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## Voyage of Discovery: The McKelvey Deanship: 1974-1981

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# Voyage *of* Discovery

The History of Golden Gate University  
Volume III, 1970-1992

President Emeritus Otto W. Butz and Velia Butz  
with Nisa Donnelly

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more to advance women, either in legal education or in the practice of law than Judy McKelvey,” stated Drucilla Ramey, executive director of the Bar Association of San Francisco. Among McKelvey’s trailblazing was being only the second woman to be elected president of BASE. She also was one of the founders and one of the first presidents of the California Women Lawyer’s Association. “Judy had a sophisticated political savvy and decisiveness about where we should be going that advanced all of us.”<sup>46</sup> As another former dean observed, “She broke through glass ceilings long before anyone ever used that term.”<sup>47</sup>

### **The McKelvey Deanship: 1974-1981**

A few weeks into the fall 1973 term, Lani Bader announced that he would be stepping down as dean and returning to the faculty by the following September. He went on to spend the next thirty-three years at the school before retiring at the end of the spring 2006 term and was lauded on the occasion of his retirement as one of the school’s “most beloved and influential professors and administrators.”<sup>48</sup>

“As a result of Dean Bader’s creative leadership, working with our Board of Trustees, administrative staff, faculty, and students, the Golden Gate School of Law has established itself in the forefront of California law schools,” read the president’s official announcement of Bader’s decision.<sup>49</sup> Under Bader, the ABA had approved the Law School at last; the full-time faculty was at an all-time high of sixteen; scores on the bar exam were greatly improved; and the library had tripled its holdings. It was attracting an unprecedented number of applicants, with an average 4,000 students competing for the 250 openings in the first-year class. Also, the grade point averages and LSAT scores of incoming students had risen dramatically. And in response to the school’s aggressive recruiting campaign, 40 percent of the law students were women, and half of all the students came from schools outside California. “In all these achievements, Dean Bader’s dedication, initiative, and skill as an administrator have played a pivotal role.”

The president called Bader’s decision “a serious loss to our Law

School, to the central decision-making team of the university, and to me personally.” The two had worked closely on Law School issues since Butz’s arrival, and while the school was doubtless in a better position in 1973 than it had been three years earlier, there were still challenges ahead. The Law School would soon hire a consultant to determine the feasibility of applying to the AALS, which would likely mean another hefty investment of time and funds, but upon which the school’s very survival depended.

Late into the holiday season, résumés from law schools around the country arrived at 536 Mission Street. Thirty-one applications for the deanship were considered and eight applicants interviewed by the hiring committee of which Pagano was a member. “The committee was a disparate group composed of two law faculty members, an outspoken student, an alumna, two strong-willed trustees, and Otto,” Pagano remembered.<sup>50</sup> “Because of Otto’s leadership, our meetings were conducted in a spirit of mutual respect, and our differences seemed to fade away. After many interviews and countless meetings—several on Saturdays when Otto would run out to Foster’s Cafeteria and bring back a bag of tuna melts for lunch—we all came to the same conclusion: Professor Judy McKelvey would make a fine dean. In retrospect, I am sure Otto had decided on Judy before the committee, but he patiently guided us until each member reached the same conclusion. He always governed by consensus, but somehow the consensus almost always reflected his views.”

Dean McKelvey was confirmed by the trustees at their February 1974 meeting. She was just forty years old. The new dean had started teaching at Golden Gate in 1968 and had first met Otto Butz when he was on campus interviewing for the president’s job; she and Bader represented the Law School faculty. The dean and president mutually respected and admired each other’s commitment to take the university and its law school to the next level. For McKelvey that meant Association of American Law Schools (AALS) accreditation.

Within the month, the consultant reported that the Law School

appeared to meet the membership criteria and that a visit by the AALS accreditors would be scheduled for the coming year. However, the report cautioned, the university must first develop a costing system that would specify the contributions the Law School should make to the university; immediately commit to upgrading the Law Library; and develop a statement of intent regarding “an adequate physical plant for the Law School.”<sup>51</sup> The Law Library was a significant hurdle: shelving was inadequate; the entire facility met neither the minimum space requirements for either the ABA or the AALS, and it was in rented space with a lease that would expire in 1978—a year before the new building that was being planned could be occupied. However, the new Law Library was being developed in conformance with ABA and AALS accreditation requirements, and accreditors often accepted projects that were under construction.

The student-faculty ratio was also in question. In fall 1974, the ratio of full-time faculty to students was one to forty-eight, or one to thirty-four if the part-time faculty was factored in. The ABA’s suggested maximum was one to thirty-five. Golden Gate was at the bottom limit, even with the adjuncts. The board approved two new faculty positions.

Early winter found the AALS accreditors visiting the school for three days. They cited two major weaknesses, both anticipated. There simply was not enough space, and there were not enough professors.

### **Scaling another Accreditation Hurdle**

Membership in the Association of American Law Schools was essential. Without it, Golden Gate Law graduates would be unable to enroll in advanced law-degree programs, which were becoming increasingly important. “The LL.M. times were beginning, and without AALS accreditation our graduates could not go anywhere; they would not be accepted in almost any other ABA-approved law school in the United States. So even though we had ABA approval, we also had to become part of AALS because only then can you say ‘fully accredited.’”

It's critical for students who wanted to do graduate work," McKelvey recalled.<sup>52</sup> Or, as Bader observed, "If you wanted to play with the big boys, you had to be a big boy."<sup>53</sup>

The venerable AALS defines itself as "the principal representative of legal education to the federal government, other national higher education organizations, learned societies, and international law schools."<sup>54</sup> Membership is voluntary and highly selective. "Though I was well aware of Otto's striving for excellence, I had great trepidation when, during the first month of my deanship, I presented a proposal to seek the extremely difficult-to-get membership in AALS," McKelvey explained.<sup>55</sup> "The process would be costly and take years because the Law School would have to make significant changes to meet the AALS standards. I came to the meeting anticipating a 'no' or a difficult campaign. About twenty minutes into the presentation, he said, 'We'll do it. Golden Gate should have a truly great law school.'"

The Law School continued to grow and to refine itself, adding more faculty and library holdings. It was making plans for its facilities on the new campus which was well underway by 1978 when the AALS visiting committee declared that the school had "more than complied with previous (AALS) recommendations and exceeds the requirements for acceptance." Even so, AALS delayed approval pending completion of the new building. The examiners were scheduled to visit in September 1979 to determine if the new facilities met their requirements. They did, and at the association's meeting in January 1980, the Golden Gate Law School was finally admitted to AALS. When McKelvey made the announcement at the January meeting of the trustees, it was greeted with applause. It had taken seven years, but at last the Law School could add "fully accredited" to its credentials. Looking back, McKelvey believes that getting AALS accreditation was her most important contribution to the Law School.

### **The Trustees Take an Inside Look**

Although the Board of Trustees had on its books a Law School

Council, the group had not met for several years. Not long before the start of the fall 1977 term, the president called for it to be reactivated, "in view of our continuing progress in strengthening the Law School and in view of the Law School's importance in the life of the university."<sup>56</sup> The group, renamed the Law School Committee, would meet three times a year to review the Law School's academic and financial operations, and provide assistance in "furthering the Law School's progress in the context of the university and the larger community." There was no shortage of lawyers among the trustees, and several were appointed to the new committee, along with the president, the law dean, and the university's vice president for finance and administration. There was no comparable committee for the specific business or public administration schools, although the board's Education Committee was quite active, and the various programs had advisory committees that sometimes also included trustees as members.

Initially, the Law School Committee weighed in on tuition increases and proposals, including endorsing an idea to establish a Law School Student Research service for lawyers in California, and also Nevada and Alaska, which at the time had no law school. While that program generated only modest returns, it provided students with research experience and was designed to be especially useful to small firms and individuals who practiced in remote, rural areas. The service was among the first half dozen programs of its kind in the country.

Then in 1979, the committee conducted an extensive evaluation of the Law School, much as a visiting committee of examiners would—meeting with students, administrators, and faculty. The Law School was doing well, the committee concluded. "The Law School is a good school. It is not fully recognized to be as good as it is, but recognition has grown, partly because of special programs which have attracted wide interest."<sup>57</sup> Doubtless one of those special programs was the new LL.M. in Taxation that had been recently approved.<sup>58</sup> "Improvement in the quality of the school during the last five or six years may be attributed to a better faculty, better students admitted, and better

facilities, including the library.”

Striving to meet accreditation standards had definitely enhanced the Law Library, which had grown from 30,000 volumes to nearly 100,000 during the decade. Library staff had increased as well from the one sole librarian employed at the start of the decade to nine by 1979. The Law Library also had been recently designated as a state depository and a federal depository. The committee called the collections on urban law and the collections in tax the library’s “principal strengths” and lauded the “splendid collection of British and American periodicals made possible by gifts in memory of Carol Holmquist Drexler and Barbara Carpenter Crossitt.”

Although the stampede to the nation’s law schools had slowed, Golden Gate still had a respectable number of applicants, but in 1979 one out of eight was being accepted, compared to the one out of sixteen a few years earlier. The quality of the entering students, based on grade point averages and LSAT scores, seemed to be about the same. New graduates had been doing consistently well on the bar examinations, with two-thirds to three-quarters of the students passing on their first attempt at the exam. Consistently, the scores were higher than the statewide average for the remainder of the decade: 72 percent in 1974, compared with 62 percent statewide; 78 percent in 1975, compared with nearly 61 percent statewide; nearly 78 percent again in 1976, compared with 59 percent statewide; 72 percent in 1977, compared with 53 percent statewide; 66 percent in 1978, compared with 51 percent statewide; and 56 percent in 1979, compared with 52 percent statewide.<sup>59</sup>

While the committee acknowledged that the bar pass rate could likely be improved by tightening admissions policies to deny admission to the lower quintile of applicants, the committee concluded that such action would “adversely affect minorities and the disadvantaged.” Because nearly all the GGU Law graduates passed the bar examinations on the second effort, they finally decided against altering admission policies. Besides, some 80 percent of the GGU Law graduates who had passed the California bar exam were working as attorneys.

Tuition, though, was another challenge entirely. By 1979, students were paying \$121 a unit or roughly \$3,400 a year to attend the Law School. And while Golden Gate tuition was twice as high as at Hastings and Boalt Hall, which were both state-supported, it was still lower than what was being charged at most of California's other independent accredited law schools. A year later, a 25 percent hike in Law School tuition was proposed, compared to a 13 percent increase throughout the rest of the university. Most of the annual tuition hikes that began in 1974 had gone to fund the improvements demanded by first the ABA and then the AALS, especially increasing the size and salaries of the faculty, and enhancing the library. Now that the new portion of the campus was open, the Law School was using a larger share of the facilities, and overhead expenses had increased as well.

Understandably, the law students heartily objected to tuition increases, citing economic hardships in a climate of shrinking student aid funding. While the students' objections were initially resolved after a series of meetings with the dean, the president, and the vice president for finance, a myth began to perpetuate that the university was draining off surplus funds earned by the Law School for use in other parts of the university.<sup>60</sup> In truth, while the Law School had been economically self-sustaining for at least the previous eight years, and had contributed modest amounts annually to the university for its overhead costs, in 1978 it had depended on support from the university to a limited extent. Even so, a small group of law students sharpened their pencils and came to the erroneous conclusion that the Law School "with 20 percent of the university's student population is being asked to finance 32 percent of the total operating costs."<sup>61</sup> In fact, the Law School student population actually amounted to more than 28 percent of the university's total enrollment, yet more than 34 percent of the chargeable space in the new facility was devoted to exclusive use by the Law School. But as with all myths that become self-perpetuating, economic facts did little to dissipate it. The controversies that periodically erupted about the Law School and university-wide finances would continue under various

guises for years, testament to the relative autonomy that the school, in many respects, enjoyed.

In an open letter to the president, published in the Law School student newspaper, two disgruntled law students complained to the president about the cost of the annual Faculty-Staff Dinner Dance held each November, which they called an “extravagant gift,” and demanded an accounting, asking, “Where did this money come from?”

The president responded to them in a personal letter dated the day after the student newspaper appeared: “Let me explain to you something about the economics of the university [...]; the business and public administration schools [...] account for more than four-fifths of the institution’s enrollments and revenue [...]; the Law School, which operates mostly with full-time faculty and which is our highest-cost division, is budgeted and managed so that revenues exactly cover expenditures. The business and public administration schools, by contrast, are much lower-cost, and annually generate substantial surpluses, which are used for [...] capital expenditures and other institutional improvements. The chief reason why the business and public administration schools have lower costs and are able to come up with annual surpluses is that some 80 percent of their faculty are adjunct professors who teach part-time (in addition to their full-time employment as business or government professionals) and who are paid at our part-time faculty rate [...], on the average between \$1,000 and \$1,200 per course.”<sup>62</sup>

Not only did the Law School have the largest full-time faculty, salaries were on the same scale as other law schools in the nation, and outpaced the compensation of the average Golden Gate professor in business or public administration. There had been a sharp increase in the salaries of law professors in 1974-75 and again in 1979-80 in order to meet accreditation requirements. The Law School faculty numbered twenty-six, including the dean, six associate professors, four assistant professors, and two visiting professors. Sixteen faculty members were tenured, and ten were on the tenure track. The trustees studying the Law School were somewhat concerned that in another ten years the entire

faculty would be tenured, limiting turnover and, thus, the opportunities to bring in new teachers. Acknowledging that fewer than 50 percent of the members of the law faculty hired in the previous decade received tenure, and other professors had retired or left for another job, the committee concluded “an aged, complacent faculty is not likely to occur.” Although the Law School faculty had never been known for its complacency, the bulk of the law professors did build their careers at Golden Gate, and many who had been at the university during the faculty build-up of the early 1970s, remained long after Otto Butz retired. One was Bernie Segal.

#### A Question of Tenure and Bernie Segal

Over the years, Bernie Segal would become one of the most beloved members of the Law School faculty. He received Golden Gate’s Distinguished Service Award in 2004, the highest honor the university confers on a staff member. His mock-trial student teams frequently won gold, silver, and bronze medals in the National Mock Trial Competitions, effectively putting Golden Gate University School of Law on the map. As one former student, who is now a successful district attorney, observed, “Bernie Segal is with me every day that I walk into the courtroom. When I see how lawyers handle themselves with clients, judges, and colleagues, I realize how, as an alum of Bernie’s program, I learned how to be a real lawyer.”<sup>63</sup> But it almost wasn’t to be.

In 1970, Bernie Segal was in private practice and had just been named lead counsel for Jeffrey MacDonald, who was accused and nine years later convicted of brutally murdering his pregnant wife and their two young daughters at their home on the Army base at Fort Bragg, North Carolina. MacDonald, an Army surgeon and a Green Beret captain, always maintained his innocence. He was sentenced to three consecutive life sentences and remains imprisoned in Cumberland, Maryland. The case gained fame through the best-selling book, *Fatal Vision*, and the subsequent made-for-TV movie of the same name. It was the kind of case that captures media attention, and over the years

The law professor never forgot the president's support or the philosophical visits that often took place in Butz's office, which was across from the mock courtroom where Segal spent much of his time. "Otto had the great combination of an open door and an open mind," Segal recalled. "His open-door policy stands alone. How many law deans have such a policy, much less a university president? But I never ever saw the door to his office closed. I'd put my head in, and if he wasn't engaged, we'd talk about the Law School and the university, and the outside world—he was always interested in linking the university to the outside world. His openness to new ideas was an enormous value to the university and to the Law School. I always felt badly for the faculty who didn't understand that he was always there for them, and for everyone else. Even though he was doing things that were important, he didn't seem to think about how it reflected on him, he just did them because he thought it was the right thing to do at the time."

### **The End of a Decade and an Era**

The 1970s were a decade of unprecedented change at the Law School. In just ten years, it had evolved from a part-time, marginally accredited night school with a small day program, to a fully accredited law school with a stable, professional faculty that was helping redefine legal education in the Bay Area. The transition had been sometimes painful, often joyful, and always challenging. A new generation of students had found their way to the Law School, leaving a swath of change in their stead, many of them going on to become recognized as the Bay Area's top attorneys.<sup>71</sup>

As the decade grew to a close, Law Dean McKelvey made the decision to return to teaching. She had already stayed in her position a year or two longer than she had planned but did not want to step down until full accreditation was ensured. In the winter of 1980, she told the president of her plans. "She feels that she has accomplished the objectives that she set when she became dean," he explained.<sup>72</sup>

Like Bader, McKelvey would remain at the Law School for the rest

of her career, becoming a popular professor and an influential voice in both legal education and law circles.

Not long after her resignation was announced, a search committee was established to find a new Law School dean. Applications arrived at the school from across the nation, and the committee considered fifty, winnowing them down to a final eight candidates for interviews. However, the president told the trustees, "No promising candidate has yet emerged." The search committee went back to work. Finally, after seriously looking at another thirty applications, they interviewed ten prospects and recommended three. More interviews were held with the finalists, and the post was offered to each in turn. However, for various reasons, none accepted the appointment. It was already early summer, the fall 1981 term would soon begin, and the Law School was still without a dean. After discussing the situation at length with the Law School Committee, the president came to the unavoidable conclusion: "It will now be necessary to appoint an acting dean of the Law School and begin a new search." And so it was that Law Professor Neil Martin Levy became the acting dean.