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The Caveat, February 1969

CAVEAT

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CURRICULUM REFORM

The American experiment of 1776 brought to fruition a political revolution, with the consolidation and protection of democratic freedoms remaining a matter of vigilance and necessity to this very day. The political revolution carried with it the seeds of a social revolution which is now reaching an unprecedented culmination in our time.

Part of this social revolution has engulfed our educational system. As a teacher recently put it, "The lessons to be learned from this past year have shown us beyond doubt that our public school system is too big, too bureaucratic, and too indifferent to the desires of the community and the needs of its teachers and students."

The strike at San Francisco State College has been the most dramatic example of the dissatisfaction of students and teachers with the institutions of higher education. The struggle at this Bay Area college has alienated many people in the city justly or unjustly because of the tactics of the strikers, but it has also exposed many of the contradictions that are embedded in our educational system and heightened the consciousness among administrators of the need for changes to be implemented now. Across this state needed improvements are being brought about in our public institutions with the development of ethnic studies programs, a greater voice for students in decisions relating to curriculums, and growing efforts to bring minority group members into higher education. While the progress is still too slow for many of us, nevertheless, the trend toward making education more relevant is as unmistakable as it is inevitable. It is only unfortunate that in all too many cases administrators have not taken the initiative, but have waited until student pressure forced their hand.

The situation in our public schools has been reflected in the law schools of this state. One of the major problems in this country today is the fundamental breakdown in communication between our legal system and the poor. The lawyer, a product of our legal educational system, is considered by millions of nonwhite people in this country as an embodiment of a system insensitive to their needs. The most important reason for this chasm lies in the law schools. For as the educational process in our colleges remains relatively unresponsive to the problems of race relations and urban poor, law schools will fail to develop young men and women equipped with the knowledge to serve the interests of all people regardless of their economic status or racial group. This failure has put the law and the courts that administer it outside the reach and understanding of millions of people in this country.

It is understandable but not excusable that this situation exists. For in our generally affluent society the majority of people seem more concerned with economic questions and broken windows on a college campus than with protecting the rights of their fellow citizens to life and liberty. This feeling that property rights are more important than human rights is amply evident in the curriculum of law schools today.

One need only look at the catalogs of law schools throughout this state to see the sharp contrast in numbers of courses dealing with law as practiced in the neighborhood law office compared to the law practiced in most of our large law firms. The main emphasis of law schools seems to be a mass disgorging of graduates who will take the bar and be able to start climbing up the ladder of success over the wallets of their clients. Certainly indigents and poor people do not fit into this scheme of ordered liberty. A purview of law school catalogs reveals a disproportionate number of courses such as Creditor's Rights, Security Transactions, Corporations, Trusts and Estates, Corporate Reorganization, Business Planning, Oil and Gas, International Business Transactions, etc.

Recently students have been moved to criticize and suggest changes in the law school curriculums. At Hastings Law School a model curriculum has been drafted as a proposal for presentation to the administration. Under the able chairmanship of Miss Darcy Cremer this report represented the combined efforts of many students, faculty, and practicing attorneys. Here is an attempt to go through the "channels" and the success or failure of this effort could pose serious consequences for all of us. In a relatively brief article such as this only a few of the highlights of that report can be touched upon with the hope that the curriculum committee here at Golden Gate will take immediate steps to get the report and study its detailed course evaluations and recommendations.

In the preface to the curriculum it is stated among other things, "The three-year curriculum should be structured so as to provide all students with an effective general legal background and a specialty at the level of the first degree in law . . . It is assumed that the Bar expects us to produce basically trained generalists who can develop themselves in the traditional mold if they desire, but the curriculum must also recognize the trend toward specialization and provide for it. This curriculum is designed to insure that all students have received minimal training in (1) doctrine; (2) skills; (3) policy determination and evaluation."

As quoted above, the proposed curriculum for Hastings divides the types of courses to be taught into three classifications. The first classification labeled "doctrine" relates to the standard bar exam courses such as torts, contracts, and property. Some of the proposals in the report in this area such as making Agency an elective and combining Wills with Trusts and Estates are already in effect at Golden Gate. These traditional courses taught by the case method employing legal doctrine, precedent, and rule of the case are still important to legal practice. This writer would suggest that it would be well for any future student-faculty review to discuss the feasibility of Professors spending more time in some of these courses on contemporary developments in these fields, especially pertaining to the law here in California. Textbooks should be selected whenever possible that have a representative sampling of California cases. After all, the great majority of students will have to practice law in this state. This does not suggest that California code memorization is necessary, mere-

continued on back page

RECENT CASE OF INTEREST

by
Elizabeth L. Emerson

The Supreme Court in FEDERAL TRADE COMMISSION v. TEXACO, INC., et al., 89 S. Ct. 429, U.S. , 21 L. Ed.$_2$394 (1968), has taken some of the sting out of recent criticism leveled at the Federal Trade Commission. Almost at the moment 1968 was becoming '69, Ralph Nader, gladiator in the consumer protection arena and director of a seven-man volunteer group of Ivy League law students, released a report of a three-month investigation of the FTC. Among the sensational charges were those of "spectacular lassitude," "incompetence by the most modest standards and lack of commitment to their regulatory missions." The Nader report listed growth of the corporate economy as a current major development which calls upon the government to become more aggressive in the protection of consumer interests. Without mention of the TEXACO case, the report indicated that ineffective action on the part of the FTC was fostering corporate tyranny and permitting subtle forms of coercion to operate and to block competition.

Almost at the precise moment the Nader report was being prepared for distribution, the Supreme Court handed down its decision in the TEXACO case. It would certainly seem to soften the Nader charges. Eight of the nine Justices supported the interpretations and enforcement policies of the Commission and, in the words of the dissenting Justice (Stewart), created "a per se rule of inherent coercion."

The Federal Trade Commission Act* provides in Section 5 (a) (1): Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful. (6) The Commission is hereby empowered and directed to prevent persons, partnerships or corporations ... from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce." The remedy for a Section 5 violation is a cease and desist order. The action against Texaco was brought under these provisions, the Federal Trade Commission alleging that Texaco had undertaken to induce its service station dealers to purchase Goodrich tires, batteries and accessories (known in the trade as TBA) in return for a 10% commission to be paid by Goodrich to Texaco; that such an arrangement constituted "unfair competition" within the terms of the Federal Trade Commission Act. At the same time similar actions were filed by the FTC against ATLANTIC REFINING CO. (See: 381 U.S. 357, 85 S. Ct. 1498, 14 L. Ed.$_2$ 443 (1964) and the SHELL OIL CO. (360 F$_2$470 (cert. denied, 385 U.S. 1002, 87 S. Ct. 705, 17 L. Ed.$_2$ 541). Those previously decided cases held that similar commission arrangements between those companies and Goodyear Tire & Rubber Co. and Firestone Tire & Rubber Co. respectively were unfair competition. In the ATLANTIC case (which the Court of Appeals for the Fifth Circuit followed in SHELL OIL) there was evidence that dealers, who operated under short-term leases, were subjected to continuing pressure to stock and sell Goodyear products in order to have their typical one-year leases renewed. In TEXACO there was no such evidence of actual pressure or intimidation, no threatened lease cancellations, no quota setting, in short, no "overt coercive practices." Nevertheless, the Supreme Court found that "the sales commission system for marketing is inherently coercive."

During a five-year period prior to the institution of the action, Texaco had received nearly $22,000,000 in commissions. It wouldn't take much in the way of salesmen's suggestions or reminders or promotional material to impress upon dealers Texaco's interest in having them support such a lucrative arrangement, the court opined. With such high stakes involved one would be lacking in common sense to say "that the dealer is perfectly free to reject Texaco's chosen brand of TBA." Justice Black went on to point out that with five major companies supplying virtually all of the tires with which new cars come equipped, it is only in the replacement market that small companies can hope to compete. If, in this replacement market, the large manufacturer is permitted to purchase the economic power of the oil company by a commission arrangement, that arrangement itself becomes a "partial substitute for competitive merit." To force non-sponsored brands to overcome this kind of economic advantage would, indeed, be "unfair competition" within the meaning of the statute, which, incidentally, does not require a total elimination of competition, merely a determination that " the practice unfairly burdened competition for a not insignificant volume of commerce."

Of course, the time consumed in reaching this decision (some 16 years from the inception of the commission practice by Goodrich and Texaco in 1952) may tend to bear out Nader's charge of "endemic inaction, delay and secrecy." And there may be some who would find the "crony-ism" Nader purportedly uncovered in his analysis of key Commission personnel ("all are from small southern towns") extended to the happenstance that Justice Black authored the TEXACO opinion in such strong support of the FTC. (According to the New American Encyclopedia, Justice Black was himself a southern lawyer, relatively little known outside his home locality prior to his election as a Senator from Alabama.)

But only cynics would decry the TEXACO milestone. Long before the Nader group began their work, "subtle forms of coercion" in the corporate economy were recognized and attacked by the FTC. With the TEXACO decision the Commission has moved effectively to eliminate another barrier to new competition.

*38 Stat. 717 (1914), as amended, 15 U.S.C. Sections 41-58.

GRADING SYSTEM REVISION

It is time to look at our grading system while there is still an opportunity this year to change it. There is no typical system of grading recognized as the best in the field of legal education. Systems range from pass-fail to number grades, with many variations between. All have been adopted after what seem to be valid consideration of the advantages and disadvantages.

Prior to 1957-1958 academic year, grades were recorded at Golden Gate in alphabetical form from A to F with a C+ average required for graduation. Following the '57-'58 year the grades have been recorded on the numerical basis of 100 as the high and 40 as the low, requiring a 70 average to graduate. This is the system in use today.

One reason for adopting the numerical grading system was to allow more flexibility in the grading and class ranking of students. If a student got two Cs and two C+s he could flunk out. However, if those were actually one point from being a grade higher, he could stay in school. The numerical system was thought to be more accurate and in the end more realistic as an indication of the qualify of a student's work.

The alphabetical system had its faults, but so does the numerical system. It has been rumored that instructors can tell a Rolls Royce from a Chevrolet, but they are just baffled when they try to distinguish between a Ford, a Chevrolet and a Plymouth. Instructors can recognize a high quality paper or a low quality paper but they have a tough time in the middle ground where most students fail.

What makes one paper a 73 and another a 72 or 74? Or a single answer a 76 instead of a 75? This is a subjective test and can only be rationalized by the way the answer affected the instructor. If we have three instructors who are competent in the same field, grade the same paper, one might come up with a 72, one a 74 and one a 76. In the case of an exceptional paper, good or bad, the same result will happen. They can decide within a range of grades where the paper belongs unanimously, but they cannot decide where in that range it should be placed. Yet that difference of four points can mean the life or death of the student's legal career.

Instead of perpetuating this system which allows extremely subjective instructors to strongly affect a student's legal career, I propose what I believe to be a better method. Let's recognize the fact that the only really valid judgment that the instructor can make is the general class of grade the paper deserves. He can tell if the paper as a whole is one which generally would be considered excellent. He can tell if it is generally so bad that the student doesn't belong in law school. And he can also tell if the student has promise but didn't study enough. This leaves the middle ground for all the rest. This general outline could be refined by applying the letters H for the excellent group, F for those that flunk, L for the group who could have made it and M for those in the middle. The student must maintain an average of M based on the weight of the course to graduate. This method eliminates the need for an instructor to distinguish between minute differences in papers in the same range of grades, and make the system much more realistic and workable.

Chas. Haughton

SOCIAL ACTION SEMINAR

A new course offered this semester is entitled "The Lawyer in Social Action." It will encompass discussion of the role of the attorney, working within the structure of our established institutions to bring about desireable social changes. The focus will be upon the attorney as citizen, the ability which he has, and the ever present opportunities for contribution to the public need.

The Law School is honored to welcome Edwin Lukas as professor for this seminar. Mr. Lukas has been a member of the New York Bar for the past forty-five years. He was engaged in general practice for twenty years, served as general counsel to the Society for Prevention of Crime for ten years, and since 1950 has been General Counsel to the Civil Rights Department of the American Jewish Committee. Mr. Lukas, who has recently retired, is to be highly commended for his role in the filing of amicus curiae briefs in every landmark civil rights case during the past two decades.

BAG LUNCH SEMINAR

A non-credit seminar will be held once a week for the purpose of giving fifteen students (on a first-to-enroll basis) the opportunity to discuss current topics of interest. The seminar group initiated by Professors Jones, Golden, Bader and Paoli will discuss topics to be selected by the vote of the participants at the end of the previous week's meeting. The moderator will generally be the person whose topic is selected and the discussion will be centered around a short, generally controversial, reading selection to be designated by the moderator. The topic first selected was the subject of Public v. Private Morality, the role of the courts and the legislature to establish mores of social conduct. This discussion will be based on the analysis of an English case in which the defendant was prosecuted for his effort to compile a directory of all available prostitution services in London.

SBA NEWS

On January 29, 1969, the SBA Board of Governors conducted the first meeting of the new year. The first order of business was the instructor evaluation forms to be filled out by the students later this Spring.

The original plan called for submitting the results to the Faculty Evaluation Committee to consider when they made their evaluations and in addition, posting the results for the students. Mr. Golden, representing the faculty view, stated essentially that the faculty liked the evaluation form very much but felt there should be no posting if the results were to be considered officially by the Evaluation Committee. However, if students wished to publish their own private poll, the faculty would not object. It was pointed out by Mr. Golden that the two student members of the Committee could determine whether the poll was being fairly considered and report such to the Board of Governors. The Board voted to not post the results and have them considered officially by the Faculty Evaluation Committee.

President Loofbourrow reported that a separate graduation for law students had been approved by the Board of Trustees. Details will be announced at a later date.

A Placement service for graduate and non-graduate students is now operating with Mr. Paoli as its head. The goals are to provide a central pool of records for the use of prospective employers as well as graduates. In addition to seeking employment for graduate students, there will be an emphasis on Summer employment and part-time jobs for undergraduates.

President Loofbourrow presented a form to the Board of Governors that could be presented to the students asking their opinion about changing the name of the Law School. The form offered three alternatives: 1. A formal name change; 2. Informally renaming the 2nd floor; 3. No change at all. In addition, the form offered possible names for the school and requested suggestions from the students. A revised version of the form will be presented to the students this Spring.

A COALITION OF FRUSTRATION

The new world now existed. All of the schools had been closed down. The students hadn't actually intended this but the fires, the riots and, upon the administration's capitulating, the unlimited enrollment of anyone who wanted to go to college had finally forced the cessation of all higher education in the country. The new Left had certainly done its work well. Not only had all their demands been met, but they had succeeded in having most of the major police departments disbanded. The resulting anarchy and chaos worried some, but no one commented – to do so would subject one's liberalism to scrutiny, and everyone knew that you didn't question anything labeled liberal – you merely agreed with it. This was marvelous as it stopped anyone from considering whether what they were doing was right or wrong. Obviously anything that was liberal was good. Law school professors could now wear long hair and absurd sideburns and ridiculous clothes and, whereas before they would be mocked and ridiculed, they were now the essence of the new Left. Sometimes, of course, they knew that what students demanded was impossible, and that it wasn't really equitable to demand free speech and assembly and yet try and prevent those who disagreed with you from having free speech and assembly. But fortunately now these things didn't have to be considered. Everything was now black and white; the liberal and the bad.

But on the horizon ominous events were taking place. the Max Raffertys of the world were being elected everywhere to high public offices. People became frightened of the liberals who seemed to think that any means justified what some considered to be their dubious ends. The populace looked to the Ronald Reagans to lead them back to what was now believed to be the peace and tranquility of days past; a past that was admittedly not the ideal, not absolutely free from tribulations but at least a world that was attempting to solve its problems by building, not destroying.

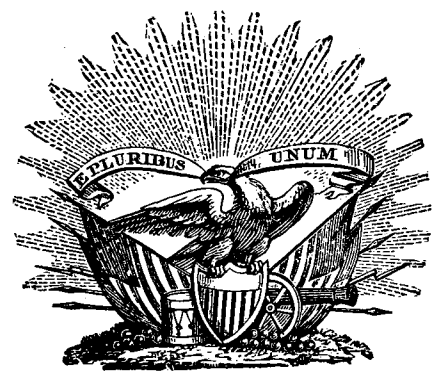
Soon the presidential elections were held and, as predicted, a Southern bigot, an evil and malefic person, was elected. His cabinet reflected his policies and as the older Supreme Court Justices died (they would not resign) he appointed Southern whites to the Court. It soon had the makeup of a typical early century Mississippi appeals court.

In reaction to this the liberals became more and more radical as the conservatives became more and more reactionary to them. Soon it was a nation split and divided.

Thus we have the liberals and their patently absurd demands, refusing to consider reasonable alternatives, and the conservative establishment, now backed into a corner, and refusing to consider any change at all. Both sides totally adamant as to God being on their side, both sides believing that capitulation would mean their demise. The presentiments of either group was absolute.

And yet both groups were incredibly alike in the reasons that they reached for their ideals. Both longed for a return to individualism and isolation and grow frantic when we are unable to immediately achieve it. Both foolishly share a need to believe that somewhere in the American past there was a golden age where life was better than our own.

But to live in that world, to enjoy its cherished promise and its imagined innocence, is no longer within our power.



LETTER TO THE EDITOR (AND REPLY)

The program described in the article on LEGAL EDUCATION ADVANCEMENT PROGRAM on page one of the December issue of THE CAVEAT was most interesting and informative and I hope it turns out to be a successful program.

However, I take issue with the grossly erroneous conclusion drawn by the author in the first sentence wherein he states without any foundation in fact whatsoever, "It is evident that much of our nation's social unrest stems from a thorough disenchantment with our legal system as it presently exists."

This type of personal conclusion on the part of an author in what is otherwise a news reporting item seems to be is out of place.

Yours very truly,
CHARLES J. HUNT, JR.
Office of Ryneal, Hunt & Palladino
Riverside, California

Lacking the tools necessary for an independent national survey, the statement here in question would ordinarily be extremely difficult to document. However, in the wake of racial strife which has laid ruin to vast urban areas of our nation, the National Advisory Commission on Civil Disorders has recently completed a study upon which I conveniently rely to document the broad generalization by which I intended to stress the crucial significance of projects such as LEAP.

The Commission listed among the major causes of social disorder within the ghetto the strong feeling of "powerlessness" to cope with the white power structure.

> *"The frustrations of powerlessness have led some to the conviction that there is no better alternative to violence as a means of expression and redress as a way of 'moving the system.' More generally, the result is alienation and hostility for the institution of law, government, and the white society which controls them."*

More specifically illustrative of the rejection of the legal grievance procedures to ameliorate often intolerable conditions, is the response to the following question posed to more than five thousand persons in fifteen cities by the Institute of Social Research of the University of Michigan under the auspices of the Kerner Commission:

> *"Suppose there is a white storekeeper in a Negro neighborhood. He hires white clerks but refuses to hire any Negro clerks. Talking with him about the matter does no good. What do you think Negroes in the neighborhood should do to change the situation?*

That survey concluded as follows:

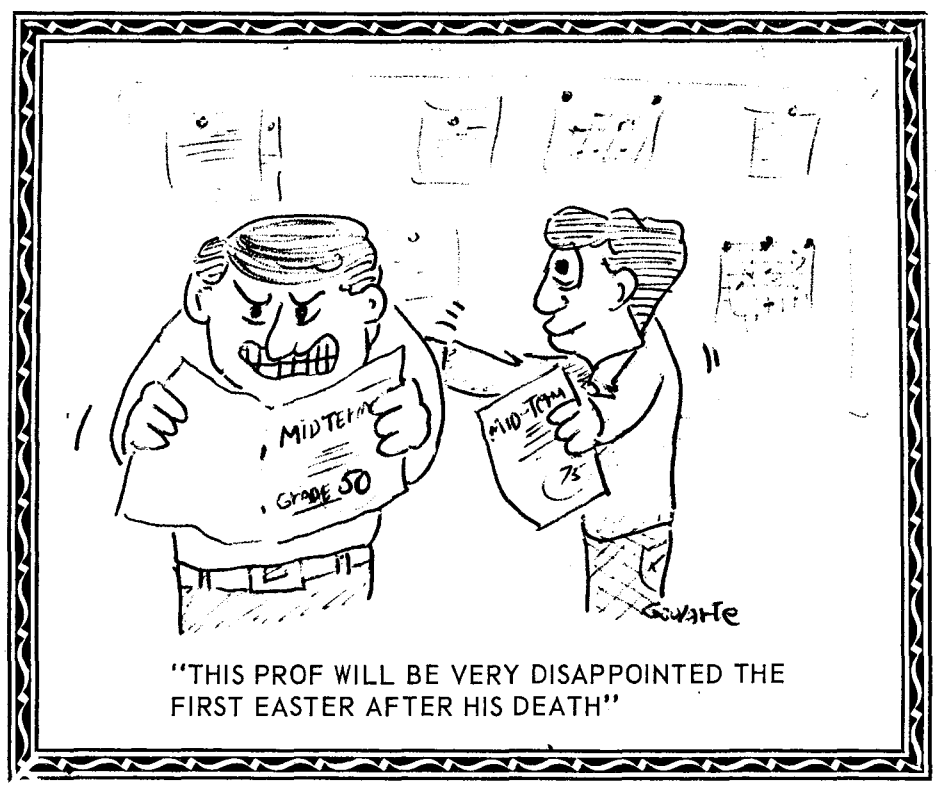
> *. . . Despite the fact that the storekeeper's alleged behavior is probably illegal, only 4% initially suggest attempts to enlist government action – a finding consistent with the National Commission's conclusion that although almost all cities have some sort of formal grievance mechanism for handling citizen complaints, this typically was regarded by Negroes as ineffective and was generally ignored (Commission Report p.4)*

The lack of faith in grievance procedures and the positive aspects of civil litigation as a remedial device cannot be extricated from the belief in the discriminatory nature of the administration of justice prevalent among those living in ghetto areas. The Commission reports that Negroes in ten cities strongly indicated a belief that the lower courts act as an arm of the police department rather than as an objective arbiter in truly adversary proceedings. In eight cities, listed among the significant grievances was the belief that there is a presumption of guilt when a policeman testifies against a Negro (Commission Report p. 82).

While the white middle class American may evaluate the legal system in terms of the legislature judges and attorneys, "the policeman in the ghetto is a symbol not only of the law but of the entire system of law enforcement and criminal justice." (Commission Report p. 157). Clearly explicative of the resort to violence in the ghetto is the fact that the policeman as the embodiment of the law is at the same time the focal point of alienation toward the white power structure. As the Commission once again concludes, "the atmosphere of hostility and cynicism is reinforced by a widespread belief among Negroes in the existence of police brutality and in the 'double standard' of justice and protection – one for Negroes, one for whites." (Commission Report p. 5)

Many of the major grievances prevalent in the ghetto community could likely be solved or partially mollified through the appropriate legal apparatus. Employment discrimination, police brutality, Housing Code violations, discriminatory consumer and credit practices, inadequate municipal services, are typical of the problem areas for which legal redress should be available. Statutory protection is, however, totally irrelevant as a lasting solution unless people in the ghettos can be taught to have confidence in and rely upon a legal system which, in the words of Justice Fortas, "has always been the hostile policeman on the beat, the Landlord who has come to serve an eviction notice, the installment seller who has come to repossess . . ." He said the poor "hate lawyers, and they have reason to, because, in their experience, the lawyer has been the agent, the tool of the oppressor." The process of re-orienting the poor to the postive aspects of the legal system can effectively be implemented by an increase in minority representation in the legal profession. This is the tremendous and extremely significant task of projects such as LEAP.

H. Levinson, Editor



"THIS PROF WILL BE VERY DISAPPOINTED THE FIRST EASTER AFTER HIS DEATH"

CURRICULUM REFORM from front page

ly a greater emphasis on the problems peculiar to this jurisdiction. Also related in a general sense is a need to discuss a re-evaluation of the case study method. Kenneth Culp Davis, a noted expert in Administrative Law, has put this issue into focus by advocating a greater reliance in the future on textual material as opposed to straight case work. In discussing this question with other students this seems to be a popular idea.

Returning to the Hastings report, the second classification deals with "skills" courses pertaining to the development of talents in oral and written expressions (moot court and a systematic writing program), internship programs and other fundamental techniques to prepare the law student for the nitty-gritty of legal work. It is interesting to note here that one of the recommendations is to make Moot Court part of the first year program similar to the situation here at Golden Gate. It is my suggestion that the Legal Profession course at Golden Gate be moved to the third year as at Hastings, so as to alleviate some of the pressure on first-year students at our school working on Moot Court. Golden Gate currently requires thirty-two units for first-year students compared to thirty units at most other law schools.

Before moving to the third area of the Hastings report dealing with courses covering "policy determination and evaluation" the efforts at two other law schools should be mentioned. At the University of San Diego Law School there is currently underway a program to introduce more practical skills into the elementary courses. For example, students in a contract class will be given experience in drafting contracts and students taking Criminal Law will be given field experience by talking with criminologists, riding in police cars, and other such activities to give the student a greater feel for actual legal work. The LOYOLA BRIEF (Nov.-Dec. 1968) stated that a new course in Trial Advocacy would be offered as a graduate course. A number of famous attorneys would deliver course material and there would be practical demonstrations involving the taking of a deposition, cross-examination of a doctor on medical evidence, and the invitation to class of jurors who had just finished duty on civil cases to tell what factors influenced their decisions. The purpose of this course would be to bridge the gap between law school and law practice.

In the areas of law dealing with doctrine and skills, Golden Gate as a whole appears to be comparable, if not superior to other law schools, in the structuring of some of the bar-oriented courses. This only means that some of the curriculum problems at Golden Gate are present at other schools. Perhaps Golden Gate should be given more credit as the school's financial resources do not match the expenditures available to a state college such as Hastings. In other words, the failures at Hastings can better be laid at the doors of the administration.

The area or type of courses most deficient at our school are the ones relating to policy making and policy evaluation. As the Hastings report puts it in respect to their school, "It is here that the development of functional fields of public and private law become significant in our curriculum." Examples of such functional fields include: urban problems, poverty, race relations, air and water pollution, etc. The new seminar at our school on The Lawyer in Social Action is a constructive start in remedying the failure to provide courses relating to contemporary problems. It might be suggested here that this seminar in the future be reserved for second-year students with a follow-up seminar for third-year students in Urban Problems. The Hastings report urges most strongly the setting up of such a seminar in which each student would be involved in clinical work in the field. This would be in actuality an internship program enabling students "to get a real life coloration" instead of the usual theoretical approach to the problems of the poor. "To teach poverty law without a substantial and continuing input from a poverty law office might be a class exercise in ivory towerism . . ."

Other new courses advocated by the report are: The Legislative Process, Comparative Law (law of other countries), and Welfare Law. At U.C.L.A. Law School the greatest progress has been made in updating the curriculum. Some of the new seminars include: Legal Problems of California Indians, Civil Rights, Internal Law of Academic Institutions, Poverty Litigation, Medical-Witness, Urban Affairs as well as regular courses in Race Relations and the Law and Control of Crime.

This article has briefly summarized the need for change in our curriculum and has pointed to some of the developments at other schools. In all candor, this is an inadequate study – inadequate because it has attempted only to point out deficiencies that have festered for too long. Now students and faculty must press for a thorough and far-reaching re-examination to insure that tomorrow's law students get a really relevant education, an education that will enable lawyers to represent all litigants in our country with an awareness and compassion for problems that have been lacking such empathy for too long.

Walter Gorelick
Associate Editor

CAVEAT

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