

11-1966

The Caveat, November 1966

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CAVEAT

VOL. I, NO. 9

GOLDEN GATE COLLEGE SCHOOL OF LAW

NOVEMBER, 1966

LEGALCARE

For those who have been wondering whether the trend towards Socialism would continue after the passage of medicare, the answer is now clear. San Francisco Neighborhood Legal Assistance Foundation has already begun operations. Under this program people with an income under a fixed amount per year will be provided with free legal representation.

Putting aside the political overtones, the aims of SFNLAF (pronounced sif-in-laf) is to fill a need under the present legal system. To those who have enough money a good lawyer is always available. But to those on relief or the aged and those considered living in poverty the use of a lawyer's services is as distant as an apartment in Pacific Heights.

The benefit of this program seems obvious. A debtor being charged a usurious rate of interest or the tenant wrongfully evicted will now have someone to assert his legal rights in a court of law. No longer will people in poverty areas look on the legal system as a tool to keep the poor in line and protect the rights of only the wealthy. People will be encouraged to settle their disputes in a court of law rather than in the street.

The law student as well as the law school has an important function to perform in this experiment. Initially law students (those who have completed two full years of school at a part-time institution, or one year on a full time program) are being hired to work as assistants to the attorneys. Neighborhood Legal Assistance Centers will be established in four or five different poverty areas. The student will be assigned to work with

(cont. on page 2)

Hallucinogenic Drugs Present A Unique Constitutional Problem

Psychedelic trips, we are told, have become so common in certain groups in our society that it appears that many have commute tickets, or would, at least, like to purchase one. About a year ago, former Harvard professor Timothy Leary was convicted of illegally transporting a few ounces of marihuana and failing to pay a tax on it. Leary has appealed his 36 year sentence, claiming that his religious liberties have been unreasonably and unconstitutionally restricted.



In response to the many student requests, the Student Bar Association has arranged an accident and health insurance program with Firemans Fund Insurance Company.

Although final figures are not yet available as to the cost of the various policies, this particular program was selected over the many that were considered because it offers comprehensive protection at a reasonable premium.

An agent of Firemans Fund will be at our campus one day in the near future to explain the program in detail and answer your questions. In the meantime, brochures will be available or interested students may contact Mike Blum, 2nd Yr. day program.

-Staff-

Psychedelic drugs pose unique problems for American society and American law. One of these is raised by Leary's defense to his conviction. Drawing upon the "transcendental sensations" experienced by the user of these drugs, Leary contends that the use of LSD, peyote and even marihuana by those of his persuasion is constitutionally protected and that he is constitutionally allowed to encourage others to use them.

This fall, in New York, Leary launched his campaign with "The Death of the Mind" - - "a psychedelic celebration sponsored by the League for Spiritual Discovery" (slated, incidentally, to come to San Francisco). His religious campaign is not solitary. More traditional theologians are pushing the use of psychedelics as the key to "inner space", opening the way to mystical religious experiences.

It seems apparent that the courts will soon be faced with cases similar to Leary's. At first glance the religious defense raised by Leary may seem specious but, the California Supreme Court has recently held that to prohibit members of the Native American Church from using peyote in religious ceremonies would violate

(cont. on page 6).

S. B. A. NOTES

October 25, 1966 5:30 p.m.

It was announced that there would be a Conference of California Law Schools to be held at Boalt Hall, Berkeley, California, Saturday, November 12, 1966. The Board selected Dave Loofbourrow and Richard Marshall to represent Golden Gate College School of Law at this conference.

Larry Handleman then reported on the forthcoming Dinner Dance which is being held on Saturday, November 12, 1966. In order to encourage attendance by as many students as possible, the Board, on Burgess William's motion, agreed that tickets would be priced at \$3.00 through November 1, 1966 and \$4.00 thereafter through November 6. Absolutely no tickets will be sold after November 6, due to the reservation requirements of the Claremont Hotel. It was noted that the regular dinner price is \$6.00 per person and that the S.B.A. was also paying \$200.00 for the band. A suggestion was made, and accepted by the Board, that special guests would be invited to the Dinner Dance. Burgess Williams in cooperation with the law wives will arrange the invitations.

Mike Blum reported regarding a Hospital-Medical Plan which can be made available to the law students. Additional information and brochures will be forthcoming.

The Board next discussed the procedure by which absences would result in expulsion from the Board of Governors and replacement named by his class. A motion was made that two absences would result in automatic expulsion. The above motion was defeated by vote of 9 to 2. A second motion was made and seconded, that two absences and a member would be subject to expulsion by a majority vote of the Board of Governors and a replacement appointed. This motion was passed. It was felt that this method of encouraging attendance would assure that all

members were interested and best representing the class.

Jerry Houser next reported on the speakers available through the

Barristers' Club of the San Francisco Bar Association and stated that the fourth year evening class was enthusiastic as well as many of the day students. It will be recalled that those speakers will discuss aspects of law practice in the large law firm, the small law firm, corporations and government. It would appear from the enthusiastic response from the third and fourth year students, both day and evening, that it will be necessary to schedule two such panel discussions. Mr. Houser will contact the Barristers' Club and make arrangements for the very near future.

Meeting adjourned at 6:45 p.m.

- Richard L. Marshall -
Secretary

LEGAL CARE (cont...)

a specific attorney, helping with research, interviewing, investigating, etc. Aside from the salaries being paid for this part time work students will gain invaluable practical experience.

Still in the talking stage is the expanded role of the law school in this program. It is contemplated that courses will be developed which deal specifically with the problems of poverty and the law. Also in the offering is a course in advanced writing with research problems being supplied to the class from SFNLAF.

- Staff -

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RECENT CASES OF INTEREST

SCHMERBER v. CALIFORNIA 384 U.S. 757

June 20, 1966, the United States Supreme Court, speaking through Justice Brennan for the majority with Chief Justice Warren, Justice Black, Justice Douglas and Justice Fortas vigorously dissenting, upheld the conviction of Schmerber for driving an automobile while under the influence of alcohol.

Schmerber was hospitalized following an accident involving the automobile which he had been driving. A police officer, after noticing symptoms of drunkenness at the scene of the accident and smelling liquor on Schmerber's breath, placed him under arrest, informed him of his right to counsel, right to remain silent, and then ordered the attending physician to take a blood test. Schmerber vociferously protested the latter order, but he was forced to submit. The chemical analysis was introduced at the trial as evidence that he was driving while intoxicated.

In determining that the withdrawal of the blood and admission in evidence of the analysis does not violate the privilege afforded to a defendant not to be a witness against himself in a criminal case by the 5th amendment of the Constitution of the United States, Justice Brennan said, "the privilege protects an accused only from being compelled to testify against himself, or otherwise provide the state with evidence of a testimonial or communicative nature." (emphases added) The taking of the blood "in no way implicated" Schmerber's testimonial capacities. "His participation, except as a donor, was irrelevant to the results of the test, which depend on chemical analysis and

(cont. on page 5)

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Below 69	1	4	25%
Totals	54	21	72%

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SUMMER SESSION SCHEDULE: Registration: Advance registration by mail. Classes meet Thursday and Friday evenings from 6 to 10 P.M. and Saturday 9 A.M. to 1 P.M. for 8 weeks. June, July and August (dates to be fixed when Exam date is announced.) Tape lectures available for each school.

FOR FURTHER INFORMATION:

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CORRESPONDENCE COURSE: A complete correspondence course, completely paralleling the lecture course. Fee: \$175, payable upon registration.



The Course is supervised by Dr. Melvin Nord, formerly of the law faculties at Wayne State University and University of Detroit and a practicing attorney. Dr. Nord has done graduate work at the University of Michigan, is the author of numerous articles and books, has had over 20 years of teaching experience on the collegiate and graduate levels, and has taught refresher courses for over 20 years. All the Bar Review Course Materials have been personally prepared by Dr. Nord, and he delivers all the lectures.

FORTAS URGES SCHOOLS TEACH SKILL, NOT KNOWLEDGE

Justice Abe Fortas called upon law schools Sept. 10 to foster a "standard of excellence" in all aspects of their instruction.

He urged law schools to train their students to become highly skilled lawyers and not merely to equip them "to pick up a living at the bar." For the law school, teaching "the law" is not the objective, "the end purpose," he said, because teaching "the law" does not produce a lawyer.

"The essence of craftsmanship in the law is not knowledge, but skill," he said. "The quality of the lawyer's mind depends, I suggest, not primarily upon its contents as a storehouse, but upon its competence as an instrument."

The Associate Justice of the United States Supreme Court delivered his remarks at a seminar

dealing with "The Training of the Practitioner." It was the concluding part of a three-part symposium Sept. 9-10 in conjunction with the dedication of Ackerson Hall, at Rutgers University School of Law.

In speaking of his experience at Yale Law School as both student and teacher, Justice Fortas characterized the Yale Law School as being in "outer space." What he was referring to was the revolutionary concept of law espoused by such "astronauts" as Thurman Arnold, Walter Hamilton, Underhill Moore, William O. Douglas and George Dession. These men are reputed to be the founders of the school of legal realism, which inculcates a skepticism of legal rules and emphasizes the policy-value considerations that underlie legal determinations.

In describing the movement at Yale in the 30's, Justice Fortas said: "These remarkable men believed with Holmes that the life of the law has been not logic, but experience; and they proceeded to try to fashion their law courses on this premise."

Justice Fortas would not abandon the study of logic, however. He pointed out that "the mastery of law begins with the ability to use logic; as a tool or an instrument." However, in order for logic to have any vitality, it must be applied to experience, he said.

As an example, Justice Fortas emphasized the value of a course such as the one Justice, then Prof., Douglas gave in business finance. It was given jointly with the Harvard Business School and featured lengthy factual descriptions. Justice Fortas said he considers this type of problem-solving approach the embodiment of the functional approach. Certainly a minimal training in the lawyer's craft is a pre-requisite, he said, such as the "ability to write a commercial letter with awareness

of legal consequences and effects; the ability to use a printed will, or power of attorney, or deed or so on." These are techniques of the craft and must be learned, he said.

Fortas noted that a lawyer is no longer able to know the law in the substantive sense since the body of law is so vast and complex. The lawyer is required to "re-read, to re-savor and to re-reflect upon the law's provisions in its interaction with the segment of life before him at the moment," he said.

Justice Fortas said the "law schools exist to aid in producing lawyers - - not to drill students in the answers to bar exam questions. For bar exams, the cram course, not the law school is the appropriate preparation. You would not go to ballet school to learn the Watusi; and if a law school does not purport to train artists, it should not exist as part of a university."

While the case method of legal study provides valuable legal insight because cases exemplify the living law, reported cases are not enough, he said. Valuable extra-legal materials must be presented, he declared. He said, for example, a course in criminal procedure concerning the subject matter of insanity should include such materials as the "lawyer's tentative diagnosis; the interplay of lawyer and client; the communication between lawyer and psychiatrist, the special problems of jury communication with respect to the insanity defense, and so on." These problems must be treated as they come to the practitioner in real life, he said.

Justice Fortas questioned the value of how-to-do-it courses in legal drafting as well as the national moot court program. He said that the moot exercises are too "tawdry and superficial" to amount to anything worthwhile. He did, however, favor the kind of

(cont. on page 5)

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LETTER TO THE EDITOR

Editor:

A FLY WOULD DIE - -

This is the sublime condition of our wondrous and odorous lavatories, heads, men's rooms, (as to ladies' rooms I cannot coment), johns, or whatever the vernacular should be, of our delightful campus---GOLDEN GATE. This condition is deplorable and completely destroys the utility of these little rooms. Since it is impossible, or let's say uncomfortable to cease and desist, what is the solution?

HEXOL plus JOHNNY MOP times WORK equals - - RELAXATION and FUNCTION.

Sincerely,

P. R. Weltin

1st Yr. Day Program

RECENT CASES

OF INTEREST (cont...)

on that alone."

Justice Black, in his eloquent dissent, noted that the 5th amendment bars a state from compelling a person to produce papers he has that might tend to incriminate him. He criticized the majority's narrow construction of the word "testify" and said in his rebuttal, "it is a strange heirarchy of values that allows the state to extract a human being's blood to convict him of a crime because of the blood content, but proscribes compelled production of his lifeless papers."

QUERY: Is California's controversial new statute, requiring a motorist to consent to a blood test, urine test, or a balloon test when requested to do so by a law enforcement officer or loose his license for a specified duration, based on the tenuous decision of this case? If so, how firm is its foundation?

- Staff -

FORTAS cont

work done on student law reviews for their intensity and depth of analysis.

"What I would like to see emphasized in the training of lawyers is the requirement of excellence -- that a lawyer's product must demonstrate excellence," he said.

In the area of practical training outside the class, Justice Fortas again stressed his concern with excellence. Superficial legal aid work or clerkships are useless for the ambitious student, he said. but legal aid programs that require the student to put his stamp of excellence on all his work are of great value to the student and the legal profession.

Justice Fortas pointed to excitement as the "essential ingredient" for an educational institution. For the attorney these times are perhaps the most exciting period to practice law due to the great changes that society is undergoing and the corresponding professional responsibility placed on the legal profession, he said. The lawyer is "the custodian of the flaming sword of individual justice and personal liberty, as well as public order," he said.

Justice Fortas said a lawyer should find it impossible to "discuss what is lawful today and is likely to be lawful tomorrow without analyzing the problem in terms of social and ethical conduct." It is imperative that the lawyer's equipment to practice law must include an awareness of his broader function in society, he said.

Reprinted from the transcript, of Rutgers University School of Law

PUBLISHED MONTHLY BY THE
STUDENT BAR ASSOCIATION
GOLDEN GATE COLLEGE SCHOOL
OF LAW, SAN FRANCISCO.

Gadfly

At the last board meeting of the Student Bar Association, mention was made of the size of the diploma awarded upon graduation from this law school. Although no one had the exact measurements of the present diploma, it was referred to as wallet size, or about the size of a pack of Marlboros. It later developed that these estimates were incorrect, although it is conceded to be smaller than most diplomas awarded at other law schools. The Board of Governors intend to investigate this question and see if it won't be possible to increase the deminsions of the present diploma and therefore make it more suitable for display on an office wall. The CAVEAT supports this inquiry wholeheartedly. There should be no question in the graduates mind that when his diploma is presented, it is in fact a diploma and not a bill for last semesters tuition.

#####

Now lets turn our attention to the lounge on the second floor. To begin with the seating capacity is inadequate, both during the day and in the evening. The solution would seem both apparent and simple - buy a few additional chairs and a couch. Yet there are those who feel this solution is a bit extravagant in view of the renovations to begin here next year and the new lounge that will emerge on the 5th floor. This argument, to me at least, has little merit. The additional furniture could undoubtedly be used in some other portion

(cont. on page 6)

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HALLUCINOGENIC DRUGS PRESENT A UNIQUE CONSTITUTIONAL PROBLEM (cont.)

their constitutional right to the free exercise of their religion. In *People v. Woody*, 61 Cal.2d. 716, 394 P.2nd. 813 (1964), the court held that the defendants' First Amendment rights outweighed the state's interest in prohibiting the possession of peyote (Cal.H.&S. 11500).

The holding of the court is based upon its finding that peyote was not only a sacramental symbol but constituted in itself an object of worship, the theological heart of defendants' religion.

The California decision is exceptional but it can be seen as the beginning of a change in American law and in society's attitude to drugs (see 39 Op. Atty. Gen. 276).

It remains to be seen, however, whether Leary et al. can persuade our judges to extend the *Woody* logic from an isolated Indian cult to a highly developed industrial civilization and from an apparently

devout group to an organization of individuals which, to the average man at least, seems more bizarre than sincere. With this in mind it is interesting to ponder the following language from *People v. Woody*, 61 Cal. 2d. 716, 726:

"... the court makes a factual examination of the bona fides of the belief and does not intrude into the religious issue at all; it does not determine the nature of the belief but the nature of defendant's adherence to it."

- Staff -

GADFLY (cont.)

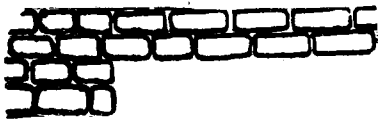
of the building when the 2nd floor lounge is eliminated, or better yet the furniture could be purchased with the new lounge in mind, and when that lounge is completed, the furniture could be moved in there.

But in addition to new furniture, I think we should again seriously consider the situation involving the vending machines. As a result of an article in the *CAVEAT* last March, there was some temporary improvement, but alas, the situation has slowly slipped back to the way it was prior to that time. Few things are more frustrating and disconcerting than the sound of your coin passing through one of the machines and landing in the coin return slot.

If the present volumn of business does not permit more modern machines or more frequent servicing, then maybe we should look to another company who would be able to operate them more efficiently on a smaller margin of profit.

Whatever the solution may be, I think these problems warrant the serious consideration of both the S.B.A. Board of Governors and/or the administration.

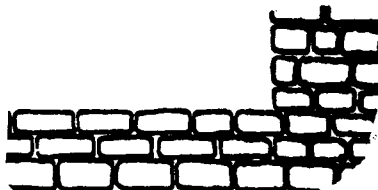
- The Editor -



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