THE DOCKET

Vol. III, Nos. 3 & 4 UCLA LAW STUDENTS' ASSOCIATION May 2, 1959

UCLA Observes National Law Day

Law Faculty Fellowship Awarded Van Alstyne

By Louis R. Negrete

Professor Arvo Van Alstyne, assistant dean of the UCLA School of Law, has been awarded a Law Faculty Fellowship in the field of law and public affairs by the Ford Foundation.

The Ford Foundation has established a small number of law faculty fellowships for the academic year 1959-60 to assist American law teachers in extending their knowledge of law as it relates to public affairs. In turn, the foundation believes this will improve the education of law students in the area of public responsibility.

Professor Van Alstyne's study will be conducted in part on the UCLA campus, but it will also take him to the library of the Supreme Court in Washington, D.C., and to a number of major university campuses in various parts of the United States.

The award will permit him to investigate in detail the role of the attorney in the process of constitutional adjudication in both state and federal courts.

"I plan to explore, and so far as possible, to analyze the relationship between the activities of the legal counsel, including matters of strategy, tactics, pleading technique, advocacy, and other procedural devices employed, and the ultimate judicial determination in selected

(*Continued on Page* 5, *Col.* 3)

Shepard Elected LSA Prexy In Recent Poll

In charge of student activities at the law school for the 1959-60 year will be Huey P. Shepard who was elected president of LSA at the recent election. He will replace outgoing President James Dale.

Shepard came to UCLA Law School from Long Beach State College where he received a B. A. in Speech. While there, he served as class president and student body vice-president. He was the recipient of a "Forty-nine" award which goes each year to the four graduating students at Long Beach who

(*Continued on Page* 3, *Col.* 2)

Seniors To Receive Hoods At Ceremony Set For Schoenberg

Hoods will be conferred on the 1959 graduates of the UCLA Law School by Acting Dean Richard C. Maxwell in a ceremony being sponsored by LSA on Friday, June 12, at 9 a.m. in Schoenberg Hall. Academic honors and awards will also be announced at that time.

Featured speaker at the proceedings will be Walter Ely, noted California trial attorney and secretary of the Los Angeles Bar Association.

Members of the law school faculty have been invited to attend. The graduates and faculty members will proceed in a group from Schoenberg Hall to the university exercises which are scheduled for 10:30 a.m.

It is anticipated that a section will be set aside at the university exercises for relatives and friends of the graduates who first attend the special ceremony so that they will be assured of seating accommodations.

Following the graduation exercises, a reception will be held in the law school lounge.

Presidential Proclamation Focuses Attention On Supremacy Of Law

President Eisenhower's official proclamation designating May 1, 1959, as LAW DAY U.S.A. urges the people of the nation to join on that day in reaffirming their dedication to our form of government and the supremacy of law in our lives.

"A free people can assure the blessings of liberty for themselves only if they recognize the necessity that the rule of law be supreme," the President states. In addition, he says, by directing the attention of the world to liberty under law in the United States we emphasize the contrast between our freedom and the tyranny which enslaves the people of one-third of the world today.

Featured Speaker—
Justice Roger J. Traynor

(*Article Page* 3, *Col.* 3)

The President's proclamation points up the two basic aims of LAW DAY U.S.A.:

1) To foster an abiding respect for law, enabling the nation to grow in moral strength as it grows in population, resources, and world leadership.

2) To provide an occasion for the American people to rededicate themselves to freedom for the individual under just laws administered by independent courts, and in so doing to emphasize before the world the contrast between the rule of law in the United States and the rule of force and fear under communism.

LAW DAY U.S.A. was inaugurated by Presidential proclamation in 1958. Public response to it was enthusiastic and widespread. Thousands of special programs and ceremonies were held on May 1 in schools, churches, courthouses, city halls, and other public meeting places. Leaders in education, religion, civic and community life hailed the observance as a cohesive influence, serving as a timely reminder of the essential roles of laws and courts in American life and the great potential of the rule of law as a force for world peace.

Occurring on May 1, LAW DAY U.S.A. dramatizes the contrast between the American concept of freedom and justice under law, and the suppression of individual freedom under communism. Traditionally, May 1 is a date on which the communist world flaunts its military might, symbol of its philosophy of rule through force and fear.

In the United States, May 1 now

(*Continued on Page* 5, *Col.* 4)

Schedule Of Events For Today

Pound Competition Finals: 9:30 a.m. courtroom — Justice Roger J. Traynor will preside over moot court trial featuring Sanford B. Bothman and Herman Sillas, Jr. v. Martin C. Pachter and John D. Schenck.

Tours of Law School and Library: 9 a.m. to 11 a.m.—guided tours will leave every few minutes from the main foyer.

Library Exhibit: Rare legal documents, including early English and Roman books, will be on exhibit all day in the law library.

Motion Pictures: 9 a.m. to 11 a.m., Room 108—Three motion pictures, "Trial by Jury," "High Wall," and "Story of the American Bar Association," will be shown.

Annual Law Show: 11:15 a.m., BAE 147 (building next door to the law school)—"Bradbourn and the King of Siam," a musical comedy farce written, directed and acted by law students, will be presented.

Luncheon: 12:30 p.m. to 2 p.m, faculty center.

Featured Speaker: 2 p.m., BAE 147—"Keys to Close Harmony in Conflicts of Laws," is the title of Justice Roger J. Traynor's speech.

Reception: 3 p.m. to 4 p.m., law students' lounge—A "Meet the Faculty" reception will be held. Refreshments will be served.

Barristers' Ball: 9 p.m., Bel Air Bay Club—Music by Bob Sunness and his orchestra will be featured at the annual LSA Law Day Dance for students and alumni.

THE DOCKET . . . .

Vol. III, Nos. 3 & 4

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The Bill Of Rights And The Guilty

by Professor Murray L. Schwartz

The conviction of a dope peddler is reversed on the grounds that the evidence which proved his guilt was unlawfully obtained. An attempt to obtain a contempt conviction of a witness who pleaded the privilege against self-incrimination when asked apparently innocent questions fails. A conviction of a brutal murder is reversed because of racial discrimination in the selection of the grand jury which indicted the defendant. Another conviction for an equally egregious crime is reversed because a confession was obtained through the use of modern third degree methods, even though there was ample other evidence to support the conviction.

Each of these decisions (and many others in the recent past) arouses heated public comment. Those who support the judicial actions usually argue that the protections afforded the guilty in these cases are necessary to assure that the innocent will not be unjustly convicted. They assert, in some variant of the time-honored phrase, that our society has decided, "It is better that ten guilty shall go free than that one innocent man shall suffer." It is, they say, a proud boast of our democracy that we will not tolerate any intrusions into the traditional protections accorded the accused, even when there is "clear guilt," lest we set precedents which will result in the conviction of the innocent.

No one can reasonably dispute the validity or rationality of this concern. The most cursory acquaintance with history suffices to prove that these protections are necessary restraints for the protection of the innocent. Certainly, any society which is based upon the premise of the dignity of the individual must take precautions to guarantee that no one will be punished for something he has not done.

But there is more to these fundamental guarantees, represented by the Bill of Rights, than this well-merited desire to protect the innocent.

Our Constitution identifies our need for protection against only specific crime — treason (and even that reference is the specification of limitations on the method of proving the offense). To the extent that it otherwise refers to crimes or criminal administration, it is concerned with deliberate limitations on the prosecution — the Government. This imbalance would seem to show that the Founding Fathers, at least, were less concerned with the imprisonment of the guilty for violations of the criminal statutes than they were with guaranteeing certain fundamental rights to innocent and guilty alike. And it is this very value judgment which is our proudest boast.

Too often we assume that because our statutes have provided penal sanctions for certain types of anti-social conduct, in some way those who have engaged in that conduct have placed themselves beyond the pale. We become frustrated and impatient with the Constitutional guarantees which interfere with their convictions.

But we no longer provide capital punishment for every felony; we do not force our capital felons to dig their own graves. Our Constitution prohibits cruel and unusual punishment. We are in the midst of a development of a system of criminal administration which will attempt to adjust, more rationally, the punishment to the individual offender. Are not these facts obvious demonstrations of the proposition that we have determined that the guilty have "rights" in our society, as well as the innocent; that we have deliberately imposed restrictions upon ourselves in the treatment of the guilty?

Indeed it is highly arguable that "criminality" of the bulk of the conduct labeled criminal today is really so permanent as to warrant the assumption that those who have engaged in that conduct should have no rights of their own.

Many of the crimes of a century or two ago no longer exist. Within that same period we have developed a multitude of new crimes. What is important here, however, is not whether we do or should have more or fewer crimes. What is important is that the designation of certain conduct as "criminal" is, by and large, less permanent than the protections accorded to all by our Bill of Rights. And not, to repeat, solely, to protect the innocent, but because we have made a value judgment that the rights of the individual are just more important than sending him to jail because he has committed a crime.

Today, for example, we are particularly upset by certain crimes, such as sex offenses and narcotics violations. Yet even here there is growing belief that these offenses should not be treated criminally at all, but should be recognized as psychiatric or medical problems. Regardless of the merits of this argument, doesn't this too demonstrate that the concept of "guilt" is not an everlasting value which should outweigh the value of the dignity of the individual crystallized in the Bill of Rights?

Certainly, the desire to convict those who have violated our present standards is a strong and justifiable one. But surely, too, it is a lesser value than the premises upon which our society is based.

Take, for example, the privilege against self-incrimination, widely reported to be "abused." (What this means is quite uncertain. If the claim is unwarranted, a conviction for contempt should ensue; if the claim is warranted, by definition there has been "no abuse.") It has been said and judicially held that this privilege is one which a civilized society could abolish and yet remain civilized. But isn't there much to be said for the argument that the society which has recognized the privilege is more advanced than those which have not? To require a man to prove the case against himself is not even very symbolically different from requiring him to pull the switch for his own execution.

And, practically, and illustratively speaking, given unlimited power of examination in the inquisitor with no privilege against self-incrimination, how many among us would not convict himself of a half dozen criminal offenses — serious traffic violations, sex offenses, income tax violations, to name but a few?

In a sense, the level of any society is determined by its intuitive, non-rational assumptions of the dignity of the individual: the same amorphous type of standards we find in our due process clause. To

(*Continued on Page* 6, *Col.* 3)

Freedom Of Contract

by Professor Addison Mueller

Of all our basic liberties, the one supporting our system of free enterprise is the one we understand the least. Our very use of the phrase "system of free enterprise" tends to demonstrate this. Sometimes the phrase is used as if it described a characteristic of our society that exists apart from our fundamental freedoms. Perhaps more frequently it is used as if it summed up all of our basic liberties. And sometimes—as when the Proclamation designating this first day of May as Law Day speaks of "the liberty under law which we enjoy and the accomplishments of our system of free enterprise"—its use could be interpreted in either way.

The truth is that our economic system of free enterprise rests on a distinct freedom — freedom of contract—which we have come to consider as much a part of the total "liberty under law which we enjoy" as freedom of speech, or freedom of religion, or any of our other traditional freedoms. But it is a separate freedom and a different freedom and a subtle freedom.

This is not a new truth. To some it may seem too obvious to be worth discussion. But important truths can bear—indeed sometimes demand — frequent restatement, and this is an important truth. For unless we give the same jealous attention to the protection of this freedom that we now give to our other more dramatic rights as free men, we may lose it without quite knowing when or how we did.

The problem of accomplishing that protection—even when the goal is seen—is a complex one. Freedom of contract often appears to be not one freedom but a host of them, and the very variety of its uses and abuses makes it difficult to pin-point specific dangers to its existence. At least three broad areas, however, can be marked as critical. And certainly in two of these areas —if not in all three—there is room for much improvement in our understanding and in our efforts. These areas are (1) our body of laws designed to prevent the use of contract to create such concentrations of economic power as will be capable of destroying individual opportunities; (2) our system of sanctions and tribunals designed to provide remedies to those who have relied on contracts and have been disappointed in their expectations; and (3) the large body of our substantive contract law which ought to have as its goal the encouragement and support of those commercial and industrial patterns that are best suited to satisfy our constantly changing and expanding material needs.

Securing Freedom By Regulation

In the first of these areas—our regulation of economic power by law—we meet a characteristic of freedom of enterprise that sharply distinguishes it from its sister freedoms. In the case of these other freedoms, protection demands resistance to all but the most limited of restraints. Freedom of contract, on the other hand, requires extensive regulation and limitation to insure its maximum scope. Only the most rugged of the rugged individualists still insist that a complete hands-off policy best protects

(*Continued on Page* 3, *Col.* 1)

Indiana Professor Teaching Wills And Conflicts This Term

"It's a pleasure to get away from an Indiana winter," says Visiting Associate Professor John Andrew Bauman who is currently teaching Wills and Conflicts at the UCLA Law School while on leave from Indiana University.

Professor Bauman is the faculty advisor to the *Law Journal* at Indiana University. The range of courses he has taught also covers Creditors' Rights, Judicial Remedies, International Law, Damages, Civil Procedure, Torts, Equity, and Legislation.

At the University of Minnesota where he had received his B.S.L. degree and returned to study law after a stint in the U.S. Air Force, Professor Bauman worked on the Minnesota Law Review with Professor Richard C. Maxwell. During this time the professor became affiliated with Phi Delta Phi National Law Fraternity.

Among his credentials are an L.L.B. from the University of Minnesota, and an L.L.M. and a Jur. Sc. D. from Columbia University. Professor Bauman is a member of the Wisconsin State Bar Association and has been admitted to practice in Wisconsin and Minnesota.

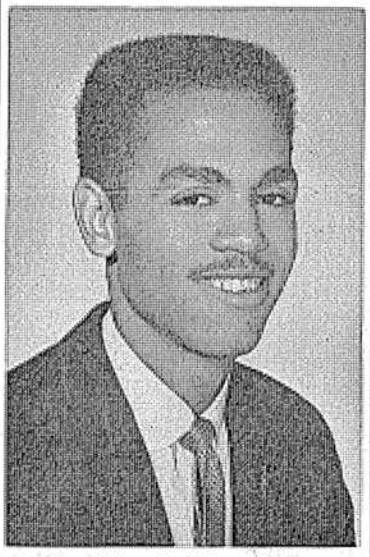
Until 1954 Professor Bauman taught at the University of New Mexico. In 1953 while acting as Legal Director of the U.S. Senate Subcommittee on Privileges and Elections, he was the Referee in the Chavez-Hurley Senate election dispute which drew nationwide attention that year.

Shepard Prexy

(*Continued from Page* 1, *Col.* 1)

are judged to be the most outstanding in their class.

One of the major problems Shepard says he intends to tackle through LSA is the lack of communication between administration and students. To promote this goal, he plans to stress the need for more interest and participation by students in school activities.



Huey P. Shepard

Other LSA officers for the coming year are: Edward Petko, vice-president; John Liebman, secretary; and Roger Denney, treasurer.

Varied Backgrounds, Youth, Marks Features of Tenth Entering Class

Due to the fact that this year's first class is the tenth class in the law school's history, as well as its largest, the *Docket* presents a few statistics of general interest.

Excluding drop-outs, the present enrollment of 177 shows a widespread geographical distribution of undergraduate education. First year students represent 55 different undergraduate colleges and universities, 34 of which being non-California institutions. However, UCLA undergraduate alumni far outnumber the undergraduates from any other school by a tenfold margin.

California residents hold an edge numerically over out of state residents. Despite the wide distribution of undergraduate colleges attended, only ten states and one foreign country were listed as present residences.

Our first year associates have not limited themselves to baccalaureate degrees. Five advance degrees were reported, including a European equivalent of the J.S.D. degree. One student has a Master of Forestry degree from Yale University, and another, a European Ph.D.

Approximately 50 percent of the first year class has served with the Armed Forces.

A more startling statistic is provided by the married group, 50 percent of the class, which has been fairly prolific providing an average of half a child per married man.

Of the seven women students in this class, one is a veteran of the U.S. Navy and is presently employed as a policewoman.

This year's first year class, with a mean age of 21.5 years, is probably one of the youngest yet. The average age, however, is considerably higher thanks to a few more *mature* members of the class. Upon entering, the youngest member of the class was 20 years old, and the oldest was 54.

At the time of this report, no withdrawals on the basis of the first semester grades were listed. On the whole, the grades for the first semester were high. The highest average reported was in the neighborhood of 85, with many other averages bunched up at the 75 mark.

Traynor Will Speak On Conflicts Today

Featured speaker at UCLA Law Day festivities is Justice Roger John Traynor of the Supreme Court of California. He will discuss "Keys to Close Harmony in Conflicts of Law" this afternoon at 2 p.m. in BAE 147.

Traynor, a Phi Betta Kappa graduate of the University of California, Berkeley, later taught political science there for 10 years. He graduated from the UC Law School where he edited the Law Review and was elected to membership in the Order of the Coif.

Prior to assuming his present position, he practiced law in San Francisco, served as a tax expert with the U.S. Treasury Department in Washington D.C., and was Deputy Attorney General of California.

During the summer of 1956, Traynor lectured at the Institute of American Studies at Salzburg. He has been an Associate Justice of the Supreme Court of California since 1940.

Bruin Pace Setter Bruce Hochman First UCLA Law Grad To Pass Bar

by Douglas Mac Rae

Bruce Irwin Hochman was the first UCLA law graduate to pass the Bar examination. His success launched the Bruins with a 100 percent passing record.

After graduating cum laude from UCLA in 1949 as a political science major, Hochman enrolled in the first law class in this school and became a charter member of Currie Chapter of Nu Beta Epsilon legal fraternity.

The prospect of imminent military service prompted Hochman to take the Bar examination, necessarily without benefit of a Bar refresher course, in the spring of 1952 while still enrolled in his final regular semester.

Following graduation, he served briefly in the Judge Advocate General program of the U.S. Air Force. Next he became an assistant in the Tax Division of the U.S. Attorney's Office for the Southern District of California.

Hochman believes that earnestness and enthusiasm are the equalizers new graduates have against veteran counsel. Government work, he asserts, provides an excellent opportunity for the young attorney to gain experience in cases too major to be entrusted to the tyro by a private firm.

After two years of being associated with Harry Graham Balter, Hochman recently opened his own office at 232 North Cannon Drive where he will act as a tax specialist.

Several tax articles by Hochman have been published in the *Bankruptcy Bar Journal* and *Tax Ideas*.

Freedom Of Contract

(*Continued from Page* 2, *Col.* 4)

free enterprise. Despite the apparently compelling logic of the position that maximum freedom of contract is bound to be achieved by a total absence of restriction on freedom of contract, we have long since abandoned that view. In its place we have recognized the important practical fact that true freedom must be tested by the number of individuals who are able to avail themselves of it.

Many a laborer at the turn of the twentieth century had freedom to contract as he chose; he could work on the terms offered or he could starve. Many a small businessman had freedom to contract as he chose; he could accept the terms of the monopoly or go out of business. The realization that such unrestricted freedom of contract would eventually destroy most freedom of contract resulted in, and continues to result in, a series of such freedom-assuring regulations by law as the Sherman Act and the Fair Labor Standards Act. Distinguishing between those restrictions that expand the scope of freedom of contract and those that destroy more freedom than they protect is, and always will be, a delicate business. Clearly, the careful observance of such distinction is vital. An important key to our defense in this area is the ability to see when power positions have changed; when the weak who once needed protection have become the strong who must, in turn, be protected against. At least we recognize the need and the danger and work to meet it.

Supporting Sanctions

We have been less quick to be concerned over the needs of free contract in another important area —that of the remedies available to businessmen who rely on agreements voluntarily made. Just as freedom needs restrictions to keep it from devouring itself, so freedom needs encouragement to achieve its full potential. And the existence of a strong system of sanctions designed to discourage deliberate refusals to perform agreements would seem to be a requirement for such encouragement.

It is an open secret that the hazards and costs of litigation deter, rather than encourage, many a businessman from seeking society's help when he has suffered loss because of a broken business promise. Except in rare cases, even if such a businessman overcomes

(*Continued on Page* 5, *Col.* 1)

The Duty Of The Attorney In Planning Distribution, Management Of Income

by Professor Ralph S. Rice

Professional responsibility is discharged at one of its highest levels where counsel can select a prudent, practical and secure path through legal perils in management of family income and wealth. The aptitude of the lawyer for this kind of service is traditional and respected. Whatever his geographical location or the nature of his practice, careful planning to avoid risks of litigation here furnishes a firm foundation upon which his reputation may be built.

In no case is this more clear than where he assists the head of a family to plan his affairs for his lifetime and death in order that the best interests of the family will be served at the minimum tax cost. This is an area with which all families of even moderate means should be concerned. Unfortunately, many of them do not realize the need for planning or the tax savings which are being effected by their associates; the lawyer has an obvious duty of inviting their attention to their requirements in this respect. Since the tax aspects, at least, of almost every legal transaction may be discussed with the client (as when he enters into a partnership, forms a corporation, sells or leases property, or makes an investment) he may be reminded by counsel frequently of his tax and other responsibilities in the formulation of plans for the family during his lifetime and at death. Once a plan is made, it is the responsibility of counsel to review it periodically to insure that changes within the family circle and changes in applicable tax law are not ignored.

In helping a client to solve these problems, it should be kept in mind:

1. The proper aim of legal planning for the family is that the social, economic, and familial needs of its members should be met. Tax savings must be subordinated to this greater objective.
2. In some areas of tax planning persons who are not attorneys have peculiar qualifications. For example, the place of insurance in both lifetime and testamentary tax planning is critical. Consequently, counsel may well wish to consult insurance underwriters for the client and his family in the course of completing his plan. If it is concluded that gifts of property should be made in trust, counseling with representatives of trust companies will often be found very helpful. The accountant for the family should also be consulted with respect to the family business and investments, particularly if he has been making out income tax returns for the business and the family. However, the lawyer's decisions must be his own, and if he has any doubt concerning what is involved he will not blindly rely on others to resolve it.

Dean Maxwell Announces Faculty Appointments For Coming Year

Acting Dean Richard C. Maxwell has announced the following appointments to the UCLA Law School faculty for the academic year 1959-60. This is in line with the objective, stated by him in the November '58 *Docket*, " . . . to secure more professors to accommodate the present and future needs of the school."

- Norman Abrams comes to UCLA from a post as Director of the Harvard-Brandeis Cooperative Research for Israel's Legal Development at the Harvard Law School. Mr. Abrams received his A.B. degree from the University of Chicago and his LL.B. from the same instiution. While in law school he served as Editor-in-Chief of the University of Chicago Law Review. He also represented the University of Chicago in the National Moot Court Competition. Immediately after graduation from law school he became an Associate-in-Law at the Columbia University School of Law and while serving in that capacity completed his residence requirements for the S.J.D. degree from Columbia. Mr. Abrams will be a Visiting Associate Professor of Law at UCLA.
- William Cohen is presently an Associate Professor of Law at the Law School of the University of Minnesota. Mr. Cohen took his A.B. degree from UCLA and his first year of legal study at the Law School of the University of Pennsylvania. He then returned to UCLA to complete his LL.B. degree. While at UCLA Mr. Cohen served as Editor-in-Chief of the UCLA Law Review. On graduation he became law clerk to Mr. Justice Douglas and went from that post to his faculty position at the University of Minnesota. Mr. Cohen will be a Visiting Associate Professor of Law at UCLA.
- Mitchel J. Ezer will serve as Associate-in-Law at UCLA during the academic year 1959-60. He has his B.S. degree in Accounting from Northwestern University and will take his LL.B. from the Yale Law School. He is a member of the Staff of the Yale Law Journal.
- Robert L. Jordan is presently associated with the New York law firm of White and Case. He received his A.B. degree from the Pennsylvania State University and his LL.B. from Harvard University. While at Harvard he was an editor of the Harvard Law Review. Mr. Jordan will be a Visiting Associate Professor of Law at UCLA.
- Dr. Herbert Morris will teach a course in Jurisprudence during each semester of the coming academic year at the UCLA Law School. Dr. Morris is presently a Visiting Professor at Stanford University. He is a regular member of the Philosophy Department at UCLA. He has his A.B. degree from UCLA and his LL.B. from the Yale Law School where he graduated with considerable distinction. After law school he was a Fulbright Scholar at Oxford where he received the D.Phil. chiefly under the direction of Professor H. L. A. Hart who occupies the Chair of Jurisprudence at Oxford. Dr. Morris will be a Lecturer in Law on the Staff of the UCLA Law School.
- Charles E. Rickershauser will give the course in Trial and Appellate Practice in the spring semester next year during the absence of Professor Van Alstyne. Mr. Rickershauser is presently an attorney with the distinguished Los Angeles law firm of Gibson, Dunn and Crutcher. He received his A.B. degree from UCLA and his LL.B. degree from UCLA. While at this Law School he served as Editor-in-Chief of the UCLA Law Review. After graduation he was law clerk to Mr. Justice Douglas. Mr. Rickershauser will be Lecturer in Law on the Staff of the UCLA Law School for the spring semester next year.

"Let reverence for the laws be breathed by every American mother to the lisping babe that prattles on her lap. Let it be taught in schools and colleges. Let it be preached from the pulpit. Let it be proclaimed in legislative halls. Let it be enforced in courts of justice. Let it become the *political religion* of the nation. And let the old and the young, the rich and the poor, of both sexes and of all tongues and colors, sacrifice unceasingly upon its altars."

Abraham Lincoln

SPACE LAW . . .

The Legal Mind In Orbit

by Professor Arvo Van Alstyne

"How high is up?" This question, once treated as a childhood riddle, is today being widely discussed by legal scholars throughout the world. Although the debate commenced long before sputnik first made its appearance among the constellations, that historic event served both as a catalyst to the production of ideas and as an incentive to organized and officially sponsored consideration of Space Law. Intensive studies are now under way not only in private organizations such as the American Bar Association and the International Astronautical Federation, but by special committees of the United States Congress and the United Nations.

Four basic problems of Space Law can be identified:

(1) Development of rules of law which will protect surface interests from potential harm resulting from space flight, without impairing the maximum utilization of space for peaceful and socially desirable purposes.

(2) Development of rules of law governing jural relationships between space vehicles and their occupants and regulating the use of space in the interests of safe transit.

(3) Development of rules of law governing jural relationships between individuals in "outer space", beyond the sovereign jurisdiction of their respective surface countries of nationality.

(4) Development of rules of law governing jural relationships between earth personnel and such intelligent life as may be found to exist elsewhere in the universe.

Although the last of these problems would on the basis of present knowledge appear to be too remote to deserve immediate consideration, the first three are clearly of an imminently pressing nature.

Discussions of possible solutions to the complex legal issues involved in these four basic areas have addressed themselves in the main to the preliminary consideration of seeking to determine the vertical limits to sovereign jurisdiction. This issue, of course, relates to the fundamental problem of the source of the future law of space: How far upwards into space may an existing earthbound government legitimately exercise its authority to make and enforce law? At what altitude will national sovereignty terminate and be supplanted by international law?

One approach to the jurisdictional problem seeks to develop analogies from existing aviation law. At present, aviation law appears to be premised upon the existence of absolute sovereign power over superadjacent air space, and is characterized by the development through international agreement of rules governing the use of this air space. Although this approach has much to commend it in connection

(*Coninued on Page* 6, *Col.* 2)

Freedom Of Contract

(*Continued from Page* 3, *Col.* 4)

doctrinal confusions and establishes his right to recovery, the law restricts that recovery to so much money as will put him in as good a position as if the agreement had been performed. Thus, if a buyer who contracted for delivery of 200 tons of steel at a price of $10 per ton is denied delivery by his seller when the price has gone up to $15 per ton, he can collect from that seller the difference between the $15 per ton he now has to pay for his required 200 tons and the $10 per ton he originally agreed to pay, or $1,000. But to get this recovery, he must sue and win. What of his lawyer's bill? What of his own time spent in such litigation? Neither of these items is normally recoverable by our injured businessman. He can hardly, then, be said to be fully protected.

And what, on the other hand, of our contract-breaking steel seller who has elected to sell the steel to another buyer at the higher price of $15 per ton? His liability in the normal situation—*if* the buyer sues and *if* the buyer wins—is measured by the very market price of $15 per ton at which he sold. This admittedly prevents him from keeping the $1,000 profit he has made on his contract-breaking sale. And he, too, will have to pay his lawyer, and court costs, and will have time involved. But his injured promisee is also a businessman who will weigh his possible recovery against the unrecapturable costs of getting that recovery before he sues. Such a businessman may well listen with interest to suggestions of a compromise at $750. The odds on such a profitable gamble for the contract-breaker are not bad! Results like this do not tend to discourage contract breaking.

There is, of course, a powerful non-legal sanction that operates to discourage breach of commercial contracts: a reputation for non-performance of business agreements is not a business builder. Such extra-legal sanctions may well be more powerful compellers of performance than are fears of lawsuits. Within highly organized and well-ordered business structures such as the tobacco industry, for example, one searches in vain for adjudicated cases; here is an industry that apparently settles most of its own disputes. In the lumber business, on the other hand, where business in many areas is handled by hundreds of small and unorganized operators, litigation is rife.

Perhaps the sanctions now offered by our commercial law — when taken in conjunction with the existing but less formal extra-legal sanctions—are sufficient to safeguard the important transactions in our society. Perhaps disciplining chronic defaulters is better left to Trade Associations and Better Business Bureaus. Perhaps the very fact that the uncertainties of our law and the inadequacies of its relief encourage compromises is a desirable rather than an undesirable feature. Certainly litigation should not be made so easy or so profitable as to encourage its wholesale institution. The point is that we do not know the answers to these questions, and we ought not to be satisfied with these "Perhapses." In a society which leaves the major part of its necessary work to private arrangement, we need to know—not guess at—what, and how well, we are doing in this area.

Encouraging Maximum Efficiency

It is in the third area of free-enterprise protection—that body of our common and statutory law which both shapes and is in turn shaped by business practice—that we find need for our most serious effort. The ultimate security of our system depends on how well it works; unless it can compete successfully with other systems in the job of getting wealth distributed fairly, efficiently and economically, it must eventually surrender to the persuasion—if not the force—of the more successful system. We must, therefore, strive constantly to shape our laws so that they will urge every improvement in the efficiency of our free-enterprise system that is consistent with the basic principle of freedom.

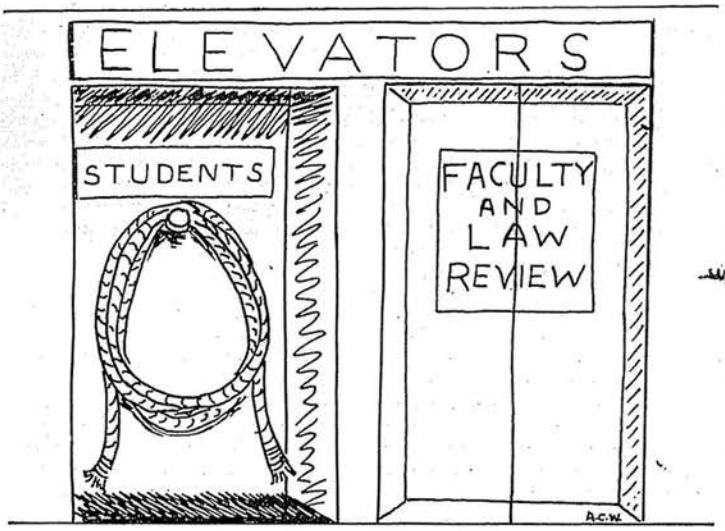
In this area the important fact is again that we have too few facts. Commercial law still depends too much—or at least pretends to depend too much—on dogmas of a law developed to handle the transactions of a far simpler economy. Those rules may have worked well enough for those times. They may even work well enough for today. But we should not assume that they do, nor should we leave the process of judicial adjustment of those doctrines to hunch or half-seen truths.

The recent case of *Drennan* v. *Star Paving Company* (333 P.2d 757), in which the California Supreme Court for the first time bound a sub-contractor on his "unaccepted" bid to a general contractor by using the "action in reliance" doctrine, provides an excellent example of the problem. This decision makes "new law." Its effect may be substantially to alter previously accepted conduct in the construction industry in California. But here again, we can only speculate on that effect. Perhaps requiring sub-contractors to consider their bids as irrevocable offers will have a beneficial effect on the conduct of the construction industry in California. Perhaps such a requirement will encourage more careful bidding by sub-contractors. Perhaps it will reduce lost motion at the bidding level and thus result in better buildings at lower cost. On the other hand, perhaps it will have precisely the opposite effects. Of one thing we can be sure, it will have *some* effect. And certainly a consideration of that effect and its part in promoting efficient free-enterprise would seem to be a more meaningful way to reach the decision than through the court's talk about whether or not the general contractor involved in the dispute acted in such reasonable reliance that "injustice could be avoided" only by holding the bid irrevocable. The tragedy of the situation is that the court had little choice but to decide the case in those terms. It had before it very little of the information that might have enabled it to look beyond the doctrine to the impact of the decision on the industrial institution involved.

It is, then, high time for us to devote significant effort to the hard task of accumulating knowledge about how our institutions respond to present legal stimuli and how they may be expected to respond to possible future stimuli. For until we learn more about what businessmen actually do and why they do it in specific contexts, and what effect this conduct has on the efficient operation of our free-enterprise system, we cannot shape our law to encourage maximum production and minimum waste. Until we learn more about what encourages agreement making and keeping and what discourages it, we cannot shape our law so as to expand the area in which private enterprise will willingly do our work. Until we learn more about what restrictions will insure freedom of contract in fact, we cannot properly protect freedom of contract by law.

Full knowledge and understanding we cannot hope for. And the required fact-finding process will be a slow and often frustrating one, for it calls for leg-work as well as brain-work. But a carefully planned program of research, carried out in collaboration with—and making use of the methods developed by—those working in other branches of the social sciences, can give us at least some knowledge where we now have none. It is not enough merely to recognize that law is a social science. It is not enough merely to translate law into the jardon of the economist and economics into the jargon of the lawyer. What we must have are facts so assembled and so presented that we will be able to understand better what types of contracts in what contexts will get our society's work done with the maximum dispatch, the minimum waste, and the greatest possible scope for individual freedom of choice.

Until we get that information, we grope in a needless dark. Getting it should be considered legal scholarship of the highest respectability and the highest priority. Law Day 1959 is a good day for students of the law at all levels to dedicate themselves to the task.



Van Alstyne

(*Continued from Page* 1, *Col.* 1)

constitutional cases," says Van Alstyne. "In the field of constitutional law, insufficient attention has been paid to the utilization by attorneys of strategic, tactical and procedural mechanisms as factors which influence materially the outcome of litigation."

President Sets Day

(*Continued from Page* 1, *Col.* 4)

has become a day for a demonstration of a different sort, in which the people may reaffirm their faith in the rule of law as the best safeguard of human freedom and dignity. The widespread observance of LAW DAY U.S.A. thus can be a potent influence in world opinion, and ultimately the greatest of all forces for promoting world peace.

So widespread has been the recognition and endorsement of LAW DAY U.S.A. that an even more extensive public participation is expected on May 1, 1959.

Student Gets Practical Education During Summer At Security Title

By Douglas Mac Rae

"Working for the Security Title Insurance Company last summer gave me an opportunity to apply the legal knowledge I had acquired during the first two years at UCLA Law School," says Ed Ross, Law Review member and third year student.

Each year for the past three years F. W. Audrain, chief counsel and vice-president of Security Title Insurance Company has requested the dean of the law school to select an outstanding student to be placed on the company's legal staff for the summer. Dean Richard C. Maxwell selected Ross to participate in the 1958 program.

The work consists of advising the branch offices regarding their legal problems, determining whether a certain piece of property should be insured where dispute arises, and assisting in defending claims brought against the company. Finding that his job did not include searching titles, a task handled entirely by the branch offices, surprised Ross.

"After being advised to take the time needed to do a good job," Ross states, "I was encouraged to work upon my own initiative. At least one of my memorandums was made the point of a directive sent to the member organizations of the California Land Title Association."

In addition to the real property law aspects, Ross reports that he prepared memoranda on phases of insurance law, duties of an executor, and requirements of publication and notice in various types of situations. Other experiences gained by Ross included preparing a survey of the law of park abandonment, being called to swear some documents into the record in a divorce action in which the company was joined as a co-defendant and attending court several other times as an observer.

"I was treated as a member of the firm," says Ross. "I really enjoyed the professional atmosphere, the encouragement and experience offered."

Space Law

(*Continued from Page 4, Col. 4*)

with the devlopment of law governing relatively low altitude space flights between various termini on the globe, it has inherent theoretical limitations when applied to astronautics. The notion of absolute sovereignty in a vertical direction becomes untenable in those very great distances from the surface which are characterized as "outer space"; and the physical impossibility of maintaining any effective degree of control at the altitudes and velocities typical of space flight makes enforcement of law by individual surface nations completely impracticable.

A second school seeks to develop analogies from the law of the high seas. The doctrine of freedom of the seas, together with the right of innocent passage between points outside of territorial waters, is urged as a desirable approach to space law. In short, it is urged that, by agreement similar to that which led to the widely accepted "three mile limit" on territorial waters, some vertical limitation be imposed upon national sovereignty, with freedom of peaceful passage above that limit.

A third school suggests that the revolutionary nature of space flight makes analogies to existing law futile, and that all uses of outer space should be placed under international control, with appropriate safeguards for the interests of individual nations.

Under each of these views, it is clear that a need exists to establish some form of vertical jurisdictional boundary above which the conventional law of the surface sovereign no longer is applicable. The various efforts to define where the jurisdictional boundary line should be drawn have mainly been based upon the technical data presently available about the attributes of the atmosphere and the technology of space flight. Despite minor differences, there seems to be a consensus in favor of drawing the line at a level to be agreed upon by international accord which would represent the upper limits beyond which economically and ecologically feasible space flight between points on the surface of the earth becomes impracticable.

Although the detailed solutions to the broad and intricate problems which are posed by astronautics cannot feasibly be evolved at the present time, substantial progress is being made in identifying the legal problems which are likely to arise and in analyzing the directions in which the law should evolve. In some limited areas, some immediate progress may indeed be possible, such as in the development of agreements relating to radio frequencies and communications between earth stations and vehicles transmitting in space. On the other hand, it would perhaps be dangerous to move too fast, and somewhat blindly, into the field of space law without awaiting the full development of adequate technological information which will permit us to develop rational legal principles. The debate will go on, however, and the more that lawyers, law students, and members of the public inform themselves about these important matters and participate in the dialogue, the more likely it is that constructive legal developments will occur, and that outer space may be effectively utilized for peaceful purposes.

The Bill Of Rights

(*Continued from Page 2, Col. 4*)

say that men should not be required to convict themselves may be difficult to justify rationally if we believe that the purposes of our system of justice is to convict the guilty. But the glory of our system is its willingness to recognize that there are felt values more important than the conviction of the guilty. And if we impair these values to convict the guilty we debase our own level, we degrade us all.

What constitutes this debasing or degradation is, in a large sense, an intuitive determination. But at least some of those intuitive standards are spelled out in the basic provisions of the Bill of Rights.

Let us determine the level of our society by moving forward, not backward, from those provisions.

Varied Events End Phi Delta Phi Year

By Dale V. Cunningham

At dusk on April 8 within the walls of the State Building in Los Angeles, 51 pledges from Pound Inn became members of America's oldest professional fraternity, Phi Delta Phi, at the joint initiation for chapters from UCLA, USC and Loyola. At this event Hilton H. McCabe, twenty years out of law school and presently Judge of the Superior Court of Riverside County sitting in Indio, was made an honorary member.

Following the initiation, a banquet was held at the University Club. Over 350 persons attended this, the fraternity's big event in Southern California for the year. Dining and talking with men of such professional stature helped us all broaden our perspective and understanding of the future that lies ahead in the legal world. Keynote speaker of the evening turned out to be an "equitable" professor from UCLA with his poignant tales of the South Pacific.

Social Chairman Craig McManigal gathered in our alumni from far and near last March 7 at the Tower Restaurant in Culver City for a reunion dinner-dance that will long be remembered. We all reaffirmed our ties with those of our order who are now happily casting their nets in the river of riches.

A family party-barbecue was held on March 18 at Professor Kenneth York's Topanga-top home. Saturday afternoon we took advantage of the volleyball courts, football fields, etc. In return, on Sunday, we all pitched in and helped cut fire-breaks. Success of this event and many prior has been largely attributed to Art Wahlstedt's signs-of-the-times. Art has given us all at last a reason for our hours of bulletin board watching.

To close out the semester, Pound Inn feted its seniors at the Anheuser-Busch Brewery with the annual Senior Stag. There lower classmen and faculty gathered to hear the sage parting words of our elder brethren about to embark upon their careers of reviewing for the Bar. This climaxed a fine year led by President Pat Crowell and provided a time to reflect upon and realize the value of fraternity membership.

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