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Loyola Digest

Loyola Law School Los Angeles
Inaugural Address
January 20, 1961

"And so, my fellow Americans, ask not what your country can do for you; ask what you can do for your country."

—Inaugural Address
January 20, 1961

(This issue of the Loyola Digest is presented to the memory of a statesman who dedicated himself to mankind.)

Moot Court Regional Winners in N.Y. National Competition

Three days in a row the Supreme Court of the United States handed down its decision on the controversy of Saul Scotch vs the United States of America, before a tense emotion-filled courtroom, favoring the Loyola Moot Court team, in the Western Regional Competition. Having defeated the teams from UCLA, Washington, and USC in a vigorous fashion, Tony, Murray, Charles Finney, and Chuck Liberto presently find themselves in New York amidst National Competition with 20 teams who represent other regions of the country. The national winners will be announced on December 18th, after three trying days in which the best team will be put through six rounds of arguments. Having received the highest score in the region on the written brief presentation, the trip promises to be successful for the trio. Further, Tony Murray carries with him the honor of having been awarded a silver cup by the American College of Trial Lawyers for presenting the Best Argument in the Western Regional Competition.

An extremely valuable experience for the teams engaged in the final round, the Digest is the trip promises to be successful for the trio. Further, Tony Murray carries with him the honor of having been awarded a silver cup by the American College of Trial Lawyers for presenting the Best Argument in the Western Regional Competition.

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Real Strength of Nation is in Local Government - Citizens Should Partake

In an exclusive interview granted to the Loyola Digest, by former Senator William F. Knowland, he stated that “after six years in the legislature of my state of California and over thirteen years in the Senate of the United States, six of which were as majority or minority leader, I developed a deep seated conviction that the real strength of our nation is in local government of which every citizen should partake.”

He went on to state that “the men who founded this republic were very wise. They knew the history of the world up to their time. They knew that where people had lost their freedom it was because of the concentration of power in the hands of a single individual in a nation’s capital.”

In commenting on the nation’s local problems, he commented that “it is too bad that those who have led the fight for one segment of civil rights have not equally stressed civil obliga-

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POLITICS: A Vital Necessity

While admitting that our nation has produced an occasional politician of outstanding merit, many Americans flinch at the thought of their own participation in politics. Yet, there is politics in every association of people—in groups of businessmen, in labor unions, in professional organizations, in social clubs. It is altogether right that this should be so. To eliminate politics is to eliminate freedom.

“They are wrong who think that politics is like an ocean voyage...something which leaves off as soon as the end is reached. It is not a public chore to be gotten over with. It is a way of life. It is the life of a domesticated, political, and social creature who is born with a love for public life, with a desire for honor, with a feeling for his fellows.”

The misconceptions of which Plutarch wrote, have persisted through the ages. Though frequently the term “politics” is used in a derogatory sense, with implications of the seeking of personal gain, schemes, and opportunism, its true meaning refers to the existence of a definite governmental organization. And, it should be noted, that the future of a free representative society is dependent on the partaking of governmental activities by men and women of character, intelligence, and resourcefulness.

To partake in politics is not only a service to mankind, but a sacrifice of the self in lieu of the establishment of governmental order, law, and justice.

1137 South Grand

By CHARLES FINNEY

Professor Laurence P. Simpson, formerly of New York University School of Law, and the author of the Hornbook on Contracts, will join the full-time faculty of Loyola at the beginning of the Spring 1964 Semester. He will teach courses in Restitution and Secured Transactions in Personal Property. He has been professor of Law at New York University since 1929. Professor Simpson is the author of Cases on Contracts; Hornbook on Suretyship; Cases on Suretyship; and co-author of Cases of Secured Transactions.

Professor Winston Fisk will join the part-time faculty of Loyola at the beginning of the Spring 1964 Semester. He will teach the course in Legislation. Professor Fisk is Professor of Government at Claremont Men’s College and Claremont Graduate School. He received his A.B. in 1942 and LL.B in 1950 at the University of California, Berkeley. He received his Ph.D. in 1958 from Claremont Graduate School. He has been a consultant to the ABA Committee on Administrative Procedure Legislation and he is now a member of the ABA Special Committee on the Code of Federal Administrative Procedure. He is also a member of the Council of the ABA Section on Administrative Law and a member of the Board of Consultants on Revision of Administrative Practice and Procedure.

To complete the Spring 1964 Semester faculty is Mr. Mitchell Ezer. He will teach the course in Sales. Mr. Ezer is a practicing lawyer, associated with the firm of Hastings and Lasker in Beverly Hills. He received his B.S. from Northwestern University in 1956 and his LL.B. from Yale Law School in 1959. At Yale he was a member of the Order of the Coif and was Note and Comment Editor of the Yale Law Journal. In 1959-1960, Mr. Ezer was an Associate in Law at UCLA.

One of this semester’s new teachers is Martin Stone. He lectures in a new course entitled Government Regulation of Corporate Securities. He received his BA from UCLA, his LL.B from Loyola in 1951, and his LL.M from USC.

President’s Message

By VINCENT STEFANO

Progress and success have been the by-word at Loyola Law School this year.

The present semester has seen the institution of new legal writing programs at all levels. Teaching fellows have been assigned to the writing sections for which has come a long way from the time when the legal fraternities prepared, gave, and corrected the practice examinations for those who cared to avail themselves. The system is now in use, while still quite embryonic, promises to be successful. For third and fourth year students, a new honors writing program has been initiated for those who have shown an aptitude for such work. These new programs are a definite advancement and an indication of things to come.

Further, progress has come to fruition in the unveiling of the architects’ renderings of the new law school building, which is to be completed sometime next year. The new building, with its expanded facilities, will be conducive, no doubt, to new educational programs. The new law school building was a long time in coming, but when completed, it will present one of the most modern legal, educational facilities in the nation.

Progress in programs and building have been highlighted this semester with the success of our moot court team in their winning of the regional elimination of the National Moot Court Competition. On its road to New York, the Loyola team defeated, amongst others, cross-town rivals USC and UCLA.

The success and progress evidenced here were not the product of chance, rather they represent victories in uphill struggles. Educational programs and facilities and their successes are not born overnight; they come into being as mere thought: It is only with untold hours of planning, preparation, and perspiration that eventually the realization can be seen—a lesson that all law students should learn the first day in law school.

Were it not for this type of attitude, there would be no new programs, no new law school, no chance for a National Moot Court Championship, or even attorneys.

The members of the Board of Bar Governors of Loyola University School of Law extend Best Wishes for a Happy Holiday Season.

Vincent Stefano, Jr
Pres. Board of Bar Governors

LOYOLA LAW SCHOOL ANNUAL DANCE

will be held at the Los Angeles Athletic Club, 431 West 7th, Los Angeles, from 9:00 until 1:00 on Saturday, January 18, 1964, with The Esquires playing for dancing in the Main Ballroom. Admission is free to all students, alumni, faculty, and friends of the law school. No bids are necessary for admission.

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

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Political Paradox

"...Purportedly Disreputable Profession of Lobbyists Comprised Largely of Attorneys"

By CARL BERGKVIST

What is a lobbyist? Is he the man with the perennial black cigar, skulking around corners bribing the elected officials? Such is the general impression of lobbyists frequently present. Recently, during what was obviously a slow even a lobbyist further contradict the story that all these charges were investigated and found baseless would not, and so, did not get the same publicity. Hence, no doubt to its credibility.

Why Have It?

Lobbying is an essential and important part of our democratic form of government. It functions to breach the tremendous gap between the elected officials and the public. The legislature for California's 18 million people is in the hands of a mere 80 Assemblymen and 40 State Senators. There is an obvious need for an intermediary. Governor Brown has stated that it is a vital procedure for the legislator to perform his duty without the aid of "legislative advocates," as lobbyists are called in California, representing each side of an issue or proposal.

There are between 7 and 10 thousand bills presented in each 6 month session of the California Congress. The impossibility of each legislator researching all the legislation, and requires a high caliber of men, those of herbs, and stones. This is the most delicate of the occupations of life; for the metals are known by their ring, and men by what they speak; words show forth the mind of a man; yet more, his works. To this end the greatest caution is necessary, the clearest observation, the subtlest understanding, and the most critical judgment."

Baltasar Gracian

CALENDAR

Dec. 19 -
Jan. 1 - Christmas Recess
Jan. 2 - Instruction Resumes
Jan. 10 - Instruction Ends
Jan. 13-18 - Examinations
Jan. 18 - Student-Alumni Dance
Jan. 22 - Spring Registration
Jan. 23 - Instruction Begins

Knowland

"...ALL CITIZENS HAVE THEIR SAY"

(Continued from Page 1)

tions and civil responsibilities. Every American citizen has the right to register and vote according to the qualifications for voting established by each of our fifty states and to do this without having discriminating standards applied to the individual applicant or voter because of race, creed, sex or color.

"By his political action and economic participation an opportunity is given to every citizen to have his say" in influencing events now and over the future years.

In referring to every citizen's duty to partake in civil and government activities, be it as a governmental official, or merely as a voting citizen, he concluded that "if we have no confidence in ourselves, no real devotion to our way of life, no determination to "pledge to each other our lives, our fortunes and our sacred honor" to maintain the freedom others provided, how can we hope to hand a free society to our children and grandchildren?"

"Know how to analyze a man. The alertness of the examiner is matched against the reserve of the examined. But great judgment  

In December 1963
Blackstone's Commentaries

It seems but a day ago that sorrow and sadness gripped the nation at the flash of the death of John F. Kennedy ... Struck down by an assassin's bullet in a moment of high mirth and joyous exultation, amid the adulation of the populace, while carrying out plans to insure his retention in an office that was the occasion of his murder ... The nation laments and refuses to be comforted nor will the period of mourning prescribed by the Constitution, be long enough to dry the tears and restore color to cheeks blanched and furrowed with weeping ... It'll take an eternity of years for men to understand how such things can happen ... And to their agonizing cry, Why? the only response for so many is the echo of the wailing cry ... A dreadful calamity, destruction by earthquake and fire, a death in the family, provide occasions that bring out the best in men ... Pushed aside are all factions, immunities, grievances, and the rest of those elements that keep men apart and content with their mere existence ... This is how they are galvanized into action and in solid phalanx they are determined this crime and its bloody sequel, must not, cannot, will not again be a blotch on our national escutcheon ... They find the answer in ordered government and solemnly pledge that the rule of law will be the guarantee of order in a world of chaos ... 

Illinois' invitation to the Rose Bowl come New Years, recalls an incident in the saga of LYNN (BUCK) COMPTON, '48, deputy in charge of the Long Beach office of the District Attorney ... At UCLA Buck was a star athlete, all-state catcher and first string guard on the Varsity ... On Saturday afternoons during football season, he played a whale of a lot of football, most of the time in the back field of the opposition ... Sixteen years ago Illinois and UCLA were the competitors, if the debacle could be rightfully referred to as a competition, but Lynn (Buck) Comp- ton wasn't present even on the bench ... He was comfortably seated in the stands, safe from the marauding Illinois, where he could watch the massacre without bearing scars of ignominy ... Here's the plug for Buck and The Law ... he turned in his suit early in the season and forthwith gave his undiluted attention to Contracts and Covenants, Writs and Mandates, to briefs to full cases, and any law books ... The same energy he displayed on the playing field in the will to win, is his associate in the courtroom, where he is always a formidable protagonist where law enforcement is concerned ... As a prosecutor he is not without the human touch and enjoys a full measure of sympathetic understanding ... All in all, he just about fills the bill for the ideal prosecutor ... Another Loyolan who raises the quality performance of the Long Beach office is JOHN MARIN, '56 who after five years of valiant service has definitely established himself an able prosecutor and a candidate worthy of inclusion in the gallery, "Profiles of Courage" ... Recently he completed a trial lasting nearly a year, got a conviction, and was acclaimed for his performance ... To be sure, not every Loyolan is a dedicated prosecutor, not at degree level ... But we are representing the man in trouble who hasn't the wherewithal to engage counsel to establish his innocence ... There's JACK KRONENBERG, '50, who after exploring about for a spot to enrich his experience and perform legal services for the man in distress, signed up with the Public Defender and is performing with a verve and glow that identify the man who is in love with his work and the cause he represents ... Jack reports that the gossip about very few writs of habeas corpus being issued these days, is grossly exaggerated ... "While "Pitchess-Sheraton East, has all the luxury of a home away from home," says Jack, "it's not substitute for freedom." Too true, too true, and lawyers are the first line of defense in preserving it in its entirety ... No chipping at the trunk of Freedom's Tree for mighty is the crash thereof ...

WHIPLASH SEMINAR

"... Minor Automobile Force From Rear Causes Greater Injury Than Major Impact"

Last month witnessed the gathering of over 250 Chiropractors, Optometrists, and Attorneys at a WHIPLASH SEMINAR, sponsored by the American College of Chiropractic Orthopedists, and conducted by Attorney Ben Bernstein of Philadelphia, who was also represented. Informing the group that 60% of the automobile injuries in the nation are located in the back and neck area, Mr. Bernstein explained that the term "whiplash" is not a medical diagnosis. Properly defined, it is an "acute traumatic cervical myofascitis with or without radiculitis and or parasthesia." "Whiplash" is only a description of the manner in which the injury occurred. Being a term borrowed from physics, the proper lay terminology would phrase it as being an injury resulting from a "whiplash" type of force (dynamics).

A "whiplash" is the result of a sudden, unexpected blow from the rear, throwing the head and neck (operating as one unit) into hyperextension (backward bending) stretching and bending soft tissue in the neck area, returning the head and neck back to a frontwards position (hyperflexion), usually hyper-extending the lateral longitudinal ligaments. When the head and neck are thrown back, they go contra to the direction of the force. This throws the soft tissue in the neck area beyond its normal range of elasticity. It is because of the soft tissue damage that it is most difficult to prove effectively in court.

Although a victim may have great emotional stress as an underlying cause of the injury, the injury rests on the anatomy of his body. A large amount of

REGIONAL WINNERS IN NEW YORK ARGUE THREE CONSTITUTIONAL QUESTIONS

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informing, is that, as a matter of general practice, an actual United States Supreme Court Justice presides over the judging panel which hears the arguments.

The questions presented to the court are: (1) whether, under the Fifth Amendment evidence seized by FBI agents after an unannounced, nighttime entry, and an arrest made without a warrant properly may be used against an accused in a

criminal proceeding; (2) whether, under the Fifth and Sixth Amendments to the Constitution of the United States, an FBI agent may obtain inculpatory statements from an accused by threatening words and deceptive tactics and (3) Whether, under the Fifth Amendment an accused has been given a fair trial where, though he has respected courtroom demeanor at all times, he is compelled to wear handcuffs throughout the trial in the presence of the jury.
Legalized Abortion

MODEL PENAL CODE SECTION 230.3 ABORTION:

Justifiable Abortion: A licensed physician is justified in terminating pregnancy if he believes there is substantial risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother or that the child would be born with grave physical or mental defect, or that the pregnancy resulted from rape, incest, or other felonious intercourse. An illicit intercourse with a girl below the age of 16 shall be deemed felonious for purposes of this subsection. Justification. Justifiable abortions shall be performed only in a licensed hospital except in cases of emergency when hospital facilities are unavailable.

Pros

By TIM SARGENT

Advocacy of therapeutic abortion is truly an exercise in defending the unpopular client. The author here merely attempts to present a compendium of the arguments in favor of liberalized abortion laws, so that both sides of the question may be viewed. The State has jurisdiction over the body of a citizen, but never over his mind, never over his body. The State should not attempt to draw the same line through human conduct and say that beyond lies crime-sin. The State is not called upon to adjudicate our morality and those states that have felt the compulsion to do so have ultimately suffered the consequences of their blasphemy. The broadest reading of the function of the State allows it to do all that is necessary to promote harmony among its citizens; harmony—but never moral uniformity. Between penology and morality there lies a shadow land which is forbidden to politic lawmakers and mortal judges. To enter that land is to seek to control the minds of men.

The Penal Code is not a conscience substitute. It is an instrument of the State whereby acts disruptive of social harmony may be defined and a proper deterrent assigned to them. Its function is no more than to assure an atmosphere in which many can freely secure the universal, inviolable, and inalienable rights inherent in the dignity of his intelligence and free will. It is properly responsive not to moral demands but to social needs. Today, there is a social need of the highest urgency that has gone ignored. There has been but one attempt by the State of California to administer to that need through its Penal Code: sections 274 and 275. These sections allow therapeutic abortion where the alternative is the death of the mother. As a law it has engendered two results: death and hypocrisy.

It has engendered death because it has forced pregnant women to receive medical treatment from quacks in dark and slimy rooms with no proper equipment. It has forced them to imperil their own lives in pursuit of their sanity. It has engendered hypocrisy because the law is largely ignored.

Compassion has urged competent hospitals to ignore the law. This is disclosed in a recent survey of 26 California hospitals published in the Stanford Law Review. In a typical case put to these hospitals, the fetus fell heir to Tay-Sachs disease (amnionotic family idiocy). Sixty-eight percent of those hospitals said that they would allow an abortion themselves or would direct the mother to a competent doctor who would perform the operation. Or take another case where the pregnancy of the mother indicated a genuine psychiatric probability of suicide. Here, 90% of the hospitals indicated that they would perform a therapeutic abortion or else secure a competent practitioner for the mother. Yet the current law clearly forbids the first case, and likely it forbids the second. The Hospitals are willing to risk prosecution because they feel the stronger urging of their duty to the patient. More important, they know that they are likely to escape prosecution.

(See 11 Stanford Law Review 417 (1959).)

The law has engendered hypocrisy because prosecution under it has become nearly impossible. Zad Leavy, when a member of the Los Angeles District Attorney’s staff, attempted prosecution under the law. He found the elements of the crime present in

Cons

By ED SCHLOTTMAN

Any Discussion concerning legalizing abortion is inextricably bound up with considerations not only of the legal aspects but moral, social, and practical as well. It is of its very nature not so much a legal question as moral and social. As the law now stands induced abortion is now illegal with the one exception of therapeutic abortion. The present controversy to change the law is based largely on social concepts and considerations.

While no purely legal objection has been raised to the present law there is a cogent legal and constitutional argument against the proposed revision. This objection first asks what a fetus is, for this is the basis of the objection. A fetus exists; it is; it has essence. It is not something in the abstract. To find out what it is as a fetus we look to see what it is at birth. All recognize the mature fetus, now a child, as a Human Being. Thus the immature fetus can be nothing else; it too is human. If the fetus were not human then women would be carrying animals when they are pregnant. Realizing that the fetus is human, a person, we look to statute and the Constitution to see what they say about persons. The Constitution guarantees due process of law to persons: “no persons shall be held... nor deprived of life, liberty, or property without due process of law.” Statutes prohibit people for murdering others, not from killing animals. No exception is stated depriving persons in the fetal from these constitutional and legal protections.

An allied argument proceeds from the natural law and accepts as a basic premise that every man has a right to his own life. This life cannot be taken from him by the act of another man. An embryonic child is as much a human being and, therefore, has as much right to life as an adult. The taking of a human life by another human is murder. Abortion accomplishes their goal. Abortion is murder and against the natural law.

Currently, arguments are being advanced in favor of legalizing abortion. They disregard the various Constitutional and moral problems and decide that certain social factors outweigh the life involved. These factors, namely: carrying the child to term where it has harmful effects on the mental or physical health of the mother; where the mother if forced to carry the child to term may suicide; that a pregnancy the result of rape including statutory rape or incest should not be carried to term, if the mother doesn’t want it; or that the child might be born with a defect of some sort, are said to be sufficient to justify the abortion.

Concerning the factor of health the argument seems to be that the pregnancy should be terminated to aid the mother’s health. Apart from the fact that such terms as ‘gravely impair the physical or mental health’ are so broad, so vague, and so weak as to be susceptible of myriad interpretations raising constant and continual legal problems of interpretation and application the argument makes the unsupported and unfounded assumption that the mother for having lived longer is worth more than the child for having lived less.

The suicide factor is largely unproved. There is evidence both ways, but, in Sweden where there is legalized abortion, surveys conducted showed that for the years surveyed, of those women
PRO:

(Continued from Page 5)

many cases. He found numerous instances of the violation and many by reputable physicians. But, he says, prosecution was almost always defeated by the defense that the health of the mother necessitated the abortion. Under the code provision, health of the mother is not a proper defense; but it is being allowed. (Cf. The testimony of Zad Leavy to the California Assembly Interim Committee of Criminal Procedure, Abortion Hearing, December 17, 18, 1962, at pages 2-30.)

The Los Angeles Grand Jury deals with scores of these cases every year. The last Grand Jury was appalled by what it considered the necessary hypocrisy under the law. In remedy to it, they drafted a proposed statute which is nearly identical with the liberalized abortion provision of the Model Penal Code, and they urged its passage on the State Legislature. As yet no action has been taken.

As if this was not sufficiently indicative of the hypocrisy necessitated by a bad law, now it can be seen even in our judicial utterances. In People v Ballard, 167 Cal. 2d 803, 814, 355 P.2d 204, 212, (1959), the court considered the present code provision and concluded that “certainly this does not mean that the peril to the life (of the mother) must be imminent, but it is enough that the dangerous condition be potentially present.” Doctor Ballard was found not guilty of performing illegal abortions and an ill-defined standard was established. When is danger to life potentially present? Is a psychiatric danger included, or only a physical one?

It is not surprising that three years later Dr. Ballard found himself back in court charged with two more illegal abortions. Given the ambiguity of the present law and the unusually severe burden of proof placed on the prosecution, his innocence was again assured. People v Ballard, 218 A.C.A. 313 (1963).

Suppose that you are a doctor facing a diabetic pregnant woman and you know that hormonal and metabolic changes associated with pregnancy may potentially take her life. Or, suppose that you are a doctor facing a single girl who has been raped and inside her grows the felon’s child. Or, suppose that your religion and hers allow you to abort that fetus. What are you permitted to do under the law?

The statute says that you may not abort, but judicial history indicates that you probably can. How long can a state perpetuate this artificial dilemma?

CON:

(Continued from Page 5)

who suicided only 8% were pregnant; and of those who were refused abortion and threatened to suicide none in fact did kill themselves.

There are practical social reasons against legalizing abortion, such as the effects of such legislation on a country as have occurred in Sweden, Denmark, Finland, and Japan—countries where abortion is generally legal. In Japan 1,000,000 abortions a year occur. In all these countries the birthrate has fallen since passage of the abortion legislation. Nor is there a decrease in illegal abortions—a large factor advanced in favor of legalizing it. Among those requesting legal abortion there has been an increase in married women asking and getting it.

Perhaps the best summary and answer to the social reasons for abortion besides the Constitutional and moral objections is the statement of Dr. Carl Clemmesen in the American Journal of Psychiatry on the observed effects of legalized abortion.

An unusual desire for induced abortion seems to have arisen in the population, a desire not based on social necessity but more likely on a rising demand for better living conditions for the women, and the existence of the law has without doubt in a number of cases caused women to consider induced abortion as an obvious way out of an unwanted pregnancy.
Bright Loyola Future

EXPANDED FACILITIES, GROWTH AND DEVELOPMENT

As of this date, construction has already begun on the new Loyola University School of Law building, which is to be located on the southeast corner of 9th and Valencia Streets near downtown Los Angeles. The only true metropolitan law school in the capital of the west will be housed in a two-story structure containing 56,000 square feet. It will be completed and ready for occupancy by the Summer of 1964.

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

Utilizing a natural grade to support most of the sloping classroom floors, the architects have also included a partial basement. Planned, designed, and engineered by Albert C. Martin & Associates, the building will have interesting roof overhangs doubling as primary architectural elements and as solar control devices for the second floor library. Plans call for a generous indention of the first floor to provide sun protection for the faculty, administrative and student offices, moot court rooms and classrooms on that level.

The moot court room, and the largest classroom will be equipped with movie and television projection equipment.

The architect's drawings of the interior are shown above. The building will have five classrooms (top right), two conference rooms, and a moot courtroom auditorium (bottom right). In addition to faculty and administration offices (bottom left), there will be offices for student organizations, two student lounges, a small chapel (top left), and a legal research room.

The library (center inset) will have a separate stack and study area. Its volumes will be increased from a present number of 40,000 to that of 130,000.

The new building, being constructed by Jackson Bros, of Los Angeles, has been designed to permit 50% expansion to the south in the future.

Parking facilities have been made available and will accommodate 125 cars, with the main student entrance being from the rear parking area.
THE ERA OF SIR EDWARD COKE: CHIEF JUSTICE, CROWN PROSECUTOR, AND PARLIAMENTARIAN

Foundation law courses call to our attention ancient Common Law cases in which current principles find root. They may demonstrate continued acceptance or an early opposite view. The opinions rendered in these cases were the thoughts of the greatest legal minds of that era. Among the most outstanding Justices was Sir Edward Coke. One automatically attributes to him certain qualities of strength and an unhesitating willingness to assert the law and apply it no matter how harsh. Students seldom develop admiration for his personality, but never deny recognition of his power and influence.

The law of Coke's time was crude and brutal. Fifty one crimes were punishable by death. A sentence to the gallows was a hideous affair consisting of a quick hanging, a cutting down of the prisoner while still alive, dismembering him before his own eyes, burning his parts, quartering his body and displaying the severed head on a long pole for all to heed.

An individual could lose his ears for criticizing the sovereign. One could be imprisoned without charge and held indefinitely at the pleasure of the Monarch. Parliamentarians could be arrested during the session and sent to the Tower for expressing opinions contrary to the Monarch.

Torture to produce confession was available at the Monarch's prerogative. Judges were frequently polled in advance of trial to assure the Crown its victory.

If a man was not moved by concern for the general welfare, he could well be moved to fight for reform as a matter of self preservation. Insecurity was not exclusive to the lowly. It was, in fact, a hazard of the high born and influential.

Edward Coke was born in 1552 in Norfolk, England. His Father was a barrister, and his Mother the daughter of a Norwich Attorney. He was raised as a Protestant—the religion of the state after Henry VIII's break with the Pope—during a period in which there was still hope for re-instating Catholicism. This program permeated much of the political activity and was the cause of great strife and much injustice.

Coke served as a member of Parliament from Aldeburgh, and as Solicitor General and Recordor of London. He was encouraged and helped by the powerful influence of William Cecil, Lord Treasurer of Burghley, through whose efforts he came to the attention of Queen Elizabeth. In 1593 she named him Speaker of Commons. Having asked for the largest sum ever considered by the Commons and having received it she rewarded him with the appointment to the office of Attorney General. In strong opposition to the appointment of Queen's request for funds was Francis Bacon, who thereby incurred her disfavor and as a result never achieved success during her reign.

As Royal Prosecutor it was Coke's highest duty to protect the Queen from Spanish plots to take her life. These were difficult days for England's Catholics. Most of the Crown prosecutions were marked by religious accusation. The record shows that Coke was overly dedicated to this type of prosecution.

One of the early cases, based on flimsy evidence and a lack of justification, appears to have been used to keep public sentiment against Spain and the Catholic influence. This was the case of the Queen's physician, Dr. Lopez, accused of attempting to poison her. He was sent to the gallows.

Robert Devereux, Second Earl of Essex, Bacon's patron, a man of great wealth and position and much admired by the public, had instigated the Lopez prosecution. But after losing favor with the Queen through disobeying her orders to quell Tyrion's Irish rebellion, his own attempt to overthrow her failed. Coke's prosecution here was easily successful with a unanimous verdict of treason, and a sentence reduced from death on the gallows to simple beheading, because of his noble blood.

Having reigned for almost fifty years, the Queen named James IV of Scotland as her successor. On her death in 1603 he became James I of England. He was a Stuart and a great grandson of Prince Henry VII.

The new King's inclination first made its appearance when a pickpocket, apprehended in a welcoming mob, was hanged at the King's order without trial.

One of Coke's first prosecutions under the new ruler was that of Sir Walter Raleigh whose opposition to the succession of James to the English crown had been known to James long before Elizabeth's death. An early plot to force certain demands on James had been discovered. Raleigh, who had merely associated with one of those apprehended, was rounded up with the others and conveniently accused of high treason. Coke's case for the crown was based on the accusation of one of the plotters who was bargaining for his life in the Tower and never produced at the trial. Raleigh, defending himself eloquently, relied on the statute of 1593, requiring two witnesses for proof of treason as is required even today, but Coke pointed out that a later statute had repealed such. Raleigh's conviction was commuted to life, but the trial made stronger cause for legal reform.

Coke was elevated to Chief Justice of Common Pleas. Jurisdictional problems then arose with the Ecclesiastical courts and with Chancery. Coke used the writ of prohibition to prevent Chancery from taking jurisdiction of cases already decided at Common Law. Chancery used the injunction against the Common Pleas, invoking the power of the King's conscience. The King, controlling Chancery through Ellesmere and the Ecclesiastical courts through Bampfyll, attempted to settle the matter asserting the superiority of the Royal Prerogative and his right to decide where there was no clear law. Coke took exception and wrote a treatise on the legality of the Common Law over all courts as well as acts of Parliament. The battle raged on.

Common's sympathies alligned with Coke since they felt the real danger of divine right and the recent proclamations of the King creating new offenses and punishments without the concurrence of Parliament.

Bacon had become influential with James and through his contrivance got James to shift Coke to position of Chief Justice of Kings Bench and Bacon was appointed Attorney General. This device was a simple method to remove Coke to a spot where

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