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LOYOLA DIGEST

Vol. 6 — No. 2 LOYOLA UNIVERSITY SCHOOL OF LAW December, 1964

LOYOLA WINS REGIONAL

By

TIM SARGENT

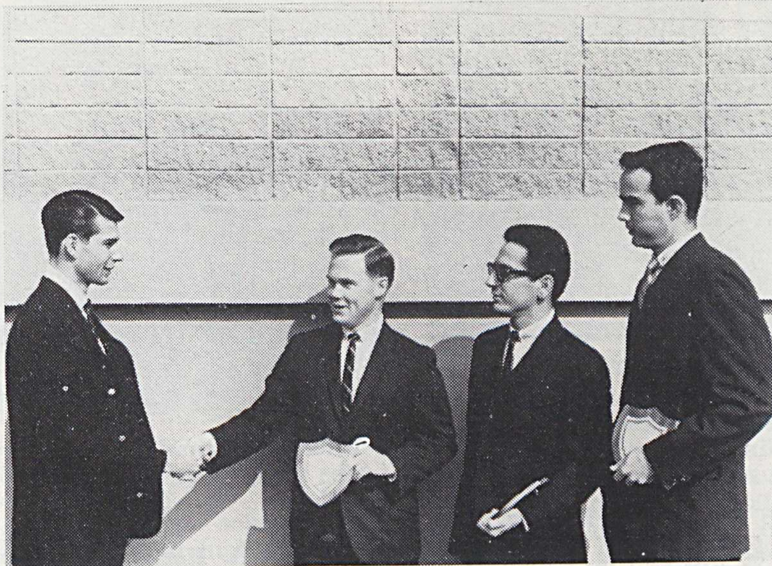
When this is read, all thoughts of Loyola's victory in the Western Regional Competition will have been forgotten. On the 19th of December, Loyola's Plucky three will return from their Eastern combat. Either they will swoop into town crowned with laurel, or they will skulk home heavily disguised. Normally reliable sources saw John Bovee packing a replica of the infamous Floyd Patterson beard.

By way of historical reference, the yellow brick road lead away from the Los Angeles County Courthouse on November 18 to New York. Washington, Willamette and Loyola drew first round byes and watched U.S.C. (respondent) defeat the U.C.L.A. team.

On the second evening of the competition U.S.C. experienced some difficulty in switching to the appellant's side of the case and lost to the alert and eager Washington trio. Loyola got its feet wet against the Oregon law school, Willamette. The Oregonians admitted having paid Loyola the highest form of flattery by copying the technique of last years regional champions. Imitation, however, fell a trifle short and Loyola eeked out its narrowest margin of victory. The balance of success was likely tripped by the forceful and persuasive rebuttal urged by co-counsel Bovee.

The finals saw Loyola take on the University of Washington. Both teams switched sides from the case on which their brief was written. On reflection, this may perhaps have been a fatal switch for Washington since the appellant's case was much the more difficult. (Statistically, in five rounds of competition, only one appellant victory was awarded, that to Loyola against Willamette).

The final round was judged by Deputy Attorney General Dan Kaufmann, Superior Court Judge Eugen Brietenbach, and Attorney Joe Ball. Against this awesome panoply of legal knowledge, Loyola and Washington hurled their verbal darts with varying success. When the points were totaled, Loyola became the representative of the West Coast in the National Finals at New York.



PLAQUES GIVEN MOOT COURT TEAM John Harris, Vice-President of the Board of Bar Governors presenting plaques on behalf of the student body to (L-R) John Bovee, Joe Battaglia and Tim Sargent in recognition of their victory in the Western Regional Finals of the National Moot Court Competition.

So much for the reportorial sketch work. The end product of three months work has now been tested in New York City. Whatever the result, Loyola was represented by a team whose skills though at first latent, became more developed due to the enormous patience of Ernie Sanchez, became tempered by moderate amounts of despair, and were sharpened by long practice sessions.

The five schools mentioned above are the usual participants in the West Coast Competition. Over the past twelve competitions little Loyola has earned seven victories. There are members of the Loyola family (i.e. the happy merger of faculty and student body) who find this statistic incredible.

"How do you account for Loyola's victories," ask these persistant self-abnegators. "After all, it is below Loyola's station in life to continue to defeat the larger and more nationally known law schools. Probably we are putting too much stress on moot court and borrowing a page from the Ivy-League ought to de-emphasize. Obviously the Loyola victories are a tribute to coaching, not to talent." This summarizes an argument seriously advanced by an eminent member of the Loyola family.

After three years of observing Loyola's remarkable masochism, one is moved to respond. As to the point of over-emphasis, attention is directed to the fact that U.C.L.A. students spend two years preparing for the National competition. As to the point of coaching, positing the "sow's ear" student body noted above, no coach, not even one combining the best talents of Ernie Sanchez and Merlin the Magician, could continue to mass produce these "sink purses".

The moot court team exboundless gratitude to the patience and guidance of Ernie Sanchez and Owen Fiore. It offers its deepest thanks to all those who acted as practice judges, especially Dean Dibble, Judge Kaus, Father Vachon, Paul Selvin, Miss Kauffmann and Jim McCarthy.

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OPEN HOUSE

By

RICHARD DISTEFANO

On Sunday, December 6, 1964 the Loyola University Law School conducted an open house for the benefit of the alumni and friends of the university. The doors of the school opened at 3:00 and hundreds of guests were allowed to walk through and browse around the classrooms, library, moot court room and administrative offices. Each of the guests was cordially greeted by members of the faculty and present students of the law school.

This occasion marked the first opportunity for any of the graduates of past years to observe the new building which was officially opened in September of this year. Judges, attorneys, and political figures returned to their alma mater and were given an opportunity to observe the changes and additions which are present in the new building and which they never had when they attended classes in the old building which was located on the corner of 12th and Grand.

The new John F. Kennedy moot court room drew the most praise from all the persons that were present since the old school did not have the facilities to house such a room. In comparing the old and new law schools, many

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LOYOLA'S NEW LAW LIBRARY

By

PROFESSOR RICHARD RANK
Law Librarian

A new era of development and expansion of the Loyola Law Library's collection and facilities is envisioned since the move of the Library into the spacious and well-designed new Law Building in September, 1964.

At present, the Law Library's collection consists of approximately 40,000 volumes with expansion planned to an ultimate total collection of circa 100,000 volumes. Law reports and statutes, both federal and state, constitute the man body of the existing collection.

It is the policy of the Library to acquire the most complete holdings possible of publications pertaining to California law. A great step toward reaching the latter goal was the designation during this year of our Law Library as a depository for all California government legal publications. Thus, we now have complete files for California legal documents for the current year, and we are striving to obtain all back issues presently lacking. At the same time, we are expanding our collection of federal legislative materials. To this end we are negotiating to obtain a grant of limited United States depository rights for various federal legal publications. The Library is also planning already this year to expand its collection of international law materials aided by a grant from the Lockheed Aircraft Corporation.

Because of the considerable increase in student enrollment this year, new and heavy demands have been placed on the Library. In order to satisfy the pressing needs of the enlarged student body, the Library is now engaged in building up second and third sets of the increasingly demanded National Reporter System. Fortunately, this has been made possible through donations by several generous benefactors. It should also be mentioned that the collection will be greatly augmented on November 19, 1964, when the Library will receive from the Bancroft-Whitney Company a donation comprising all their legal publications. These volumes will be shelved separately in the reading room and will be known as the **Bancroft-Whitney Collection.**

The Law Library is now commencing to catalog the collection in order to make its resources readily available both to the faculty and the students. For this purpose the Library has engaged the services of Miss Frederica M. Sedwick, the new Cataloging Librarian for the Law Library. In addition, the Library has employed Mrs. Virginia A. Wilson as the new Library Assistant and Secretary to the Law Librarian. Miss Carol A. Easter, the Senior Library Assistant, has been placed in charge of circulation and reading room services.

Additional new services in the Law Library have been planned. There will be microfilm and microcard readers in a special room in the Library allocated for this purpose. Also, book photo-copying services will be made available in the near future. To acquaint the faculty and students with new books bought by the Library, a "List of Recent Acquisitions" will be compiled and distributed to them from time to time. The latest issues of current periodicals are displayed on the periodical display rack adjacent to the browsing area. In addition, interesting volumes of the Library's collection will be exhibited in the special case in the Library's search and browsing area.

We hope that the improved facilities, services and organization of the new Law Library will better meet the ever growing needs of the students and faculty, both to aid them in their studies and to encourage and help them in their research work.

SCHOOL DANCE ANNOUNCED

Loyola Law School will present the annual Spring Dance on Saturday, January 30, 1965 in the Renaissance Ball Room of the Biltmore Hotel.

Music for the affair will be provided by the Stan Myers Orchestra of radio, television and movie fame.

Students, Alumni and the faculty are cordially invited to attend. Further communications will be forthcoming from Chairmen Marty Blake and Larry Bertino.

Hernandez Resigns Office

Richard Hernandez, third from left, welcomed many dignitaries from Latin America.

Richard A. Hernandez, Mayor San Yorty's Administrative Assistant and Chief of Latin American Affairs, has resigned his position at City Hall to devote full time to the study of the law at Loyola.

Born in East Los Angeles, Richard had the job of maintaining a liaison between City Hall and the Latin American community. He did it well. No community meeting escaped the resourceful assistant. No community problem was passed by, as he averaged sixteen hours a day between the office and our people. The part of the Latin community he was not able to meet personally he reported to weekly over the Spanish-speaking radio and television stations.

The 23 year old Chief of Latin American Affairs also had international responsibilities. Working with the Latin American Consular Corps here in Los Angeles, Richard was entrusted as "the may to talk to" for the representatives of our neighbors to the South. His complete familiarity with the countries and their culture inaugurated an era of real understanding and mutual appreciation between Los Angeles and the Latin American Consular Corps. These Inter-American duties included the greeting of President Lopez Mateos of Mexico and President Lyndon B. Johnson during their recent history making visit to Los Angeles. All Latin American dignitaries Board presidents to commissioners were the responsibility of Mr. Hernandez during their visit to Los Angeles. Richard's last official functions included presenting the main address to a crowd of over 3,000 at the International Room of the Beverly Hilton Hotel as they celebrated the famous International Dia de La Raza and acting as official host for Mayor Yorty during the visit of over 100 mayors from all over Latin America.

Seasons Greetings

P.A.D. PRACTICE EXAMINATIONS AND SEMINAR

A brown and white cocker spaniel puppy prances dangerously near the edge of a swimming pool. The impending possibility of tragedy is easily foreseeable. You dash toward the pool and arrive at its lip just in time to see the splash.

Before your eyes unfolds a scene that is terrifying, pathetic, humorous, and miraculous. The small puppy madly churns the water with his paws as nature demands that he fight for his life in the only way that he knows how.

"Atta Boy! This way! Come on, Boy!" As you encourage you remain tense so that you can jump in if necessary.

What does this story about a puppy's fight for life have to do with a first year law student and his examinations? The answer is that the predicament of the first year law student, faced with examinations for the first time, is not too far removed from the predicament of the puppy faced with water.

The puppy does not know quite what to do; neither does the first year law student. Each is in his own way fighting where the stakes are high. The puppy may lose his life. The first year law student weighs the following: Either he survives the examination and is thereby permitted to remain in law school or he is out. What is the significance of this failure? Failure means that he probably will now be denied admittance to another accredited law school. Failure means facing family and friends who had high hopes. The fact that they would say, "We understand," does not lessen the burden. Failure may mean that a draft deferment is revoked. Finally, failure may mean that he is not going to be an attorney, a cherished dream.

How can I convey the first year law student's feelings of fear, helplessness, and frustration? Imagine that you are me. The date is September 1963. As a first year law student you have four classes, Torts, Contracts, Property I, and Legal Method.

You are seated in Torts class. A huge man glares menacingly down at you from his rostrum. "Look around you; by the end of the semester, surely by the end of the year, your neighbor probably will not be there." And you swallow hard, for it is you that he might be talking about. Further encouragement, however, is offered to you when you are gently called upon to answer a question, "Mr. Jones, you have heard your fellow student's remark. Would you care to demonstrate your ignorance!"?

"Can he be serious?" you think. However, the same cheerful message is repeated by the Contracts professor. He does not have the same booming voice as the Torts professor, but the message is no less effectively conveyed and understood because he is the assistant dean and because he, with terrifying nonchalance, pronounces statistics indicating a 50% drop out. And so you leave class and drive to the College Book Store in order to purchase a book that he has suggested, **Corbin on Contracts.**

You find yourself running scared. You find yourself reacting simply from fear of not reacting. Only one goal is before your eyes. "How can I get through!"

"Maybe I can find some solidity in Property class," you hope. This class is different from the others. A charming woman with a fine sense of humor is the teacher. "This is what the principle of law is," she says. "But on the other hand . . . ."

"Here we are again," you think, "It is always, 'On the other hand,' or so it would seem."

It takes a while to get used to the idea that there is not necessarily a contradiction when one abstract principle is taken from its particular factual situation and opposed to another similarly abstracted principle. This is not so bad. But in many cases there are actual conflicting principles. Its hard to eventually realize that more often than not there is not going to be "the answer".

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Presentation Ceremony

LIBRARY GIFT: (L-R) Professore Richard Rank, Law Librarian, Dean Dibble, Roderick H. Rose, president of Bancroft-Whitney Co., Associate Dean Tevis at the presentation ceremony of the California Integrated Law Library from the Bancroft-Whitney Company.

Loyola University Law School, since the start of the fall term housed in its new quarters at 9th and Valencia Streets, on November 19 received from Bancroft-Whitney Co., law book publishers, gift of a California Integrated Law Library valued at $6,000.

Presentation of the Library was made by Roderick H. Rose, president of Bancroft-Whitney Co., during a ceremony in the law library on the second floor of the new building. Representing the university were Law School Dean J. Rex Dibble, Associate Dean Lloyd Tevis, and Richard Rank, law librarian.

"The California Integrated Law Library," Mr. Rose explained, "consists of 13 separate professional legal publications in 600 volumes, cross-indexed and interrelated to enable the student to conserve time and effort in pursuing legal research."

"Purpose of the gift," Mr. Rose said, "is to make it possible for law students, through usage, to become familiar with the working tools they will need when they enter the practice of law."

In accepting the volumes for Loyola Law Library, Dean Dibble expressed his thanks on behalf of the students and university.

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VARIABLE ANNUITIES

By

FRANK B. MYERS

Variable Annuities Life Insurance Company of America (VALIC) filed its application to do business as an insurance company in California, July 20, 1960. The application and the proceedings that followed are the only contacts California has had with the variable annuity type policy. Because variable annuities present such a new innovation in investment insurance, it has raised several significant legal problems.

Many states, California included, regulate the sale of securities and the issuance of insurance policies under different statutes and provide for separate regulatory agencies to administer each statute. The variable annuity, being a hybrid form of insurance, falls in between the traditional definitions of securities and insurance contracts. This presents the problems of which agency will regulate variable annuities and under which laws they will be regulated.

The traditional fixed dollar annuity provides that the annuant pay premiums to the company and upon reaching a certain age, or upon the happening of an event, the company begins paying back to the annuant a fixed amount at regular intervals for the rest of his life. Inflation or the rise in cost of living is the major drawback to the fixed dollar annuity.. The real income of the annuant may turn out to be significantly lower than what he bargained for at the time he took out the policy.

The variable annuity is designed to remedy this problem. Under this type of policy the insurance company invests all the premiums paid in on variable annuity contracts in common stocks. Instead of receiving fixed amounts on maturity, the annuant's income varies according to the productivity of the investments. Productivity is measured by dividents on the stocks and market fluctuations. Assuming that inflation or a rise in cost of living accompanies higher stock dividends and a rise in the market, the annuant should receive approximately the same income, in real terms, as he bargained for on taking out the policy.

While the variable annuity has advantages, it carries with it a corresponding disadvantage. In exchange for the opportunity to share in a rising market, the annuant takes the risk of receiving nothing at all. Should the dividend payments diminish or should the stock market fall, the annuity payments will decrease correspondingly.

In result, the variable annuity has many of the incidents of a mutual fund. The annuant, not the insurance company, takes all the investment risks. nevertheless, it retains some of the incidents of an insurance contract. The company takes the risk of miscalculating mortality predictions in computing benefits. In this respect it acts as a normal insurance contract. It is because of this dual nature that the problem of classification have arisen.

Several companies now offer the variable annuity insurance contracts. VALIC, however, was the first company to do any substantial business in this field and has more or less set the trend. For purposes of analysis VALIC's contract will be used as representative of the total industry, first, because most of the legal problems thus far have involved VALIC, and second, because little information is available on the others.

VALIC is incorporated in Washington, D. C. and is licensed to do business in 19 states. All but 8 of these allow it to write variable annuities. From the date of its incorporation until November 27, 1961, VALIC issued only variable retirement annuities, life insurance, and disability insurance in combination. By virtue of certain charter amendments which became effective on that date, the company now also writes insurance independently of its variable annuity contracts. Nevertheless, VALIC deals primarily in variable annunfties and has developed a nationwide reputation for being the pioneer in this field.

Several large companies, Prudential for example, plan to write variable annuities in the future as a supplement to their regular policies. It is expected that these policies will provide for a minimum benefit payment and thus be less risky to the annuant. A later discussion shows that if the annuant is guaranteed at least a minimum monthly payment the courts may find it far easier to call the variable annuity an insurance contract rather than a mutual fund type security. This could have substantial effect on the regulatory scheme in a given state.

Securities and Exchange Commission v. Variable Annuities Life Insurance Company of America, (1959) 359 U.S. 65, settled the federal question on the regulation of variable annuity contracts. The SEC sought to enjoin VALIC's sales activities until that company complied with he Securities Act of 1933, requiring full disclosure of risk before sale can be made, and the Investment Company Act of 1940, giving the SEC regulatory authority over investment companies. VALIC claimed it was exempt from SEC regulation on three grounds:

(1) The Securities Act exempts "annuities" and "insurance" contracts issued by a corporation subject to the regulation of any state.

(2) The Investment Company Act exempts any company "organized as an insurance company whose primary and predominant business activity is the writing of insurance."

(3) The saving cause in the McCarran-Ferguson Act which essentially leaves regulation of insurance to the states.

The court held that VALIC's variable annuity contract was not a contract of insurance nor an annuity under the above laws and as a result, was subject to the SEC's regulation. The court pointed out that the earmark of insurance is the true underwriting of risk. Since there is no guaranteed minimum benefit payment and since the benefits vary according to the investment policy of the company, the investment risk is born by the annuant and not by the company. Justice Douglas writing for the court recognized that the annuities did have some of the traditional insurance principles, but considered these superficial. He focused on the fact that VALIC took absolutely no investment risk. At least as to VALIC's present variable annuity policy, it is not a contract of insurance under federal law.

The opinion indicates that the states may continue to regulate variable annuities even though they are subject to the regulation of the SEC. Douglas's pointed recognition of the insurance features, though not expressly stated, seems to imply that the variable annuity is still "insurance" under the McCarran-Ferguson Act. In other words, with respect to the powers of the SEC it is a security. With respect to the McCarren-Ferguson Act and state regulation, it is insurance. Naturally, each state is left to classify these contracts as they wish.

VALIC filed its application for admission to California as an insurance company July 20, 1960. August 15, 1962, VALIC supplemented the application with a statement that it would not sell variable annuities in California unless the Insurance Commissioner issued an additional permit, and that until this permit was issued it would deal solely in the traditional insurance contracts and fixed dollar annuities. April 18, 1963, the Insurance Commissioner filed a statement of issues pursuant to the Administrative Procedure Act which was essentially a denial of the application. Three reasons were given for the denial of the permit:

(1) Insurance Code section 700 prohibits any person from transacting any class of insurance unless he has been ad-

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mitted for such class. Life insurance is one of the classes and as defined in Section 101 includes ". . . insurance upon the lives of persons . . . (and) annuities." The commissioner cannot issue a life insurance permit and limit its coverage to only fixed dollar annuities and life insurance policies. If admitted under section 101, VALIC would be able to deal in all classes of insurance named in that section which presumably includes variable annuities. Note that the Commisioner assumes the word "annuity" in section 101 includes variable annuities. If his interpretation is correct and contrary to Justice Douglas's interpretation of the federal statutes, then California is unable to follow the eight states that have admitted VALIC but limited the admission to fixed dollar annuities.

(2) VALIC has developed a nationwide reputation as a seller of variable annuities. Assuming that VALIC did not sell variable annuities if admitted in California, the intrinsically misleading name of VALIC would enable local insurance brokers and agents to misrepresent the terms of the policy in violation of Insurance Code, Section 780. Persons would think they were buying a variable annuity when really they would be getting a fixed annuity. Misrepresentation based upon the reputation of VALIC are grounds for suspension of the permit under Sections 783.5 and 704, and constitute grounds for denying a permit.

This argument is adequate to exclude VALIC from California but wouldn't work against a company that didn't have such a reputation. For example, if Prudential were to begin issuing variable annuities, the public wouldn't be misled. Prudential has no such nationwide reputation. If variable annuities are to be excluded from California, it must be on other grounds.

(3) Assuming again that VALIC wouldn't sell variable annuities in California, its national reputation would tend to create an erroneous public impression that it was selling variable annuities while in fact it would be selling only the traditional policies. The resulting deception would be an act of "unfair competition" under Section 790.03 which prohibits the making or circulation of any statement misrepresenting the terms of a policy. VALIC's name and reputation alone is such a misrepresentation since the public would think that VALIC was offering variable annuities and tend to take its business there when, in fact, VALIC would be offering no more, and possibly less, than its competitors.

Again, this argument is adequate to exclude VALIC from California but is limited to companies with nationwide reputations for variable annuities. At this point there is only one company with this reputation and that is VALIC.

(4) Section 10431 provides that a company which as an inducement to insurance issues securities along with life insurance policies in any State will not be admitted. The commissioner now argues that VALIC's variable annuity contract constitutes the sale of a security and that the sale of this type of policy "in the several states of the United States . . . necessarily constitutes a violation of said section 10431 in that securities or contracts promising return as profits are thereby issued as an inducement to insurance." Assuming that a variable annuity is a security under California law, then VALIC can be excluded from California since it sells as a package deal life insurance, disability insurance and a variable annuity in at least 11 states. This is the Commissioner's strongest argument.

In summary, the Commissioner first argues that if he were to admit VALIC to California, he couldn't prevent it from selling variable annuities. Then, by relying on VALIC's nationwide reputation, he argues that even if VALIC were to refrain from selling variable annuities in California, its name would work a fraud on purchasers and would create a situation of unfair competition. Finally, he argues that since VALIC sells variable annuities in conjunction with life insurance policies in 11 other states, and since a variable annuity is a security under California law, he is prohibited from admitting it under Section 10431.

The real crux of the problem as far as a general discussion of variable annuities in California is concerned lies in the first and fourth arguments. The second and third arguments rely solely on VALIC's nationwide reputation and would become moot questions should one of the large well established insurance companies wish to deal in variable annuities.

Essentially, regulation of variable annuities in California turns upon whether they are contracts of insurance, or securities, or both (as was the holding in the **SEC V. VALIC** case). If a variable annuity is a security, first, no company can sell them in conjunction with other types of insurance anywhere in the U.S., and second, there is a real problem as to whether they are subject to the regulation of the Insurance Commissioner or the Division of Corporations, or both. On the other hand, if they are not securities and are merely normal insurance contracts, any company now admitted to California could begin writing these policies immediately without any additional restrictions. These problems are merely anticipatory and no attempt is made to resolve forever all the legal issues that variable annuities could raise under the California regulatory statutes. It appears, however, that the resolution of these issues will determine what additional questions will arise in the future.

Insurance Code Section 821 and 821.5 defines a security subject to the regulation of the Insurance Commissioner. With a few minor exceptions, this definition and the definition of a security found in the Corporate securities law are the same (CF; Corp. Code Sec. 25100) **Silver Hills Country Club v. Sobieski,** 55 Cal. 2d 811 (1961) announced the most recent and somewhat broadened definition of a security. The test is whether capital is risked in exchange for a fair opportunity to receive a return on the investment. The form of the return expressly makes no difference. Under this definition a variable annuity is a security. The annuant pays premiums in hope of receiving a return on this investment. He has only a fair opportunity to receive benefit payments since he is guaranteed nothing. The problem, however, comes from subsection (d) of Section 821 expressly exempting "policies of insurance issued by an insurer."

In the SEC v. VALIC case the Supreme Court held that even though "annuity" and "insurance" contracts were expressly exempt from SEC regulation, the SEC had power to regulate the issuance of variable annuities. Douglas said that VALIC's policy was not "insurance" in the traditional sense because the annuant took all of the investment risk. Though California isn't bound to the Supreme Court's interpretation of federal statutes, the reasoning is very persuasive. The liberal definition of a "security" in the Silver Hills case evidences a trend towards increased regulation of business activities not unlike the U.S. Supreme Court's trend in the same direction. Moreover, because the McCarren-Ferguson Act has left regulation of insurance to the states, a state insurance statute should be read in its broadest possible sense. To read it otherwise would imply that the state's attitude towards insurance is completely "hands off," both at the state and federal levels. It would take more than courage to argue that this is the attitude of the fastest growing state in the nation.

In light of the foregoing considerations the California Supreme Court most assuredly would hold that a variable annuity is a "security" under Section 821. Specifically, subsection (d) exempting "policies of insurance issued by an insurer" would be inapplicable since a variable annuity is not insurance.

What would be the short run effects of this holding? First, before selling variable annuities an insurance company

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HOW TO AVOID BEING EXPOSED

Various devices have been created by unprepared students in an effort to avoid being "exposed." While these methods are constantly changing and being refined, the Digest (as a public service) lists some of last years most popular answers.

BOOK SHUFFLING: Immediately after you have been called on, begin to furiously shuffle your books around, eventually coming up with a case book for another class. This will evoke some amount of understanding from the professor who, by the way, has frequently come to class armed with the wrong lecture anyway.

COUGHING SPASMS: The spontaneous outburst of coughing and hacking at the sound of your name not only will make the instructor pass you up but it may spread sufficient germs to make the rest of the class sick before final time.

STALLING: If you're called on within the last fifteen minutes, ask a question about the last case and hope that some of your daydreaming classmates may realize your dilemma and carry the discussion until the bell rings.

CONFUSION APPROACH: After the question has been asked and your name called, ask the instructor why he has decided to review a question he so thoroughly and clearly covered the day before. Then volunteer to review the subject for him. If he tells you to do that, you're dead!

OMIT: Tell the instructor that the case was marked "omit" in your book. This will indicate two things:

First: That you did the assignment.

Second: That You're an impoverished student working your way through school and using second-hand textbooks.

HANDKERCHIEF: If you are really desperate, shortly after standing raise a red-stained handkerchief to your nose and ask to be excused.

Blackstones Commentaries

The author of Blackstone's Commentaries is spending the Christmas Season attending to pressing business in the East. The column will be resumed in the next issue.

Practicalities Of Private Practice Panel

The first of two Saturday seminars for the graduating students of the Day and Night Division was held at the school Saturday morning, November 21.

The purpose of these seminars was to inform the students of the various aspects of private and government practice and to assist them in deciding on the kind of practice and the type of firm that they would prefer.

Participating on the panel were: George F. Elmendorf, of O'Melveny & Myers, representing a large firm; Mark P. Robinson, of Vaughan, Bradlin, Robinson & Roemer, representing a medium-sized firm, Frank E. Gray, of Gray & Maddox, representing a small firm; Landon Morris, representing the lawyer practicing for his own account; Stephen W. Edwards, of Hutton & Edwards, representing a firm in a small but prospering outlying community (Colton); and Roger Donaldson, Chief Counsel for Lockheed Aircraft, representing corporate counsel. Assistant Dean Clara Kauffmann arranged for and conducted the panel.

The panel members discussed the broad practicalities of private practice from the viewpoint of the type of firm that they are associated with. Each described what the neophyte lawyer may expect to experience in his particular type of firm or practice including: the kind of work he would be doing during the first years and what he may expect to be doing the ensuing years; starting salary, bonuses and later salary; how much trial and appellate work he would have; to what degree he would be required to specialize in a particular area; what the opportunities for advancement would be; and the hours he would be working.

The second seminar, the panel on the "Practicalities of Government Practice" was held on Saturday, December 12, at the Law School.

Lawyers participating on this panel were: Manuel L. Real, the United States Attorney, representing the United States Attorney's Office, Southern District of California; Charles E. Corker, Assistant Attorney General, repресnting the California Attorney General's office; Jer-

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VARIABLE ANNUITIES IN CALIFORNIA

(Continued from page 5)

would have to obtain a securities permit in exactly the same manner it would have to get a permit to sell its own equity securities. Likewise, a variable annuity could not be sold along with any other type of insurance anywhere in the U.S. since this would violate Section 10430 prohibiting the sale of a security as an inducement to the sale of insurance. And finally, if a variable annuity is a security, companies now admitted to California would have to await a chance in the law before they could sell these policies freely in California.

This is not to say, however, that all variable annuities are non-exempt securities. Should a company like Prudential issue a variable annuity that guarantees at least a minimum monthly return to the annuant, the logic of the court in **SEC v. VALIC** would not apply. The company would be taking some of the investment risk. Moving the policy closer to insurance and further from a security. Even though the policy would be a "security" under Section 820.5, it would be exempt under Section 820 as a "policy of insurance issued by an insurer." If so, a company issuing a variable annuity policy in which it takes at least some of the investment risk would be allowed to sell variable annuities without having to get a permit. In addition, this type of policy could be sold in conjunction with life insurance and not violate Section 10430. Any admitted insurance company could begin to sell minimum benefit variable annuities immediately, without any additional regulatory restrictions.

The only remaining question is the effect of the above conclusions on the Division of Corporations. General jurisdiction over the regulation of securities is in the Division of Corporations. Nevertheless, Corporations Code Section 25100 expressly exempts from its jurisdiction any security issued by a company organized for the purpose of transacting an insurance business, the issuance of which is subject to authorization by the Insurance Commissioner. The question then becomes, how far does the Insurance Commissioner's jurisdiction extend?

The Insurance Commissioner regulates all securities issued by an "insurer" (Section 827). An "'insurer' includes every business organization organized for the purpose of assuming the risk of loss under contracts of insurance" (Section 826). As was seen above and in the SEC v. VALIC case, the VALIC type policy is not a contract of insurance. As a result, a company that deals exclusively in the VALIC type variable annuities would not be an "insurer". Since it isn't an "insurer", it isn't within the Insurance Commissioner's jurisdiction and must be under the Corporations Commissioner.

The problem with this logic, however, is that no company in the U.S. exclusively issues VALIC type variable annuities. Even VALIC sells traditional life insurance policies in 19 states. If a company is organized to sell insurance, even though it also sells variable annuities, it is an "insurer" under Section 826 and all securities it issues, including variable annuities, are under the Insurance Commissioner's jurisdiction. Likewise, if a company issues a minimum benefit variable annuity and nothing else, jurisdiction remains in the Insurance Commissioner. Since this policy is still a contract of insurance its issuer is an insurance company. If it's an insurance company, all securities it issues are expressly outside the jurisdiction of the Division of Corporations.

In result, when a company deals exclusively in VALIC type variable annuities and sells nothing else that could be called a "contract of insurance," then the Corporations Commissioner could argue that he has jurisdiction. If, however, the company sells actual contracts of insurance along with the variable annuities, or issues a minimum benefit variable annuity, as Prudential plans to do, it would be an "insurer" and under the Insurance Commissioner jurisdiction. Under these circumstances, it is doubtful whether the Division of

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LOYOLA WINS REGIONAL
(Continued from page 1)

However the moot court team also acknowledges that Battaglia, Bovee and Sargent have invested heavily with their own time and effort hoping to fittingly represent Loyola University School of Law. The repayment of this investment will be accomplished by an end to self abnegation. Hopefully, the response of the Student Body will be a recognition, or a re-evaluation of Loyola's rightful place in legal circles. A growing number of students are recognizing that Loyola's education is as good as anything on the West Coast. A growing per cent of the Student Body is becoming aware that Loyola's victories in intermural competition are not startling.

Loyola has a fine new school and a fine old reputation. All that remains is a psychological recrudescence.

OPEN HOUSE
(Continued from page 1)

of the guests were amazed at the size of the new library and classrooms. The present library has facilities to house over one-hundred thousand books. One room located directly behind the reserve book section has been reserved for only rare books. This room will also house rare books and the desk of the first United States Senator from California, Stephen White. The new school is also equipped with a microfilm room and a small chapel which was opened last week.

Immediately following the tour of the new law school the guests were all invited to join in a social gathering in the library. There they met old classmates and reminisced over old times.

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P.A.D. PRACTICE EXAMS
(Continued from page 3)

This lack of solidity does not mitigate your fears, and adds to your frustrations. You will learn to live with it.

The last class that you will take is taught by the only Jesuit priest on the teaching staff that I know of. Most probably you know Father Vachon.

"Will he be a haven?" You hope that he will. But like the other professors he does not seem to give much solidity and substance to what is taught. He is perhaps the most unreasonable of all the professors from your point of view. "Think," he begins. Since thinking is difficult and does not come easy, you try to duck his question. "Reason," he hammers.

"Wouldn't you like to give me the answer, Father," you reply.

"No", he says, "You have a mind; use it!"

Where does the Phi Alpha Delta legal fraternity fit in? You can see what the first year law student is faced with. It is the purpose of our program to render what we can by way of counsel, assistance, and encouragement. But unlike the onlooker of the puppy's plight, we can not jump in and take the examination. It is at this point that the analogy stops. In short, this means that we can not promise success.

There are things we can do. We can simulate what he will have to face by way of practice examination. This will mean that the first year law student will not be facing a totally unknown situation. He will see the types of questions that he will be presented. He will hear in seminar the methodology of putting together a presentable answer against which he may check his own attempt.

We certainly do not pretend to attempt to teach any law, for that is his job and his professor's job. We can counsel him as to a good method of taking his examinations.

If we can succeed in rendering the awsome unknown a little less so, we will have performed one goal. If we can by encouragement and training bolster the confidence of the examinee, we will have performed another goal. If the ultimate result is that the examinee passes, our final goal has been reached.

Our program is vitally important this year. The reason is that last year the P.A.D. practice seminar and examination was in addition to and supplimental to practice examinations offered by each professor. Possibly because of the increased enrollment, the school administration has decided to discontinue the official practice examination. This means that without our program, a first year law student would be left totally on his own.

Last year we were very successful, for we only lost one pledge out of all who applied for membership. We attribute this to the practice examinations. This year we hope to do even better.

PDP SEMINAR PROGRAM

Phi Delta Phi has begun its annual Seminar Program for freshmen. Under the guidance of Scholastic Chairman Bob Charbonneau, moderators who achieved top grades in the subjects are leading by-weekly review sessions. At the end of the review period a written exam will be given in each course. These will be returned corrected to the participants along with pertinent constructive criticism.

The purpose of this program is to give neophyte students exposure to the hazards and pitfalls of law school exams, develop their analytical skills and offer pertinent suggestions in problem areas.

The need for such guidance has been reinforced by discontinuance of the first year practice exam program by the school. As a result this will be the only testing that the freshmen will encounter prior to the real thing this January.

Moderators for this years program are: Bob Chabonneau—Torts, Tim Sargent—Contracts, Joe Battaglia—Legal Method and Jim Waldorf—Property.

LAW CLERKS— Then and Now

The position of a law clerk today connotes an opportunity for a law student to obtain some inside law office experience, a notch below the actual practice of law before completion of his formal legal education.

Properly utilized the opportunity gives the student an informative practical basis for making later important decisions as to the type and place of professional practice.

The position didnot always present the opportunity, challenge and glamour that it does today. In the mid 19th century the job was little better than that of a male secretary-office boy.

English law clerks came from diversified social, educational and economic backgrounds, excluding only the sons of the aristocracy and the landed gentry.

The first and perhaps most important step for the novice was the proper choice of a solicitor. In most cases, a solicitor living either in the community or the county of the clerk was chosen. Most clerks paid a fee for their instruction, dependent upon the area chosen and the demand for clerks. Illustrative, **The Law Advertiser** in 1825 stated that: "Board and lodging will not be provided and as the opportunity of gaining knowledge of the Profession are considerable a liberal premium will be expected."

(Continued on page 8)

Test Your Knowledge

Which least belongs in its category?

(1) a. Goldwater
b. Johnson
c. Yorty
d. Miller
e. Humphrey

(2) a. Rape
b. Sodomy
c. Libel
d. Adultery

(3) a. Gilbert
b. Zionitz
c. Playboy
d. CBRC

(4) a. Phil Siracuse
b. Ron Tucker
c. Janet Chubb
d. Bill McAdam

(5) a. National Review
b. New York Times
c. Loyola Digest
d. Time

(Answers on page 8

LAW CLERKS—
Then and Now
(Continued from page 7)

As most articled clerks received their articles in their respective communities, a proviso was often attached to the articling contract. This clause made provision for the clerk to spend his final year in London. For example, Richard Wilcocks of Exter agreed to find for John Acland " . . . lodging at or near Clements Inn at his own expense and pay him 6x. a week so long as he does not mispend his time." Wilcocks charged Acland a premium of L15 10s. The L15 10s must have been earmarked for a weekly allowance of six shilling while he was in London.

As most clerks came from the counties, they were the products of local schools. In many instances, these schools were operated by the village parson. In areas where there were a large number of dissenters, private societies often established dissenters schools. Here students were given instruction in the Bible, reading, writing, arithmetic and sometimes geography. The vast majority of articled clerks came from schools whose standards were like those of Dotheboys Hall in Charles Dicken's **Nicolas Nickelby.** The standards of these schools were low and the curriculum was narrowly constructed. It included classics, reading, writing, arithmetic. Occasionally, geography and history were taught. A few clerks came from the great public schools of Eton and Harrow. Such schools adopted an equally rigid system: Greek and Latin were the basis of academic study.

Most students left school at fifteen or sixteen and immediately entered into their articles. Parents were primarily responsible for their sons leaving school at such an early age. Most desired them to complete their apprenticeship by the age of twenty-one. One of the best known Victorian writers, Charles Dickens, was an excellent example. At fifteen he was articled to an attorney by the name of Mobley and later to the office of Ellis and Blackmore of Grays Inn. Here he earned approximately fifteen shillings a week.

The clerk's work was hard and tedious. He was not well paid. In most offices, the clerk's day began at nine o'clock and ended, sometimes as late as eight at night. Except what he learned in his Master's office, he had little opportunity of widening his knowledge of the law. Most of his day was spent copying all types of documents. Occasionally, he was sent on errands. At such times, it was not uncommon to find him examining abstracts of deeds, questioning judges or lugging books and briefs to Westminster Hall. All Solicitors who specialized in chanery proceedings often employed a "clerk in court". Usually, they had small offices in Chancery Lane where they did copy work. They were paid by the solicitor instructing them and many of them received sizable salaries. In 1842, this office was abolished.

Most clerks were paid approximately twenty shillings a week. However, a distinction must be made between the copying clerks called indoor clerks, and the outdoor clerks. The latter was generally more experienced and in some instances could have been a clerk in court. These clerks were paid approximately twenty-five shillings a week. All salaries were not established on a weekly basis, as some were a lump sum agreement made at the time of articling.

VARIABLE ANNUITIES IN CALIFORNIA
(Continued from page 6)

Corporations will have jurisdiction over any variable annuities.

California needs variable annuities. The need is greater here than in any other state. Thousands each month emigrate from the Eastern and Widwestern cold seeking a glimpse of the sun, secure jobs, higher wages, and a nice place to retire. The industrial boom and accelerating housing costs, however, have made California probably the most sensitive spot in the country to inflation. Seeking a supplemental retirement income the purchaser of a fixed dollar annuity must gamble that what he lays out today in premiums will be at least close to the value of what he gets on retirement. He could be wasting his money. Variable annuities are designed with this man in mind.

The problem, however, is that when the Insurance Code was written, no one thought about variable annuities. Under the present state of the law the large companies won't be willing to spend what it would cost to test the courts, and VALIC has already been rejected. What we need is a change in the Insurance Code. A few constructive suggestions might help.

First, Sec. 821 should be amended so that a variable annuity expressly is not a "security." This would enable a company to issue variable annuities without the added requirement of obtaining a securities permit from the Insurance Commissioner. The variable annuity would then have the same status as any other insurance policy. This would also enable a company to sell variable annuities in other states along with regular insurance polities and not violate Sec. 10431. Secondly, a variable annuity should be made a class of insurance in itself. In this way the Insurance Commissioner could prohibit certain companies from selling them without excluding the company all together. This new area of insurance could then be closely scrutinized without an undue detriment to the purchasing public. Thirdly, to be on the conservative side the legislature could require a minimum benefit payment so that if the economy crashed the annuant would have at least something to fall back on.

The need for variable annuities is here and the above suggestions are not meant to be exclusive. Nevertheless, some steps should be taken in this area so that the laws of California correspond to the changing needs of Californians.

Answers To Test Your Knowledge

(1) c. Yorty — He runs for everything.

(2) c. Libel—This is a tort.

(3) c. Playboy—Not complete enough for review.

(4) d. Bill McAdam—He's a transfer student.

(5) b. New York Times—It's a daily.

PRACTICALITIES OF PRIVATE PRACTICE PANEL
(Continued from page 6)

ald S. Schutzbank, Chief Assistant Commissioner, representing the California Corporation Commissioner's office; David D. Mix, Assistant County Counsel, representing the Los Angeles County Counsel's office; Richard S. Buckley, Chief Deputy Public Defender, representing the Los Angeles County Public Defender's office; Weldon L. Weber, Executive Assistant City Attorney, representing the Los Angeles City Attorney's office.

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