron of the (Continued on Page 2)
Caveat Vendor...

(Continued from Page 1)

the ultimate user whether the latter is in privity or not.

History

Some 4,000 years ago, more or less (when we go that far back the "more or less" doesn't make too much difference), the code of Hammurabi had a rather heroic "caveat vendor." At least as applied to "druggists" and those who provided services to others, there was a complete liability. The druggist who compounded a noxious or unwholesome nostrum, causing his patient to suffer or die, had his pill-rolling fingers cut off. (Even i, who coined the expression the "adequate award" and brought it to full fruition in the "Cutter Cases" would not recommend such an "absolute liability," regardless of what some insurance companies might say of me).

As man and his law progressed through Roman times and the great Roman law to the latter centuries of the common law, the wheel of social and economic enforceable morality, which is law, had completely turned and caveat emptor had become the rule of the day: It was a seller's world and neither the vendor nor the King's Bench, nor the King, for that matter, was very much concerned with whether the vendee got Spanish red velvet, glass chandeliers and rococo architecture culturally portrayed this employers' and manufacturers' world. Legally, the technicalities of the forms of action are descriptive of it.

New empires had to be gained, new corporations needed protection to thrive and flourish, new industries could not be harassed by over-zealous protection of human rights; the vendor, the fabricator, the corporate doer were the favored by law, so—caveat emptor.

But with the latter 20th century, the wheel started to come to full turn, to the absolute liability of Mr. (his other titles being omitted because of space) Hammurabi. Certainly Workmen's Compensation laws, first born in Germany (see the history of the Pillory and not sue B because he was "a stranger to the contract," even though C's suit was in tort for negligence. Although C wasn't suiting as a privy to a contract, the Victorian concept of strict liability phase of the suit may be decided, C should have been able to sue B either in "warranty" or negligence, since both are tort and privity of contract is now necessary!

Likewise, it should be remembered, and this is something many courts forget today, in a warranty case, or proof of negligence is not necessary. The proof required is simply that the commodity was unwholesome, proximate cause, i.e., that the food product caused the wrong, and damages. (As to this confusion of the Federal Court in the cancer case which I tried in California, it can be seen at 34 Southern Cal. Law Review 399) This is why, in a warranty case upon adequate discovery (see Cembrook v. Superior Court (1951) 11 Cal. Reporter 223) insufficient facts may be adduced so that summary judgment on the liability phase of the suit may be achieved. See also Varoni v. California Bottle Co. (1950) 38 Cal. 2d 552.)

On the interesting proximate cause question, i.e., did the unwholesomeness actually cause the condition (and this was the principal question in the last of the Cutter cases), see 34 Southern Cal. Law Review 399.) This is why, in a warranty case upon adequate discovery (see Cembrook v. Superior Court (1951) 11 Cal. Reporter 223) insufficient facts may be adduced so that summary judgment on the liability phase of the suit may be achieved. See also Varoni v. California Bottle Co. (1950) 38 Cal. 2d 552.)

In any event it wasn't until MacPherson v. Buick (217 N. Y. 1962) brought it into fuller flower that C could sue in negligence against B if that which B fabricated was "reasonably certain to place life and limb in peril when negligently made."

MacPherson v. Buick was a tremendously important decision because it at once should have cut the percentage of that group in the expression "the
THE LARGE WORDS

When one talks of hereditaments, misprisions and indentures, of chattels and of mortgages, of choses and debentures, of femes, both sole and covert, separating and divorcing, of words of twenty letters, which you'd think would break his jaw, you will then know that the fellow has just begun to study law.

Cave Venditorem

By Scott Conley and Edward J. Saunders

(Editor's Note: Mr. Conley and Mr. Saunders are members of the San Francisco law firm Sedgwick, Detert, Moran and Arnold, which represented the defense in the famous Cutter Lab cases.)

Beware of the Salesman!

Recent expressions of trial advocates interested in the product liability damage theory of claims for damages for one cent, in producing a maximum amount of dollars huzza that there is gold in the streets of Product Liability, and that Breach of Warranty is the name of the vessel which will transport us to that promised land.

Metheglin gentlemen do promote too much. The millennium is not at hand, nor would the active and vocal plaintiffs' bar wish it to be lest it aboil its own raison d'etre.

The basic concept of negligence has been, and will be the backbone of the tort injury case; when the wheel comes off the vehicle or the splinter of glass mences from the bite of bread there is negligence in the fullest sense of the word, and the seller should not just beware, he should pay off for if he doesn't, a jury will make him pay.

The lawyer who is too lazy to build his case on negligence theory is unable to find any negligence (as in the Cutter polio cases) — should not be urged to rely upon breach of warranty to supply the omission.

The law doesn't yet equate warranty and absolute liability although there are those who have vested interest in selling the idea that it does.

What Is Warranty?

The heart of any warranty concept is so simple that it is hard to grasp. Basically it means only the buyer is entitled to get what he ordered: the English case plaintiff's cancer was caused by tobacco smoke. In other words, even though the product caused the harm, there was no warranty that it would not do so — merely a warranty that the cigarettes sold were of the same general quality as the average cigarette marketed at the time. At the time, of course, is the key phrase; conceivably a product widely manufactured by many companies might contain an unsuspected potential of harm. If at a later date one is injured by potentialities such as a side effect of a drug, the basic issue is going to be the ability to prove that the defendant is not the one that the food which was sold conformed to the product as generally manufactured and described. If it does and the potentiality of harm was not reasonably foreseeable, the result of litigation is going to be most unhappy from the claimant's standpoint.

Privity

The Gill salesmen of absolute liability in warranty also negligently fail to warn of another toostuber: the privity doctrine is not quite such a dead duck as advertised. Even in California it is judicially abolished only in food and drug cases and in the vast majority of the remaining 50 states it remains as a bar to the remote consumer in all cases. The Uniform Sales Act, codified in most states, establishes a remedy for breach of implied warranty only in favor of a "buyer" and even the revised Uniform Commercial Code would go no further than to adopt the doctrine of the "family buyer."

The lawyer should beware, then, of too hasty adoption of breach of warranty as a holiday in the hard labor of proving a negligence case. Contrary to the claims of those who have a real money interest in selling it as an absolute liability gimmick to the judiciary and to other lawyers, the cause of action is not for you or your client to have no contractual relation with the seller as such a contractual relationship is the basis of liability; or if you can prove nothing beyond the fact that the product caused the harm the essential question is still one of reasonableness.

In modern television America are well accustomed to the salesman's pitch. We know as well that its evaluation requires an independent appraisal of the product by the light of the requirements of the individual and the public. In fine, cum grano salis.
Blackstone's Commentaries

That grim fellow Time is on the march, nor has he desisted therefrom, since he first started out on this planet, stepping off the hours with the staccato tread of finality. Today we are at the touch of singularity in the rhythm of the universe, it moves along with the embellishments of academic achievement. Regalia glowing with the royal purple of the Law, gowns of somber hue, hoods reflecting Loyola's Crimson and Gray, and tasseled mortarboards, proclaim this Pageant of Victory. Nor should it be otherwise, for it marks the harvest of four years' patient and humble toil. There's the high ambition of ardent youth, the "survival of the fittest" in the struggle for the mastery. This day records the hour of triumph. The morrow opens wide the portals of a new era. "Looking Backward" confirms the success formula that gave glowing reality to this day of accommulation. Each competitor in the November run-off.....

Mr. Nixon emphatically stated that the legal umbrella in the area of criminal law either needs repairing or a strong hand to hold it.

He indicated that our crime rate is up 20% and that there is an immediate need to stand behind local authorities and to diligently construe the laws as they now stand in the light most favorable to our peace officers who must work within an exacting framework of case law in order that evidence obtained be deemed to the upper reaches of the aristocratic Hill Country. A formal career of high professional service, changed and enduring, is the warranty of a glowing scroll recording a career of high professional service. Not unlike Tom Lesage, '37, who looks back on twenty-five years of the kind of service we are talking about and proud to record. He's been in general practice in Pasadena and daily embellishing his achievement scroll for the population of Los Angeles. A person of integrity, Mr. Nixson, is enrolled at the school and reflecting many of the attributes that made his father a standout. The Mendelian Law is likewise proving its validity in the case of the "HOUSE OF COLLINS". Father and Son, James Senior, '34, sets the pattern and pattern. The MENDLEIAN Law is proving itself to be depended upon to always perform in the grand manner. Not unlike Charlie Ronan, '39, who is about to turn in a second-rate performance. All of which is highly commendatory all around, not slurring over the discernment of the Loyola trained technicians of the firm HUGH ROTCHFORD, '25, OTTO KAUS, '49, and BILL TUCKER, '53. Due somewhat to primitive methods of counting ballots, the results of the recent election (50) are not like proving itself to be depended upon to always perform in the grand manner. Not unlike Charlie Ronan, '39, who is about to turn in a second-rate performance. All of which is highly commendatory all around, not slurring over the discernment of the Loyola trained technicians of the firm HUGH ROTCHFORD, '25, OTTO KAUS, '49, and BILL TUCKER, '53. Due somewhat to primitive methods of counting ballots, the results of the recent election (50) are not like the law to stand up and "face the music."

The over-all tenor of Mr. Nixon's observations would lead to the assumption that if he is elected to the office of Governor, he will not adopt the use of "slap the hand" penalties but will cause those who break the law to stand up and "face the music."

Gubernatorial candidate Nixon emphasized the importance of the State of California, stating that we are moving toward being number one in the nation in every field. We are an aggressive, fast-moving state and we are piling up a rich variety of legal experience, as Deputy District Attorney, sworn that they are not secretaries of the Governor, stating that we are moving toward being number one in the nation in and performs no little part in making his valiant wife Arizona's Catholic Mother of the Year (1961).

HEALTH INSURANCE

Every Swedish citizen of fifteen years and older is a member of the country's compulsory health insurance program. This covers most of the doctor's fees, hospital treatment, and cost of drugs. A small daily tax-free allowance is given during the period of illness.

Editor Garcia and Richard Collins interview gubernatorial candidate Richard Nixon at Loyola University

Digest Interviews Nixon

By Richard Collins

"Do you feel that the law as it presently stands in California needs either stronger support or implementation?" Reporters of the LOYOLA DIGEST asked this question of Richard M. Nixon at an exclusive interview after his recent speech at Paul Revere Junior High School in Pacific Palisades on May 22, 1962.

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GOVERNOR BROWN DISCUSSES
LEGISLATION, APPOINTMENTS

By Robert W. Ridley

Taking time out from his crowded calendar, Governor Brown spoke with members of the DIGEST staff during one of his recent visits to Los Angeles.

The Governor was particularly enthusiastic about the large number of judicial appointments which he has made during his term in office. He especially cited his appointment of Loyola faculty member, Otto M. Kaus, to the Los Angeles County Superior Court. Mr. Kaus is a Republican and the present Governor Brown commented further upon various programs of his administration which have been incorporated into recent state legislation. In 1960, the Special Study Commission on Narcotics was created by Executive Order to study the adequacy of the existing law. From this study, the 1961 legislation was passed, imposing stiffer penalties for peddlers and a new rehabilitation program for addicts. Additional legislation is needed, though, and the final report of the Committee included a recommendation for new federal laws for closer regulation of interstate commerce in the dangerous drugs and new laws to control their sale and possession in California. As a result of this special study, a state narcotic detention and treatment facility under the Director of Corrections was acquired. Here, the program will embrace treatment, psychological, physiological, vocational and educational therapy, and long-range post-release supervision and rehabilitation.

One of the important tasks that the Governor has undertaken with the support of recent legislation, is his delinquency prevention program. Under this 13-point program, the Governor explained that the purpose of delinquency is preferred to attempting rehabilitation in institutions. Among the suggestions for augmenting this goal of prevention, the Governor's advisory Committee on Children and Youth recommended that more jobs for youths, improved probation services, and earlier identification of children with problems be investigated. It will take years to evaluate the changes that this program has proposed, but the Governor expressed optimism about the results of the changes.

Besides preventing delinquency, the Governor pointed out the necessity of effectively dealing with those delinquents that the Department of Youth Authority is attempting to rehabilitate. In the last few years, the Youth Training School, south of Ontario, with the initial capacity of 400 was opened, as was a new Ventura School for girls. The Governor also stressed that wards committed by criminal courts have been accepted immediately into institutions without waiting long periods in jail, as was necessary in past years.

The Governor expressed regret that he could not discuss the many other legislative programs that his administration has sponsored, but the duties of his office precluded such a lengthy interview.

Inexcusable Delay—
Bar To Recovery On Auto Policy

The California District Court of Appeal in National Automobile and Casualty Co. vs. Brown, 197 ACA 633, October 1961, upheld the decision of a trial court that an inexcusable delay of nine months by the insurer in notifying the insured of an accident, relieved the insurer of its obligation under the policy.

The insured, a used car dealer who had loaned out the automobile involved, was notified one month after the accident occurred, he inspected the car, saw that it was a total loss, and made no attempt to find out if there was any injury in the accident. Two months after that, the insured got a letter from Brown's attorneys advising him of the accident and that insurance benefits were payable. The insured did nothing about the letter for another six months at which time he received a summons and complaint from Brown's attorneys and sent it to the insurer.

The policy contained a provision requiring notice by the insured of any accident within a "practicable" time period. The court felt that the insurer was prejudiced by the delay in that it lost opportunity of questioning a witness who had since died and whose testimony might have disclosed that the car was being driven by a person not covered under the policy. The court further found prejudice in the fact that the insurer was deprived of an opportunity to settle the case. The law favors prompt and diligent settlements whenever there is a reasonable opportunity to get them.

Generally, failure to give the notice required in an auto policy is not fatal to recovery thereunder unless the insurer has been prejudiced. Public policy is against a strict construction of this part of the insurance agreement. The issue of prejudice is within the competence of the trier of fact, although in the case of inexcusable delay the law presumes that prejudice did occur and the insurer carries the burden of rebutting that presumption. In this case the court found that there was sufficient evidence to support the finding of fact by the jury and coverage was denied.

In Frank Epple v. State, 112 Tex Crim 612, 18 SW (2) 625 the Texas court took judicial notice of the existence of Santa Claus.
Law and The Federal Tort Claims Act

By Roscoe Pound, Dean Emeritus, Harvard Law School

(Editor's Note: The Editors of the DIGEST invited Dean Pound to comment upon the age-old query, "What is law?" The Dean was most generous in responding and answering this question in the light of the current problem area of the Federal Tort Claims Act. In a letter to the DIGEST, "I have written some 900 words on a problem raised by recent decisions of the Federal Tort Claims Act which undoubtedly will eventually have to be determined in the Supreme Court of the United States. It raises a crucial question in the law of what is coming to be called "strict liability" and is the right line of the course of decision today.

The lawyer likes to start from authority. But I fear that the authority from which he lays down or expounds the law is the law of the time and place assumed to be the law of all time and place. Moreover, there is the best of authority for holding that law is reason: Reason applied to time and place and to the events of time and place and to the events of time and place and to the events of time. "For reason," says Coke, the oracle of our law, "is the life of the law, nay the common law itself is nothing else but reason." But perhaps we must from this original situation and be-

The goddess of justice, holding the scales of justice, is often likened to an affray. It is a body of principles of justice, proceeding from reason and having the sense of right and justice of civilized mankind behind it. It is a law in modern. The law is found. However, it must be admitted that the poverty of English speech makes it seem plausible that the principles of the law are laws and so to be thought of and applied as rules rather than starting points for application of reason to acts and events. But this much confuses what we say in the books about the administration of justice, making it appear at most a glorified policing. The goddess of justice, holding the scales, is also often likened to a symbol of treatment of injury much more than the policeman's billy.

Policing and administration of justice are distinct functions. But in the local village community society of the beginnings they were not distinct. The king ruled the repository of political power of which policing was the chief activity. The king's peace maintained the social and political order. Breaches of the peace were seen and applied as rules rather than starting points for application of reason to acts and events. But this much confuses what we say in the books about the administration of justice, making it appear at most a glorified policing. The goddess of justice, holding the scales, is also often likened to a symbol of treatment of injury much more than the policeman's billy.

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This is the case by procuring a writ reciting a wrongful breach of peace.

As administration of justice was thought of as reparation of wrongs, and it was a maxim that the king, the fountain of justice, could do no wrong, it followed that the government was not legally liable for wrongs. His first authority was the primacy of the king and legislative work of legislation which investigation and hearing of the claims presented by them required, became a serious interference with the primary and legitimate work of legislation. Accordingly in 1946 the Federal Tort Claims Act (28 U.S.C. §§ 1346 and 2671) provided that: "The district courts shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, for personal injury or death caused by the negligence or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." It adds: "The United States shall be liable, respecting the rights of claimants, in the same manner and to the same extent as a private individual under like circumstances." The interpretation and application of these provisions were the subject of illuminating discussions by Mr. Justice Jackson (Feres v. U.S. 340 US 135, 1950) and Mr. Justice Black (Federated Industries Tow- ing Co. v. U.S. 330 US 81, 1947).

Cardinal McIntyre to Write for Digest

By Douglas Martin

What is law? What is the place of natural law in our legal system? These problems, which have perplexed lawmakers for centuries, will be featured in a forthcoming issue of the DIGEST. James Frances McIntyre, Cardinal Archbishop of Los Angeles, will lend his insight to the legal profession as he analyzes and answers these questions.

He states that the natural law is the basic and universal law; it is conformity of social order and private conduct with the primary and legitimate work of legislation. This order of nature is not a fluctuating quantity, but a permanent and perduring element in man and nature. If a law is not in conformity with natural law, it is not good law.

Blackstone

In a recent interview, the Cardinal drew on two excellent illustrations to support his position. His first authority was the definition of natural law given centuries ago, wherein Blackstone stated:

"The law of nature, being coeval with mankind and dictated by God, Himself, is, of course, superior in obligation to any other (law). It is binding over all the globe in all countries, and at all times; no human laws are of any validity if contrary to this (the natural law); and such of them (human laws) as are valid derive all their force and all their authority, mediately or immediately, from this original (natural law)."

Space Flight

Scott Carpenter's flight furnished the second example of the nature of the natural law. "Man in space is not creating new laws, but merely pulling away the curtain of the natural law." How closely this parallels the statement of Dr. M. Scott Carpenter, the flier of Scott Carpenter, who, in commenting on his son's historic flight, stated: "I feel proud that Scott is able to contribute in the search for the natural law."

To see the relation of the natural law to Anglo-American jurisprudence and to learn some of the problems of the lack of accommodation of social conduct to the order of man, don't miss the next issue of the DIGEST, wherein Cardinal McIntyre answers the question "What is law?"

Legal Data...

I m p o r t a n t notice! The mail route from Mecca to Zanzibar is reliable. Zanzibar is east of Tanzania.

The Constitution of Oxford University still has a law which reads: "No student shall carry bows and arrows through the streets of the town."

Michigan law reads: "An act to provide for the lawful taking of suckers, mullet, dogfish, and law- ers from the waters of the Sturgeon River." Act 293, Michigan Laws, 1907.

Hollywood, Calif., law has an ordinance forbidding droves of more than two thousand sheep to be driven down Hollywood Boul- evard at any one time.

A federal law provides "that no sponges ... shall be landed at any port in the United States of a smaller size than four inches in diameter."

A Kansas law still on the books reads: "When two trains approach each other at a crossing, they shall both come to a full stop, and neither shall start up until the other has gone."
It has been the tradition of addresses to graduating law students that they be couched in terms of inspiration. The speaker does not touch his feet on practical ground; he soars high into the lofty regions of the law's ideals, and he speaks of the noble motivations which will guide you through life.

But there are several assumptions underlying such inspirational talks which I think might be examined more closely. The first assumption is that you have finished your law studies. I regret to say that this is not so. In Coke's day there were 5,000 cases which provided precedent. In Lord Mansfield's day there were 10,000 cases; you have two million cases with which, at one time or another, you are to have familiarity.

You have an enormous body of cases growing at an alarming rate. Your advance sheets, law reviews, practicing law institute courses and many other sources for keeping abreast of the law.

No, you have not finished your law studies; you have barely begun them — unless you are to be one of those whom Dr. Nicholas Murray Butler once described as dying at 30 and being buried at 70.

There is another assumption underlying the inspirational graduation address, and that is that you are ready to enter the lists of tittle brite and all the you need is a final exhortation to go out and do mightily. Again, I regret to say that this isn't true.

The most beautiful sights in the world is that of a law graduate in cap and gown with his diploma in hand. But when I think of the iron and steel of intellectual combat in the legal profession, I am afraid that your paper diplomas are frail weapons indeed.

You are seniors this year but, in truth, you are freshmen enterers of this university. The walls and the campus is everywhere you tread. The teachers of this university are not identifiable. They are your law associates, your adversarists, the judges, the clients, the witnesses, sometimes your youngest clerk. Indeed, they are all the people you meet, even in your social contacts, and in your spare hours you must read and do. For what you have learned in the law school is merely a technique — a methodology — until you have been subjected to the stimuli of human motivation in all its complex forms; not until you have gained insights which sharpen your perception and your judgment, will you be qualified to be the greatest of all practitioners, the legal adviser.

We wish you to become successful as practitioners, but we wish you to gain the esteem of your associates at the Bar, the respect of the Judiciary, the confidence of your clients and the appreciation of the community which you will serve. For this reason, I shall advert to some of the courses which you will take in the new university which you enter. While I do not abjure any inspiration you may receive from these courses, they are designed to be of practical aid in your professional life. The courses I shall outline are not taught in any law school. With profound apology to your professors, I must say that they are at least as valuable as any you have taken in the law school.

Industry One

The first will be called Industry One. I do not refer to "industry" in the objective sense; I am talking about your industry, your effort. "The world belongs to the energetic," said Emerson, "do not know whether the work does, but I am sure the legal profession does. It is the keystone of your success.

All of us have certain capacities. We are told that these are determined at birth by our genes and chromosomes. But it has been suggested that we do not exploit more than 20 or 25 per cent of our capacity. That which distinguishes the brilliant man from the bright is the capacity to bring up the ore.

I have seen the ore from the law schools into law offices. Most of them fall by the wayside. Some attain mere adequacy, and are lodged in their little office cubicles. A few grow steadily, become partners and achieve great distinction in their professional lives. What is that which separates the few from the many? Is it greater brilliance? Very often, not. Indeed, I have observed that the brilliant man sometimes relies upon his brilliance, becomes indolent, and is quickly out-distanced.

The explanation is that the successful lawyer has a burning zeal and enthusiasm for the law. They drive him on to excel. He confines himself to the clock. He works at all hours of the day and night, because it is not work to him. Nothing is work unless you would rather be doing something else.

He is the young man who, when you give him a problem for research, does not come back with the report that there is no authority. He has sought out the remotest substitute authorities, law reviews and English cases. He has searched the legislative intention by looking up Committee reports.

He is the young man who, if a fact must be established and the witness who can supply it is hostile to your client and will not come to court, visits him at his home, compelling him to present his charms and persuasion upon him, while he brandishes a subpoena under his nose; for Justice never walks into the court room, it must be brought in by the heels.

I regret that it was a doctor, rather than a lawyer, who expressed this point most eloquently. Sir William Osler put it this way:

"There is an old folk lore legend that there is some mystic word which will open barred gates. There is, in fact, such a mystic word. It is the open sesame of every portal. The true philosopher's stone, which transmutes all the baser metal of humanity into gold. The stupid man it will make bright: the bright, brilliant and braver. With this mystic word all things are possible. And the mystic word is 'work.'"

Benjamin Franklin put it more tersely: "I was never one glorious," he said, "who was not also laborious."

Client Psychology

There is another course in the new university you are entering to which I would like to advert. It is called Client Psychology. The most important point in winning your client's confidence is your scrupulous adherence to ethics, your high principles under stressful circumstances. I would not be as presumptuous as to give you a manual on this subject, for you are taking oaths to comply with the highest standards of our honored calling; and of course, you will be as good as your word and your oath.

The reason that I discuss the ars of getting started. The law is a jealous mistress and she does not take lovers to her side lightly. You may be sure that as time goes on, these dark hours will fade into the background and hardly be remembered.

The practice of the law is in many aspects the waging of war and, like any other war, it can be won only by courage. There are defeats, but you must turn them into victories. Battles are lost, but you must persist until the war is won. If you become panicky and lose heart, you will lose all, when the prize might be within reach.

Does anything you have said shock you, dishearten you? I hope not. If it does shock you, you should not be discouraged by the high standards. Remember that, in these new courses, 70 entitles you to an "A." None of us achieves perfection; perhaps you must turn to the stars to chart your route. Furthermore, I think you should derive great solace from the fact (Continued on Page 8)
Legal Scholars To Teach Law At UC's Boalt Hall

Berkeley — Two outstanding legal scholars will serve as visiting professors for the 1962 summer session at the University of California School of Law (Boalt Hall) in Berkeley. Professor John Dawson of Harvard University will teach restitution, a subject which he will satisfactorily completed one year of law study.

From the Boalt Hall faculty, Professor Edward Halbach will teach legal accounting and Professor Kenneth Schreiter will teach family law.

The summer session will run from June 18 through July 27 and is open to members of the bar and to students who have satisfactorily completed one year of law study.

SITTING DOWN FOR YOUR RIGHTS—Constitutional Problems Re: Negro Sit-Ins

By Humberto Garcia

An interesting and perplexing legal phenomenon is occurring on the American scene; people are sitting down for their rights. Negro demonstrators have visited public restaurants that refuse service to Negro patrons. The demonstrators refuse to abandon the counter seats upon refusal of service. The proprietor may raise the question that arises, “Whether judicial enforcement of the state trespass laws, upon the complaint of the proprietor of a public restaurant and for reasons of racial discrimination, is prohibited state action within the meaning and scope of the 14th Amendment.” That Amendment provides that no state shall deprive any person within its jurisdiction the equal protection of the laws. In English that means that there is the existence of “State Action” which is the threshold problem. In undertaking the “sit-in” issue, the courts will receive little help from precedent. Prior attempts to give meaning to “State Action” have not involved the challenging intricacies of the “sit-in” demonstrations.

Precedent Inadequate

The Civil Rights Cases and the 1883 court decision were the first emphatic Supreme Court pronouncement holding that the prohibitions of the 14th Amendment were not directed at the individual. In that case certain Nichols and Stanley were indicted for denying to persons of color the accommodations and privileges of an inn. The Court pointed out that the 14th Amendment was a prohibition upon the states only, “individual invasion of individual rights is not the subject matter of the amendment, . . . ” The Court has never subjected claims of rights, for which the states ALONE were or could be responsible, was the great seminal and fundamental wrong which was intended to be remedied.

It becomes apparent that the Civil Rights Cases afford little basis for deciding the “sit-in” cases. The black and white dichotomy of 1883 will not work today. That decision made a clear cut distinction between state and private action. Today that is not an accurate working distinction. Negro and white, individual and social, public and private functions can become interwoven. As has been pointed out, “... a more realistic justification for applying the 14th Amendment would rely less on the anthropomorphic concept of state action and yet on the conjunction of the individual act and governmental authority. (31 Harvard Law Review 344, 351.)

The most spectacular example of combined individual and state activity to produce “state action” is the 1951 Supreme Court decision of Shelley v. Kraemer. In this case property subject to a restrictive covenant had been conveyed to Shelley, a Negro. Owners of nearby lots also had restrictive covenants, brought suit to restrain Shelley from taking possession and to have his title divested and reversioned in the grantor. The state courts granted relief requested by the plaintiffs. The Supreme Court reversed. The opinion may be summarized as follows: Private persons remain free to discriminate against others even on grounds of race and color. But the right to acquire, enjoy, or dispose of property is clearly protected by the 14th Amendment from discriminatory state action. Judicial action is clearly “state action” for purposes of the 14th Amendment. State judicial enforcement of these covenants is forbidden state action.

Uncommunicated Rationale

Should the doctrine of Shelley be extended to the “sit-in” cases? Justices Black and Douglas have given no indication of the reasoning behind their opinions of Rice v. Sioux City Cemetery and Black v. Cutter Lab. But observe that the Shelley doctrine affords no guidelines for making distinctions between permissible and nonpermissible private discrimination. There are many difficulties in attempting to extend Shelley to the “sit-in” cases. The Civil Rights Cases have properly pointed out that the U.S. Constitution is a charter of government and not a prohibition upon the private individual (with the exception of the 13th Amendment). Shelley cannot go as far as its logic leads. There is substantial dissimilarity between the restrictive covenants and the trespass cases. Even as to the limited fact situation of Shelley, there have been some provocative questions: “... why is the enforcement of the private covenant a state discrimination rather than a legal recognition of the freedom of the individual? That the action of the state court is action of the state is entirely obvious. What is not obvious, and this is the crucial step, is that the state may properly be charged with the discrimination when it does no more than give effect to an agreement that the individual involved is, by the hypothesis, entirely free to make” (73 Harvard Law Review 1, 39, 1959).

Writers Not In Accord

Other professional critics of the Supreme Court have made similar statements. Professor Henkin, while criticizing the opinion of the Court, insists that the distinctions drawn by the Court are not satisfying, and that a more satisfactory opinion can be written (100 U. Pa. L. Rev. 637, 661-62, 1961). Another frequent suggestion would limit Shelley to restrictive covenants—that is a kind of “zoning” for which the state is responsible even when perpetrated by private persons (60 Colum. L. Rev. 1083, 1115-18, 1960).

The most interesting suggestion is that of Professor Louis Pollak; he would apply Shelley to prevent the state from enforcing a discrimination by one who does not wish to discriminate; but he would allow the state to give its support to willing discrimination without violating the 14th Amendment (108 U. Pa. L. Rev. 1, 13, 1959). With this qualification the Shelley doctrine would apply to the “sit-in” cases.

Shelley Abandoned?

Obviously the legal writers are not in accord as to the scope of the Shelley doctrine. Of more determining significance is the fact that in at least two cases the Court has not seized opportunities to reconsider or clarify. In Black v. Cutter and Rice v. Sioux City, the majority of the Court has evaded decisions based on the Shelley rationale. It is unlikely that the “sit-in” cases will be decided per Shelley; the Supreme Court has had several opportunities to try and spell out the implications of the Shelley case and the opportunity to do so in each instance. In Garner v. Louisiana (368 U.S. 157, 1961) “sit-in” demonstrators had been prosecuted under a Disorderly Conduct Statute. The Supreme Court found that the convictions were without the due process command of the 14th Amendment. In this case there was no evidence of disorderly conduct. This case is not going to protect the demonstrators in the future. They can be charged with criminal trespass or the state will wait until there is actual disorderly conduct. These then are the Constitutional problems in re the Negro “sit-in” demonstrations. In the U.S. Supreme Court have their work cut out for them when and if these cases reach that tribunal.

Law Cannot Stand Still

As long as there are Negroes some of the hopes and frustrations will be inevitable. Fortunately, our Constitutional history reflects a principle of growth. The most reassuring attribute of our Constitutional law has been its flexibility, “its power of expansion.”
Justice Burke Views Narcotics Problems

By Carolyn Friel

“There is a deep sense of frustration which every judge experiences who has had the task of sentencing a narcotic addict,” according to the Honorable Louis Burke, President of Justice of the Fourth Division of the District Court of Appeal, in a recent interview. Justice Burke went on to explain how he thinks Governor Brown’s 1961 legislative program establishing a detention and treatment facility for narcotic addicts holds the promise of ending, at least in part, this judicial frustration.

Prior System

Prior to these 1961 amendments to the Penal Code (6400 et seq.), the penalty for addiction was a short term in the County Jail, usually 90 days, and then probation. If the addict was brought to court again, the jail term was doubled or tripled, or he was given the maximum sentence of 1 year in the County Jail.

With the release of the addict from jail, he returned to his old environment and habits without the benefit of any special program for the treatment of his addiction. The addict is rarely psychiatric, says Justice Burke, but suffers from a personality defect and a lack of proper motivation, which a treatment program might cure.

New System

The new program, under the control of the Department of Corrections, establishes the California Rehabilitation Center to be located near Corona in facilities previously used as a U. S. Naval Hospital. Here, trained custodial officers will keep the addicts “in and narcotics ‘out,’” with a professional staff directing the treatment of the inmates.

Under this legislation, if a narcotic addict is convicted of any criminal offense, he be it a misdemeanor or felony, prior to being sentenced for the offense the court must certify him to the psychiatric division for examination. If the judge of the latter division determines that the individual is in fact an addict and is otherwise eligible for commitment under the program, the inmate will then be committed to the new state detention and treatment facility.

If the offense which he committed was a misdemeanor, the commitment is for an indeterminate period not exceeding five years. If a felony, then not exceeding ten years. In either event the addict will be kept in the facility under treatment for a maximum period of six months and for as long thereafter as is required, since he is only subject to release when the medical authorities determine that he has benefited sufficiently by treatment to warrant his being tried on parole. Thus, in the case of a felony he could be held as long as ten years.

When paroled he will be under close supervision. When first released, he will be to a halfway house where he will reside with other addicts on parole. He must abstain from narcotics for a period of three years before his parole will be terminated. If he should resort to the use of narcotics or commit any other violation of parole he is subject to be returned to the detention and treatment institution.

The new program also will permit commitments of addicts who have not been convicted of crimes upon a proper showing being made to the District Attorney and the institution by him of proceedings to have the person committed.

Excluded from eligibility from the program are defendants who have been convicted of crimes of violence against the persons of others and repeater narcotic offenders who are facing penitentiary terms in excess of five years. Thus, the program is not an “escape hatch” for so-called “hard-core criminals” who may have added addiction to their other anti-social activities.

Justice Burke is especially pleased with a provision in the law for the establishment of a halfway house. Such a facility is missing in the federal hospital treatment program for addicts. After being paroled, the addict can reside in the halfway house for individual and group therapy while remaining in contact with the world. This additional step in rehabilitating the addict is much needed, according to Justice Burke, since it makes the transition from the hospital back to former environments less abrupt.

As an example of the effectiveness of a halfway house establishment, Justice Burke cited the work done by Father Dismas Clark in St. Louis, Missouri. Father Clark, subject of the movie, “The Hoodlum Priest,” accepts state or federal paroled “thieves” in nondenominational facility where he attempts to guide them to useful occupations. His program is so successful, that out of 1200 paroled to his custody, many of them after long terms in prison and repeated offenses, less than 12 have gone back to prison.

As one of the proponents of Governor Brown’s narcotic law program, Justice Burke hopefully sees the promise of an end to at least some of the frustration involved in the narcotics problems as viewed from the bench.

Professor “Jake” - Quarter Century Of Service

Twenty-five years of devoted service makes the name of Jacob J. Becker, a household word on the only professional school on Grand Avenue, between Eleventh and Twelfth. Without “Jake” as he is affectionately known, Loyola’s current law building would be just another handsome and mortar institution for dispensing wisdom via the “case-method.”

This balking, professional product of the University of Chicago, contributes a touch of color and an aroma of quality to everything to which he sets his hand.

Business courses have been his particular stock in trade since joining the faculty a quarter-century ago.

During the years he has become so identified with the subject matter of his teaching, that it is still a moot question, “Did Becker write Corporate or did Corporate write Becker?” Referred to at times as an “Animated Corporation,” he acts out stockholders liability with the exquisite touch of a Russian Ballet. There are no short-cuts in his course, and an isolated footnote gets the same round treatment as the boldest face type of the Restatement.

He’s a real thorough-going teacher, that is so uncommon this day. May he long continue to disseminate the law with the genuine Becker touch, for there is no substitute for this dedicated Master of the classroom.

Loyola Law Wives

February’s meeting was a luncheon held at Rudi’s Italian Inn where Mrs. Milton Krug, President of L. A. Lawyers’ Wives, spoke on Legal Aid, a project of Lawyers’ Wives.

Mary Lou Murray headed the program committee for March. Mr. John E. Anderson, member of Loyola faculty spoke to the group. Benv Brody, Ruth Sigler and Kathy Paneno also served on the committee.

The April 8 meeting was held at the home of Mr. and Mrs. A. Marburg Yerkes. A professional interior decorator led a discussion pertaining to interior decorating problems. June Andeler assisted by Sheila Margules, Jean McQuoid, Donna Martin and Carol Towne made the arrangements for the program. Elections of officers for the next school year were held.

The new officers are: Mary Lou Murray, President; Jan Rylaarsdam, Vice President; Barbara Solomon, Corresponding Secretary; Marilyn Topel, Recording Secretary; Jean McQuoid, Treasurer, and Nancy Smith, Social Chairman.

Class A fires are those that originate in wood, paper, textiles, etc. They can best be extinguished by water. Class B fires are those caused by flammable liquids such as gasoline, kerosene, etc., and should be smothered.
A DIFFERENT STANDARD OF MORALITY IN THE MARKET PLACE

Pros & Cons

By Osias Goren

The year was 1948 and the case involved price-fixing (U.S. v. G.E., 80 F. Supp. 999). The Court said: "I appreciate the fact that some twenty years ago many things that are now regarded as improper were looked upon as every day occurrences . . . industry must realize the need to conform to present day morals." Some 13 years later, in a group of cases brought under the Clayton Act, we did not heed this advice, pleaded guilty and "nolo contendere" in a Federal District Court at Philadelphia and served prison sentences for the same violation — price fixing.

Can the same set of ethical and moral concepts which are applied to society in its every day conduct of life be applied to the business man in his daily fight for survival? The old concepts such as "caveat emptor" and "business is business," while still heard today, are now regarded as grossly improper. Yet business in our Free Enterprise system, is based upon the profit motive, and, by its very nature, tends to bring out the self-interest instincts of man.

Is this in reality evil? When this great nation was barren and unpopulated, it took young vigorous men of vision and daring to conquer, tame, and exploit the vast resources which today are enjoyed by the great mass of our people at a standard of living which no others have ever attained. This nation has prospered and with it the white wheat. To properly balance the desire for profit and the imagination of the individual who had the courage to venture into new frontiers. The rewards granted such a giant played no small part in keeping him constantly questing for new worlds to conquer. There is no reason why this man should not enjoy the fruits of his labors. The creator, the adventurer, the business man need have no shame for his material acquisitions. He is entitled to his rewards, so long as he has not destroyed others along the way.

There was a time for exploitation, as history has proved and there is a time for regulation and moderation. But there is an ocean of differences between moderation and suppression.

The national scene reveals the pressures of government, which must have a vibrant expanding economy to maintain a high level of employment. This country must maintain its world position in the cold war. It cannot forfeit the leadership of the newly emerging nations. To accomplish this, industries must leap wholeheartedly into the fray. What is it that needs moderation?

On the domestic scene, the competition for the consumer dollar is vigorous; varied are the methods used to get the greatest share of it. Major national corporations set the quotas and use means which may be reprehensible in the eyes of some. But perhaps this isn't so bad; perhaps these drives are the reasons for the growth and expansion of our economy; perhaps it is what has kept our nation great and its economy vibrant and expanding. Is it not the desire of labor to constantly improve its lot? Of industry to improve and expand the distribution of its products? Of each man as an individual to climb to the top of Mount Everest? The glory of all this is the fact that every person in this country has that opportunity.

By William Rylaarsdam

Last year several executives of major electrical manufacturing companies were punished by fine and imprisonment for their participation in a price-fixing scheme. Their conviction was based upon the U. S. Anti-Trust laws. The participants either pleaded guilty or nolo contendere. I believe that the punishment meted out was deserved. I believe that the legislation under which these men were convicted is necessarily dualistic in concept: one for society as a whole and another for the business community, must be rejected.

This position will be illustrated by an analysis of three aspects of price-fixing. First, this paper will examine the public policy (in this context economic aspect) of price-fixing; secondly, the legal aspect; and thirdly, the moral aspect of the problem.

There are definite public policy considerations in the economics of price-fixing. When the members of a particular industry enter into an agreement to fix prices, they in effect are uniting to obtain the main advantage of a monopoly. It is a basic rule of economics that in a truly competitive market, prices are determined by supply and demand. However, the monopolist controls supply and the price which will give him the optimum return on his investment will nearly always be higher than the price which would prevail in a freely competitive market, including price-fixing.

The legal aspects of price-fixing are well established by precedent. An agreement to fix prices is a contract in restraint of trade. Even the early common law recognized that such a contract was illegal, Dyer's Case, Year Book, 2 Hen. V, vol. 5, pl. 26 (1415), and persons entering into such an arrangement were guilty of the common law crime of conspiracy. King v. Norris, 2 Kenyon 300, 96 Eng. Rep. 1189 (K. B. 1758). To this extent the Sherman Act of 1890, under which the business executives were convicted, merely made the conspiracy in restraint of trade, including price-fixing, a federal offense.

The moral issue of price-fixing is too often overlooked. The conduct of the convicted executives raises undeniable moral questions. In the first place, they violated the law. Because of the constant awareness of anti-trust legislation within the business community, it would be reasonable to assume that they knowingly violated these laws. The motives of the business executives, their conviction was based upon the U. S. Anti-Trust laws.

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By Osias Goren

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Putting aside the violation of the law however, I maintain that the conduct of the price-fixers was immoral even if it had not been prohibited by law. As was shown above, monopolistic price-fixing schemes result in the monopolist taking something (i.e. a higher price) for nothing (i.e. without increased economic utility) at the expense of others (i.e. society as a whole). This taking of something for nothing at the expense of others constitutes theft, even if the monopolist may not make out a common law case of larceny against the perpetrators. I am not aware of any moral code which would condone theft.

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Caveat Vendor...

(Continued from Page 2)

should be included in a law student and trial lawyers’ “Black Book” as a practical matter nowadays, it is most difficult for a venire to show a specific act of negligence by the vendor of a particular commodity. While the venire may go into the factory under court order and, for example, take moving pictures and depositions of the particulars, see MODERN TRIALS, page 95, Vol. 11 looking for negligence, such procedures are expensive and sometimes the negligence, though one knows it is, can’t be found. This was plaintiff’s problem during the Catter cases; the negligence, though we knew it was there, never could be proved in the Cutter laboratories as to the making of the faulty polio vaccine.) But with warranty, the caveat vendor comes into full bloom. The unwholesomeness of the product itself is enough. It’s even simpler than the shifting of the secondary burden of proof in res ipsa loquitur where, once it’s shifted, as a practical matter, it is almost impossible for defendant to overcome. (Escola v. Coca Cola supra, where defendant brought in an expert to show how careful he was in bottling his beverage and that his bottles were minutely inspected so as not to explode. While he was showing this exquisite care on the one hand, on the other he was building up the practical proposition that the jury that, somewhere along the line, there must have been negligence amidst all this care or the accident just couldn’t have happened!)

Jumping Privity

It must be remembered in California (Burr v. Sherman & Williams, (1954) 42 Cal. 2d 682, 268 P.2d 1041) as well as in a number of other jurisdictions in express warranty cases the privity gap is jumped, i.e., the guarantee of the advertisers’ claims or the warranty, or whatever it will ultimately be held to be, is made to “run with the goods,” to the ultimate user. Like it or not, the original fabricator has been returned to the morality of the Yankee position — behind his goods whomsoever ultimately uses them.

It is in the implied (in law) warranties (for other than foods), those of personal fitness for a particular purpose that the privity gap has not been completely jumped, although the trend is to jump in all states. Indeed, in Georgia the privity gap is jumped by statute, Book Holt v. General Motors, (1959) 110 S.E. 2d 642.

As will be elaborately discussed in Volume VI of MODERN TRIALS, (1) res ipsa loquitur, (2) failure to warn, (3) the warranties, express and implied, and (4) absolute liability in more and more instances coalesce to give the same result of a caveat vendor absolute liability, as a practical matter. They all make the seller or fabricator, not the buyer, beware in rather a strict and absolute manner, and, indeed, as we’ve seen above (Venon v. Celarco), a trial may be heroically shortened by discovery and summary judgment given on liability to a buyer.

The only way of complete caveat vendor has not yet arrived, it’s rapidly advancing. And it may very well be hastened by those justices who sit in front of their TV set of an evening to have their programs repeatedly and in poor grace interrupted by the exaggerated and repulsive advertisements of some of our national fabricators of goods and claims.

Said one court (Johnson v. Capital City Ford, 89 So. 2d 75 (La. 1955), “If defendant argues that . . . the advertising offer . . . was not in good faith and only a lure, there is entirely too much disregard of law and truth in the business, social and political world today . . . It is time to hold men to their primary engagements to tell the truth and observe the law of commerce, honesty and fair dealing.”

It was always thought that privity liability cases were only a small percentage of the cases tried, and they were cases of small damage, small awards. But more and more privity liability cases are being tried and negotiated now than the cases of highest damages. Indeed, the highest verdict even given by a jury and sustained by a Judge against a motion for a new trial, $675,000, was a products liability case. Recently there was a chlorpyrinic products liability verdict of $334,000.

New Trends

All over the country these cases in warranty and for the defect of an article manufactured, fabricated, assembled, compounded or ultimate purchaser are being brought by more and more consumers against more and varied producers. Consequently, when we envision a caveat vendor in these cases, we know the threshold of our law has trended towards an absolute liability. The other half is still taken up with “service” products. The interesting question will arise when someone asks why should the manufacturer of a drug be held absolutely liable when the doctor who performs services, i.e., operation, still can hide behind an instruction that “a doctor is not a guarantor of his services.” And how about motorists? and the merchant who displays his goods? The manufacturer is now liable absolutely in warranty if his goods are unwholesome, should he be absolutely liable to someone injured who has come in to inspect his goods?

When the courts have settled these problem areas shall we find the following definition in our legal dictionaries? “CAVEAT VENDOR—Let the buyer beware.—An obsolete advertisement now used only in those few cases where CAVEAT VENDOR does not apply.” (Since there are some in this great and honored institution of legal learning who have more than a casual knowledge of Latin, perhaps a more accurate legend should be “Caveat Vendit’Or!”)

 Impressions Of A . . . Judge

By Judge Otto Kaus

The Editor of the Loyola Digest had just finished telling me who the contributors to this issue would be.

Because of his customary modesty it had not been easy to get him to sell, but finally the last name was dropped. He blushed, quite nicely.

“Well, then Bob” I asked, “after the President, the Governor, a couple of Attorneys General, a King and what else, whom are you going to have for an encore?”

“You.”

So the joke is on me.

“About 300 words, Judge, you can make it longer if you like, we’ll cut out the dull bits.”

“What would you like me to write about?”

“Well—we had you down for a piece called ’Impressions of a Rookie Judge’.”

“Don’t you think ‘Recently Appointed Judge’ might be more in keeping with the dignity of the Bench?”

“Nothing wrong with being a rookie, Judge. Look at Bo Belinsky.”

“The dignity of the pitcher’s mound is one thing, Mr. Garcia”—I felt that to continue to call Bob, would somehow prove his point.

“Well, your Honor”—he beat you at your own game every time—“when the day comes that you pitch the judicial equivalent of a no-hitter in your first season.”

“Mr. Garcia, the comparison to our national pastime is inept.”

“Maybe so, Mr. Kaus, but look, I don’t give much time. I have four other jobs, a couple of books to write, finals coming up, a letter to the alumni to get out and besides, we’ll print your picture that’s big enough to the judges.”

“How can one resist.”

Seriously, it is possible to sit down and write about an experience when one is barely at its threshold? There are impressions one likes to treasure, like the chat with Prof. Cook during the first really complicated contract case—his patient explanation that my analysis of the problem was pure “bootstrap lifting” — the old friend who waives a jury as follows: “Otto, we’re giving you one chance”—he’s never been back, CCP 170.6 no doubt—the many sincere good wishes—the pride in the court room demeanor of former students—the pleasure in seeing present ones drop in during court breaks, even when they happen to edit student papers and pester you for space fillers—the early realization that the friends who forget (urged?) is an important because “you’ll see your family once in a while” had apparently been brainwashed by those who think the only time a judge is working is when he is sitting on the bench—the generous help and advice from fellow judges—the loyalty assistance of the court room personnel—all these are only impressions which cannot lead to any conclusions at this time; therefore, (to be concluded).

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THE EDITORS
Far-Reaching Effect Of Reapportionment Case Seen By Debs

By Johnnie Cochran

The recent decision of the U. S. Supreme Court concerning Tennessee reapportionment (Baker v. Carr) will “open the door” for many States to correct some of their own injustices of long-standing.

That is the opinion of Ernest E. Debs, Chairman of the Los Angeles County Board of Supervisors, a man with 20 years in public office as a State Assemblyman, Los Angeles City Councilman and County Supervisor.

“I certainly agree with the majority opinion in the Tennessee case,” Debs said, “and it proves the Supreme Court is cognizant of radical changes in our country since the Constitution and Bill of Rights were written.

“Our statesmen of those early days never realized we would become a nation of large urban centers as well as rural areas. They certainly couldn’t visualize, for instance, a vast metropolitan area such as Los Angeles County with its nearly six and one-half million residents.”

For many years, Debs has favored reapportionment of our own State Senate to give more equal representation to the population centers, and is now actively supporting the plan favored by Supervisor Frank G. Bonelli which would give Los Angeles County six instead of one State Senator.

“We are operating at present under a law I like to call the ‘40-40 plan’ because our County has one State Senator out of 40 and we have 40 per cent of the State’s population. Our Senator is spread mighty thin in Sacramento when it comes to committee assignments,” Debs declared.

The Supervisor pointed out that opponents of reapportionment claim we are operating under the so-called Federal Plan, providing that Assembly members are elected by districts having approximately the same number of voters, such as Congressmen. Then the Senators are chosen by areas with no regard for how many people they represent, as each State has two U. S. Senators.

“What people fail to realize about this system, however, is that the U. S. Senators are elected by voters from both rural areas and city centers of mass population,” Board Chairman emphasized, adding:

“This is, of course, not the case with our State Senators, so it cannot be called the same thing. It takes about 2,000,000 ‘city-type’ votes to elect our County’s Senator, while some Northern Senators can be elected.

(Continued on Page 16)
**State Attorney General Mosk**

**Stresses Consumer Protection**

By T. Murray and E. Vargas

The expansion of the role of the state attorney general in the areas of antitrust and consumer protection were discussed by Attorney General Stanley Mosk recently in an exclusive interview with the **LOYOLA DIGEST**.

Attorney General Mosk stated that during his five years in office since 1967 California's antitrust law has been enacted in 1907. "The Cartwright Act, California's antitrust law, was known as California's sleeping beauty until we took office," he said. "We have concentrated our antitrust actions on bigoted bids on public contracts. Thus, achieving direct savings for the taxpayers. In one suit, costs to the state on the defendant's products dropped one-third after we filed suit. So far, we have been successful in all our suits. We won the first criminal antitrust suit in forty years in California."

The three avenues of litigation which may be pursued by the state are injunction, damages, and criminal action, the Attorney General said. "We are not interested in being anti-business, but simply in getting honest bids for public agencies and preserving free-enterprise. Therefore, we usually proceed by injunction, except in the most flagrant violations."

**Consumer Protection**

Expressing approval of President Kennedy's recent proposals on consumer protection, Attorney General Mosk noted that he had initiated a consumer frauds section within his office three years ago. This section has vigorously prosecuted "the shoe shine boys" in such activities as fake fallout shelters, fraudulent aluminum siding sales, and unscrupulous trade schools. "This month we took our first action to permanently enjoin a so-called trade school from fraudulent advertising, but the demand for small hotels is overworked, to think as good lawyers should think. As I see it, the good lawyer, and therefore the good law student, must be able:

1. to analyze, correlate, and summarize facts;
2. to know and understand the general principles of law which bear upon particular facts;
3. to know and understand the reasons and the history of such general principles so that he can analyze and apply valid and established principles to new factual situations, or so that he can prove that the old principles should be modified in application to the new facts;
4. to use the source books to verify and support his application of the general principles to the facts;
5. to present his facts, reasons, and conclusions in succinct and logical form, in writing or orally;
6. to develop what can best be described as an intuitive sense of values, a feeling for the law which will indicate his proper approach to a problem before he is able to do the necessary research.

**Do's and Don't's**

In the acquisition and use of the foregoing abilities, memory obviously plays its part but it can never be a substitute for thinking. Perhaps a few Do's and Don't's will help you to understand what such thinking involves.

**Do:**
1. Practice analyzing complicated factual situations — you cannot rely upon your client to do this job.
2. Develop the habit of asking yourself why the rule of law was made.
THE CRIMINAL LAWYER—

By J. W. Ehrlich

Editor's Note: J. W. Ehrlich has practiced law since 1922. Primarily a trial lawyer, most of his time is spent in corporation and banking law. He is the author of EHRICH'S BACKSTORY, THE HOLY BIBLE AND THE LAW, AND EHRICH'S CRIMINAL EVIDENCE. He is the NEVER PLEAD GUILTY

The citizens of our country would not adopt the Constitution of the United States and bill of rights if all of us were unaware of what they have been embodied which had for their purpose the protection of the rights of the people in those areas where individual liberties were concerned. As a result of this demand, ten amendments were adopted. Among these were the Fourth, Fifth and Sixth.

These amendments are the basis for the protection of the individual. To protect these rights and to guarantee that they be accorded to all men, the criminal lawyer stands as guardian and custodian of the criminal lawyer, all of these guaranteed rights would be non-existent and unforceable.

As a nation, we pride ourselves that no one, whatever the crime, can be arrested without a lawyer to stand trial in an American court of justice if there is no lawyer at his side to insure that he will receive all of his constitutional rights and legal privileges.

This man who stands beside the defendant is commonly called a criminal lawyer, and those living in ivory towers, as the name implies, take a personal interest in looking upon them as a professional outcast. It is impossible for them to understand that the criminal lawyer himself has dedicated his profession to the service and protection of his fellowman.

While our law schools pay little, if any, attention to criminal law, and while they spend only a very little time teaching this important subject, it is here that the student is taught to know that the criminal lawyer himself has dedicated his profession to the service and protection of his fellowman.

Great men in our history have browned some of the fears of our legal fraternity and have involved themselves with the most exploitive causes of our time. These lawyers have established the reputation of the unimprovable case, knowing all too well that in so doing they faced a very real threat, a financial loss, social ostracism and political exile.

There are so many examples of the moral and mental courage shown by lawyers in the defense of the rights of the people that to enumerate each case would fill volumes.

The criminal trial rendered services which cannot be lowered into the class of civil litigation. To the criminal lawyer, life or liberty is the pawn; to the civil trial lawyer the issue is always the interests of accountants.

It isn't too long ago that Judge Charles W. File was appointed the late Jack Hardy, a great criminal lawyer, who had entered the judge's court that morning on other business, to defend the infamously accused Grant. Jack Hardy stopped everything and went to work on the defense. He spent months and much money in the defense. He persuasion to make his case, and when his case was refuted, he later applied for a $5,000 fee and a grateful community paid him nothing. Today, at last, a court order lawyers' fees paid when they are conscripted for service.

It is the defense lawyer — the criminal trial lawyer — who day in and day out, labors to help those against whom every advantage has been turned. They fight against illegal and unreasonable searches and seizures. They fight to secure every right of the citizen which is guaranteed by amendment to the constitution.

An accused person has a constitutional right to the services of an attorney and the criminal lawyer is there to fulfill the obligation owed each person and to make sure that these rights are preserved.

If we would but stop and think that before our Government was created and the custom of authority to force a defendant to prove himself innocent instead of it being the duty of the prosecution to prove his guilt to a moral certainty and beyond a reasonable doubt. It is the criminal lawyer who enforces by his actions.

It is the criminal lawyer who insists that the citizen be unmolested in the performance of his duties and obligations. It is the criminal lawyer who has made it possible for me to write this article. Without him, I would have feared the consequences of an enraged authority. It is the criminal lawyer who stands guard while from the houses of worship come the words of Deuteronomy — But as for thee, stand here by me, and I will speak unto thee all the commandments that they may do them.

The foregoing advice is given as my opinion — it may or may not be shared by other professors. Good luck and hard work to all Loyola students.

JRD

Book Review

MY LIFE IN COURT

By Myron Fink

A courthouse is a place of enchantment for Louis Nizer. He recalls his visits as a boy to a Supreme Court building and the magic of its cool marble floors, high frescoed ceilings and brief cases that seemed endlessly to march down long corridors attached to the doors of lawyers. Most wonderful of all were the huge, dark-green leather doors that led into the courtrooms. To the young Nizer, these were never really doors, but mystic and symbolic gates which inspired in him awe and reverence for the law. On top of each door was an oval glass pane through which one could into the courtroom. Standing on tip-toes with neck stretched to reach the window, the boy studied what must have seemed to him a pattern of magic and mystery within. Every movement, every facial expression of judge, lawyer, witness, juryman, clerk, took on special significance. The courtroom became for him a microcosm wherein was enough to challenge a man for a lifetime.

Today Louis Nizer has become the arbiters of that world and has become the trial lawyer he dreamed of. Courtroom doors now open before him and many of his cases are landmarks in the law: *My Life in Court*, we too are privileged to enter the great green doors and to join the author at the counsel table. We listen to him tell about the cases of Quentin Reynolds vs. Westbrook Pegler; the “War of the Roses”, Billy vs. Eleanor; the case of the plagiarized song “Rum and Coca-Cola”; Nazism and “honor” in America; two cases of “negligence” and a giant “proxy battle” concerning M. G. M. When we have finished we understand why Louis Nizer is a great trial lawyer.

In a “Prologue” to his book, Mr. Nizer has some perceptive things to say — all of which are amply illustrated in the cases that follow. Witnesses do not break down and confess after one confrontation. Westbrook Pegler under cross-examination contradicts and antagonizes and is still unrepentant but never retracted anything he wrote. Real court drama, Mr. Nizer reminds us, is more grim, some because a witness will tell the truth rather than to survive. True human experience exceeds the patterned concept of fiction.

The cases in this book illustrate also a technique em...
IT'S TIME FOR A CHANGE!

By L. L. B.

Despite the fact that the title of this article reeks with political implications, the tenor thereof is non-political, at least on the surface. Prefacing my remarks with this Caveat, I turn to the business at hand which is the following: a farewell to the present Editors of the Loyola Digest and a greeting to the new Editors. Those who are leaving, Editor in Chief Humberto Garcia and Executive Editor Robert Ridley, have requested that I mention a very few points which they feel should be specifically covered.

First, they make special mention of the alumni. They wish to express their thanks to the alumni but they give no reason — just good form, I suppose. Second, they have great praise for the student body, especially the members of their own class. Third, there is a request for a special expression of gratitude to the Student Bar Association for their counsel and assistance in helping the DIGEST through the complexities of Robert's Rules of Order.

So much for the farewells. As to the greetings. The incoming editorial board will consist of (in alphabetical order) Carolyn Frlan, Tony Murray and Ernest Vargas. Just what positions will be held by these three worthy people is unknown at the present time, since all appointments are subject to confirmation by person or persons unknown.

In a stirring ceremony, the outgoing Editors presented the incoming staff with their symbols of office, a bottle of red ink, a roll of red tape and a package of “Censored” stickers — unused. Much success.

The longest hypothetical question on record was propounded to an expert witness by Attorney Robert Morse of Boston in the famous Tuckerman will contest, 5 Ohio Law Reporter 45.
Rights... (Continued on Page 8)

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Debs...

(Continued from Page 12)

on 2500 votes—all of them farm votes, or maybe a few from small villages.

Debs explained that the Bonel- li plan does not propose to take anything away from the rural areas. It would only add ten Senators—five here and a total of five in other metropolitan areas—to give a slight bit more representation to urban centers.

"Farmers are prosperous as well as most city dwellers, and we don't want undue power, we just want a little reciprocity, as we've always supported measures that would help the farmer, but have been thwarted and again when we seek our just share of State funds," he concluded.

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