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The Caveat, November 1969

CAVEAT

VOLUME 5, NUMBER 2 GOLDEN GATE COLLEGE SCHOOL OF LAW NOVEMBER 1969

Willie Brown To Speak At Golden Gate

The Student Bar Association will present the Hon. Willie Brown, member of the California Assembly, as a guest speaker on Monday, December 8th at 12:30 in the 5th floor auditorium.

Assemblyman Brown, an attorney, represents the 18th district in San Francisco. In the last session of the legislature, he was a member of the following committees: Education, Elections and Constitutional Amendments, Urban Affairs and Housing, and Select Committee on Campus Disturbances.

PEACE MARCH PLANS

Attorney Terence Hallinan, the western coordinator for the New Mobilization Committee's November 15th march in San Francisco, said at least five speakers with a wide range of views have agreed to speak at the Golden Gate Polo Grounds Rally. The speakers are: former Senator Wayne Morse, Southern Christian Leadership Conference chief Dr. Ralph Abernathy, Chicago Eight defendant Rennie Davis, Black Panther Chief of Staff David Hilliard, and farm worker union leader Dolores Huerta.

Entertainers at the 2:00 P.M. rally, following the march, will include Phil Ochs, Arlo Guthrie, and Buffy St. Marie. March routes and further information will be posted on the Law School bulletin boards.

HIGH SCHOOL SPEAKERS PROGRAM

For a large number of urban adolescents, secondary education is, unfortunately, an irrelevant, frustrating, and unmotivating experience which does little to enhance the social functioning of the individual. High school civics and citizenship classes fail to relate in terms of practical day-to-day situations. The evolution of law or the Bill of Rights as taught in the abstract bear little relevance to the temptations of narcotics, theft, or statutory rape and the reality of repossession, eviction, and criminal prosecution.

A program jointly sponsored by the Law Student Division of the American Bar Association and the San Francisco

continued on back page

IF YOU THINK YOU'RE RIGHT STAND UP AND FIGHT!

Editor – Walter Gorelick

"I cannot sign Series I because my beliefs are not based on religion but rather on philosophy . . ." "My ethics are based on a reverence for life . . ."

The foregoing words were written by a young native of North Carolina, William Martin, to his draft board as an addendum to his request for conscientious objector status. Under the 1967 Selective Service Act, Sect. 162.14, 50 U.S.C. App. Sect. 456 (j) the law has given preference to religious conscientious objectors over someone who is conscientiously opposed to war, but for non-religious reasons. Hence, Martin was classified 1-A and later found it necessary to refuse induction in San Francisco.

William Martin had his day in court several weeks ago and I attended the trial as a personal friend of the defendant. The preliminary motions interestingly were made on October 15th, the day of national protest against the Vietnam war. We entered the Federal Building on that day strengthened by the thousands assembled outside and the conviction that the hour of decision is at hand for America. Perhaps a challenge to the draft law through Bill's personal commitment and the constitutional challenges raised by his attorney Michel Willey would in some way right some of the injustice others were protesting in the street outside.

The factual situation in Bill Martin's case was similar to what occurred in U.S. vs. SISSON, currently on appeal before the U.S. Supreme Court. In the SISSON case, 297 Fed. Supp. 902 (1969), Judge Wyzanski, in essence, ruled that the 1967 draft law was unconstitutional on 1st and 5th Amendment grounds. Attorney Willey, using SISSON as a basis, argued that Martin should be acquitted because the Draft Act encourages the establishment of religion and restricts the free exercise of religion contrary to the guarantees of the 1st Amendment. Further, the Draft Act, under which the defendant was classified and ordered for induction, deprives defendant of his liberty without equal protection of the laws guaranteed to him

continued on back page

Golden Gate Constitutional Law Professor Mrs. Judith Grant McKelvey

(See "Like It Is" column, page 3)

EDITORIAL

NO BUSINESS AS USUAL

The time for debate is over. We agree with the New Republic Magazine (September 1969) that "Richard Nixon has had eight months in which to pry us loose from the trap in Vietnam and has not done it. He has promised withdrawals and ordered some, but over a half-million U.S. troops remain. He has said that the greatest honor history can bestow is the title of 'peacemaker,' but he marches to the drums of the generals in Saigon and on his Asian trip described Vietnam as America's 'finest hour.' The only force that can assuredly move him to get us out is public opinion, fed up finally with the killing of 39,000 Americans, and the wounding of a quarter of a million more."

We call upon our fellow students to join the Saturday, November 15th, peace march in San Francisco and help make it the largest demonstration of popular opinion on the most important task facing the American people – the ending of the Vietnam war.

No business as usual until the troops come home must become a meaningful slogan to the administration in Washington. This peaceful exercise of constitutional rights on November 15th will be such a start.

White Juries And Black Defendants Under The Law Of The Land

By Attorney Fay Stender
Franck, Hill, Stender, Ziegler and Hendon

Post Kerner Report (President's National Advisory Commission on Civil Disorders, 1968) officially admitting that white racism is a genuine American disease, responsible for disorders previously officially attributed to the faults of blacks and other minority groups, the district attorneys of this State, and closer to home, in Alameda and San Francisco counties, either permit, condone or encourage the trial deputies to peremptorily excuse the last few blacks who survive selection and excuse procedures, which weed out minority and poor citizens before they ever reach the jury box.

Black defendants are today being tried by all-white juries for alleged offenses often arising out of confrontations in the black communities with white police officers who patrol, but do not reside in those communities. Within the past few months, Black Panthers Charles Bursey and Warren Wells were tried in Alameda County by all-white juries, and so was a young black student, Wayne Greene.

Recently, in San Francisco, Black Panther John Bowman was tried by a jury from which Municipal Judge Donald Constine permitted the deputy district attorney to peremptorily excuse all blacks who were seated in the jury box. Amongst the plethora of charges against John Bowman, which the City and County of San Francisco spent the community's funds in prosecuting, were the charges that he violated a city police code regulation forbidding posters to be placed upon telephone poles (by posting announcements of the hearing in the United States District Court on Huey Newton's application for bail pending appeal) and charges of battery and trespass growing out of Bowman's visit, by invitation of the Black Student Union, to Balboa High School.

The writer had recent occasion to visit Lexington and Concord, to see the educational film shown at these monuments to the American Revolution, and examine the literature describing these sacred initial engagements of the Revolution, all emblazoned with the physical symbol of the rifle and musket. The memorial to the fallen British at the Bridge, near the Minute Man himself, expresses a warmer compassion, a closer cultural tie between the colonists and the British than may be found today between the predominant white society and the non-white communities of either the north or the south.

The British in 1776 were not more foreign than the white police officer in the black community of the late nineteen sixties; the language of the British and the colonists was more similar in tone, nuance and shared values than that of the suburban or hill white community and the black ghettoes of today; the taxes levied by the Crown were less oppressive than the unemployment of the blacks, or their disposition by selective service to the jungles of Southeast Asia today.

Yet the relations between the blacks who take arms, symbolically, or in self-defense, against these conditions, and the whites who impose them, are defined by white legislatures; the laws interpreted and enforced by white policemen, their reports submitted by white prosecutors to white grand juries, their criminal charges tried before white trial juries; and upon conviction, sentences are imposed by white judges and served in jails and penitentiaries run by white sheriffs and prison officials.

The political power of black people is increasing, (as is that, at perhaps a slower rate, of other minority ethnic groups in the United States) and it is true that due to the recognition and exercise of this power there now are a few black legislators, a few black judges and deputy district attorneys, a handful of black grand jurors, a few black deputy sheriffs and employees in correctional work. And, although substantially under-represented, there are black persons in the master jury panels.

Thus, at the final moment when there is, despite all of the obstacles[1] to selection of jurors from a fair cross section of the entire community, a chance that a black defendant on trial may be judged by a jury with at least one or two members of his own community, race, peer group, with an understanding of his language, culture, motivation, problems and pressures and aspirations; the peremptory challenge is used to exclude either all or most black people who appear in the jury box.

If it be argued that this is just the historic use of the peremptory challenge, where reason need not be given, the result nevertheless compels an examination of the reason. Is not the reason precisely based on the factors listed above; that the black juror WILL understand the black defendant and listen, if not sympathetically, at least with comprehension, to the black defendant and his witnesses? Isn't it precisely that true understanding, which leads to a judgment not based on the fear which the dominant white group feels of the rising, militant black group, or even to an identification with the motivations and actions of the black defendant, which the district attorney wishes to exclude from the jury?

The district attorney wishes to exclude those persons biased in favor of the defendant; in the racial confrontation situation he assumes that the black juror will be sympathetic to the black defendant. The operation of the other processes of exclusion and the fact that the blacks are still a minority results in the presence of so few blacks in the jury panel that the district attorney can exclude all blacks from the jury, not just those whom he feels to be pro-defendant in the classical sense in which every attorney intuits who is a good juror or bad juror for his client.

The reader is referred to the unpublished opinion, available in the Alameda Superior Court records, by Judge George Phillips. PEOPLE vs SMITH, (No. 42219, July 1968), where a mistrial was declared when the district attorney exercised 26 peremptory challenges, the majority of which were against non-whites, and in fact excluded all non-whites sitting as part of the prospective jury. Judge Phillips held that these facts and circumstances were such as to logically and reasonably lead to the inference of a conscious intent on the part of the district attorney to exclude non-whites as a group or category from the jury.

Before reading the exhaustive and analytical treatments of the legal impediments to abolishing the practice, and the decisions by which the white majority has maintained not only its power but a rationale rhetorically consistent with the Constitution, the reader, and especially the law student, is urged to take the time to visit the Superior Courts of Alameda County and watch the process in action, and count.

As he sits there watching black after black peremptorily excused, perhaps the white observer can try to imagine how he would feel being judged on a criminal charge, perhaps an alleged personal assault, upon a black person, by a jury of twelve blacks, as he sought to explain the circumstances of the incident with all of the assumptions, premises and frame of reference inherent in the position of the white person in relation to blacks.

One wonders if the district attorneys who employ this practice have ever

continued on back page

". . . Like It Is!"

By SAM DeLORENZO

GREAT MOMENTS IN HISTORY— THE BATTLE OF FACULTY MEADOW

Once upon a time, in the golden kingdom of Gate there was one Prince John, a strong-willed monarch who saw fit to commit himself and his kingdom to support a protest against the Hundred Years War to be held in that year on October 15th. The Prince advised his Court and his Ministers of Public Instruction to refrain from indulging in matters of import on that day that other kingdoms had voted to close down in protest of the useless killing of the war. The Minister of Morality – Golden "Fat City" Rule – was joined by his five colleagues in voting to accept the Prince's advice and thereby abiding by their convictions and the Prince's and his subjects.

But all did not take kindly to the Prince's procedures. Prince John and his Court were subjected to the ignominy of rebellion in the kingdom of Gate.

"Who dares dissent from the dissent?" spake P.J. . . . Some peasants were heard to shout, "The Prince doth assume too much in spaking for me and thee – without asking we."

The Prince duly relied on his royal heavies in the Court to silence the rebellious opposition . . . Duke Stuart of Blecher, the Royal Secretary, Baron Rothschild, Chancellor of the Exchequer, and Sir Percival Lerch, Chief of Surveillance (yea-verily- he can't even call balls and strikes). The leader of the peasants opposed to the Moratorium was one Baron von Zubel and his hard-working yeoman Stephen . . . ably assisted by a veritable Maid Marlene – a very foxy lady who had no small voice, as many were wont to wish.

The opposing forces were seen maneuvering in and around Faculty Meadow where von Zubel hoped to force the issue by forcing Prince John to sign a Magna Carta which would guarantee that his highess would desist in making pronouncements without asking the Baron and his men (and women) where they stood. The Baron was overheard issuing commands in a heavy, Prussian accent . . . "Ve shall not gif up von foot . . . retreat is out of ze question." "Right," seconded Stephen (some said far right.) "The war must not be recognized by this kingdom – at least not until we are asked whether we recognize it or not!"

With that the issue was joined. Of course, some in the realm were unaffected by all these events. The leader of those unaffected by the affected was the court jester Duncan – Duncan . . . he was heard to say poignantly "Come on, you guys . . . who cares about that junk . . . let's have a beer blast!"

Back at Faculty Meadow the battle was fast and spurious . . . each side claiming a victory. Prince John, in a rare attempt at humility, declared his intention to listen to the protests of the peasants in the future . . . that is, AFTER he and the court took further "unofficial" stands on political issues. After this "capitulation" the "triumphant" opposition rode away on their asses shouting, "Three cheers for Prince John." MORAL: IT'S ALL IN HOW YOU LOOK AT IT!

ADMINISTRATIVE LACK OF RESPONSIBILITY – FAILURE TO FUND MOOT COURT PROGRAMS

Golden Gate has an identity problem . . . ("Golden Gate? Where's that?") This has resulted in a monstrous inferiority complex which a concerned student body, led by Geoff Russell and Jon Rutledge, are trying to remedy . . . with the help of the administration. So far the administration, whose responsibility it is to upgrade the reputation of the law school, has failed to assist the Moot Court Board with any funds.

The flimsy excuse ("We haven't got any more money.") is not acceptable to a very concerned student body. We don't mind HELPING the administration to do their job but we do mind having to do it by ourselves! If this school is to attract the kind of students who can and will advance the reputation of this law school in national competition, the administration must "find" the necessary funds IMMEDIATELY!

The amount needed in proportion to the stakes involved is minimal. We hope that the administration's incredible excuse will not kill one of the school's most worthwhile and necessary programs. If the necessary funds are not allocated, this administrative lack of responsibility will help to cause an even greater annual exodus of the kind of students who would make up the Moot Court Program to the other area "name" schools. This amounts to a rather abysmal failure on the part of the administration to clearly see what the law school's needs and priorities are and should be. Need we say more?

MISCELLANEOUS

John Rutledge's third year class football team is called the "Adverse Possessors." Reasoning (are you ready for this?). . . "Because we're open, notorious and hostile (Oh wow!) . . . A CASE OF PLANNING . . . Tony Rothschild's wedding date was selected so as not to conflict with any football or baseball games . . . he was, in effect, married on an off-weekend . . . Dean Bader's wife gave birth to their third child . . . congratulations to the new dean . . . a very busy man . . . THE SCHOOL PICNIC . . . a big success . . . plenty of beer (where was the Barr?), food, sunshine . . . Softball game between faculty and students . . . 2-2 tie . . . Golden (with the help of Lerch and "whiz kid" Jones) was able to keep the student power in check for four scoreless innings . . . Another picnic scheduled in May . . . Do yourself a favor and don't miss it . . . SBA and all connected with the picnic did a great job.

WHO'S WHO . . .

Judy McKelvey (Jude) . . . Con Law prof and faculty adviser for Law Survey . . . graduated Univ. of Wisconsin Law School . . . taught for Univ. of Maryland's European Division in Athens and Darmstadt for 3 years . . . passed Calif. Bar in '67 . . . married to retired Lt. Col. McKelvey . . . Because of her European experience in teaching, she decided that she would like to teach at a small law school in S.F. . . . a small law school in S.F. decided that she would be a welcome addition . . . they were right . . . her only complaint is about her husband . . . "When I went to work, he quit" . . . SOME VIEWS: Vietnam . . . "Get out as soon as possible . . . it was a mistake . . . only question now is how to disentangle" . . . Marijuana laws . . . "Silly to outlaw . . . matter of individual conscience" . . . Student Activism . . . "Involved students serve necessary function i.e. dissent . . . we all have a moral obligation to be involved in what's going on around us."

Leo Paoli . . . Assistant Dean, Criminal Law prof . . . Golden Gate Law graduate . . . taught at S.F. Law School . . . married with three children . . . Reasons for teaching . . . "I like the intellectual challenge in the classroom – stimulating." SOME VIEWS: Vietnam . . . "Get out" . . . Capital Punishment . . . should be declared unconstitutional – cruel and unusual punishment . . . Grass laws . . . "Ridiculous – predicated on unproven assumptions . . . Criminal law should be revamped to reflect present-day social values with minimum interference with individual's right to do as he pleases . . . as long as it doesn't result in harm to others.

GRADUATE DEFERMENTS

A male law student, like virtually every male under thirty in the U.S. today, has draft problems. One problem facing graduate students particularly, is the effect of that provision in the 1967 draft law which provides that no student who has had a 2-S deferment after June, 1967, is eligible for either a 1-S(c) to enable him to complete the current school year if he is ordered for induction in that year, or for the otherwise statutory 3-A deferment for men with children. (50 USC App. 456 (h)(i))

The courts have exhibited concern over this provision, since the effect is to penalize students wishing to do graduate work. Local Board Memo No. 87, issued by the Selective Service System, held that the provision applied to every student who had had a 2-S deferment, graduate or undergraduate, since June, 1967. While the provision has been upheld as to students with undergraduate 2-S, it has not been uniformly applied to students holding graduate deferments at that date.

The first case decided on this issue was that of ARMENDARIZ vs. HERSHEY, 1 Selective Service Law Reporter 3323, decided January 27, 1969. The fact situation was typical. Armendariz was a graduate student who was not holding an undergraduate 2-S on or after June, 1967. He was ordered to report for induction, requested a 1-S(C) the local board was required by law to give if the requirements were met. The Board refused the 1-S(c) on the grounds of Local Board Memo No. 87. Armendariz sought pre-induction judicial review, which was granted on the grounds of OESTEREICH vs. SELECTIVE SERVICE SYSTEM, 393 U.S. 293, 1 SSLR 3215. OESTEREICH, which concerned a deferment for a divinity student, held that pre-induction judicial review was available, despite the legislative prohibition in draft cases, in situations where the deferment was statutory and not in the discretion of the local board. The District Court for the Western District of Texas held that the 2-S provision did not apply to graduate students holding only graduate 2-S since June, 1967, and enjoined Armendariz's induction.

Shortly thereafter, the District Court for Connecticut followed ARMENDARIZ in CAREY vs. LOCAL BOARD No. 2, 297 F. Supp. 252, 1 SSLR 3326. The First Circuit approved the view of ARMENDARIZ and CAREY in Bowen vs. Hershey, 1 SSLR 3374.

In California, Judge Peckham granted a preliminary injunction in an ARMENDARIZ fact situation in Schafer vs. Mitchell, Northern District Calif. March 31, 1969, 2 SSLR 3014, and it seems likely that other judges will follow suit in this District.

Approval of Armendariz has not been universal, however, and many courts have refused to grant pre-induction relief to graduate students in similar circumstances. The Tenth Circuit held that pre-induction judicial review was barred in RICH vs. HERSHEY, 408 F.2d 944, 2 SSLR 3011.

Some courts which may have refused to grant pre-induction review find that refusal to grant the 1-S(c) is a valid defense to a prosecution for a subsequent refusal of induction. See U.S. vs. Amos, 2 SSLR 3194, U.S. vs. Rundle, 2 SSLR 3195.

Although the situation is fluid, any law student who has not had an undergraduate deferment since June, 1967, and who is ordered to report for induction during the school year should request a 1-S(c) and consider an attempt to enjoin his induction.

Besides the decision in Schafer vs. Mitchell, the District Court for the Northern District of California, which has a reputation for fairness to selective service registrants, has made other recent decisions with far-reaching consequences if they are followed here and in other jurisdictions.

The right of a registrant to be classified by a board made up of his neighbors, a concept at the root of the local board system, has been upheld in two recent Northern District cases. Judgment of acquittal was ordered by Judge Peckham in U.S. vs. BELTRAN, 2 SSLR 3202, when the defendant showed that only one member of the local board lived in the area served by the board.

Since then, Judge Zirpoli has followed BELTRAN and ordered a judgment of acquittal in U.S. vs. DeMarco, 2 SSLR 3204. In DeMARCO defendant showed that, of the four persons who had served as board members during the time he was classified, only one lived in the area. Further, it appeared that fourteen members of various other local boards lived in the area served by DeMarco's board. Judge Zirpoli held that there was a sufficient showing that it was "practicable" for board members to live in the area served, as required by statute.

The right to be classified by one's neighbors whenever practicable is extremely valuable, especially in areas with specialized local interests and problems, including ghetto areas.

Mrs. Sylvia Bingham
2nd year eve.

ALUMNI NOTES

In answering a request for information, J. Russell Pitto writes that he is employed by the San Francisco City Attorney and presently assigned to the Public Utilities Commission as Administrative Assistant to the General Manager, James K. Carr, former Undersecretary of Interior of U.S. under Stewart Udall.

Thien Koan Ng writes, "I have just received a L.L.M. degree in taxation from George Washington University (Sept. 1969) and started working in the tax department of Touche Ross & Co. in New York City."

Martin Friedman in Anchorage, Alaska, sends the following obscurantist note: "I will need a law desk next summer and Chris has a leather shop in the basement."

Philip R. Weltin has recently joined the firm of Cooper, White & Cooper in San Francisco.

Ron Bass writes that he is an unemployed bar result waitee. Well, Ron, if you knew what some other recent graduates were doing, things might be worse.

Alumni Joe Thomson, a Bay Area Attorney, points out that his son James H. Thomson is now enrolled at Golden Gate Law School, evening classes, 1st year.

Erik Michael Kaiser of the class of 1968 has recently joined the law firm of Chase, Rotchford, Drukker and Bogust in Los Angeles. He is also an instructor at Glendale College of Law, Glendale, California.

A JOCK BY ANY OTHER NAME...

By DUNCAN BARR

It's happened. The Super Gate has opened the door to wrack, ruin, destruction and despair with the initiation of a flag football program. The behemoth will soon become the dreadful albatross that has destroyed other prestigious educational institutions in the past. Already the signs of decadence are noticeable. Only last week the school gardeners (?!) could be seen planting ivy in the school's quadrangle; the Dean was caught scouring the downtown pawnshops for a raccoon coat; Mr. Jones was already planning an alumni game and organizing cheerleader tryouts; and finally, tragic as it is, Mr. Smith now roams the corridors muttering: "All right, gang, let's win this one for the Buddah."

But the real problem lies not with those All-Americans who favor the pigskin parade ... that's Sportstalk ... but rather the "liberal coalition" who, led by Super Silver, now find another target for their radical wrath. Soon they plan on appearing before the SBA and demanding that the football budget of $6.80 be slashed. If this isn't immediately done, they will undoubtedly occupy the men's room on the second floor and refuse to leave until the administration meets their twelve-point plan.

There is little doubt that they will demand — The question of facial hair will surely cause at least one small riot, and the faculty can hold several meetings to determine its stand on the issue. But all of this will be for naught if the picketing does not come off with a cool precision and alacrity. We all know of the fatal blunder that Super Silver committed on the day of the Moratorium and if he wishes to control his minions, he must pull this one off.

Super had his troops rallied on that dreadful Wednesday and successfully led them to the federal building. There, however, as often happens, he became confused, and he and his lackeys went to the wrong side of the building. He did not notice that the people picketing there were not protesting the war but rather demanding a Federally-subsidized birth-control program. When Super, with his picketsign ("Withdraw now!") realized all of this, it was too late. Though dejected at having missed his opportunity to protest, and changing the world immediately, he could be heard saying, "Wait until next year!"

Whether the vast athletic program can provide Super Silver with the vehicle for returning to power and stature among the darlings of the Law School society remains to be seen. It is quite probable that it will. Generally the most innocuous happenings provide impetus for the inane to return to the inane.

Ah, glorious irreverance!

LAW WIVES

The Law Wives' Club held its first meeting on Tuesday, October 7. The Wig Palace of San Francisco demonstrated a number of their many hair pieces. One of our members won a free wiglet. President Jan Helfrick presented a one-hundred-dollar scholarship to Susan Bender. This was a special award given for last year only to the highest ranking graduate. Susan is from New York where she graduated from Queens College with a B.A. in sociology. While she attended Golden Gate, she worked at the Probation Department and the Contra Costa Legal Services. She has taken the Oregon Bar, but she has no plans as yet.

The next meeting will be a Tupperware Party. This will be held on Tues., Nov. 4, at 7:30 P.M. in the Seminar Room on the 2nd floor of the law school. The wives are encouraged to bring friends. The December meeting will be the annual Christmas Party in which the wives will exchange gifts they have made themselves. The L.W.C. is lots of fun, and all wives of law students are invited.

ANGELA DAVIS

Angela Davis, a twenty-five-year-old, black Assistant Professor of Philosophy at U.C.L.A., became the subject of a recent controversy when she publicly acknowledged her membership in the Communist Party. University officials claim that they did not know of her party affiliations when they hired Miss Davis last spring. However, they acted with haste upon discovering it. On September 19th, in keeping with their thirty-year-old policy of not hiring Communists, the Board of Regents voted to fire Miss Davis because she was a member of the Party.

A group of U.C.L.A. faculty members reacted to the vote by bringing a suit against the regents. In granting a motion for summary judgment, made by the attorneys for the faculty members, Superior Court Judge Pacht ruled the regents blanket policy of not hiring Communists unconstitutional.

Mere membership in an organization which might be considered subversive is not a ground for barring a person from employment. Discrimination against an individual for membership in an organization constitutes an abridgement of the rights of expression and association guaranteed under the First Amendment.

There are many cases supporting this position. KEYISHIAN vs. BOARD OF REGENTS, 385 U.S. 589, 1967 ,

involved three faculty members of the State University of New York at Buffalo. Each one refused to sign a certificate stating that he was not a Communist, and if he ever had been, he had reported that fact to the President of the University.

The Supreme Court declared the regulation invalid because it discriminated against a person for his mere membership in the Communist Party, regardless of whether or not he had an intention to further the unlawful aims of the Party. Without a requirement of specific intent the regulation is overbroad, and thus bars ... "employment both for association which legitimately may be proscribed and for association which may not be proscribed consistently with First Amendment Rights." (Keyishian 609).

UNITED STATES vs. ROBEL, 389 U.S. 258 (1967), tested the constitutionality of that part of the 1950 Subversive Activities Control Act which made it unlawful for any member of a "Communist-action" organization to be employed in any defense facility. Appellee had worked in a shipyard without incident, and without concealing his Communist Party membership, for ten years when, in 1962, the Secretary of Defense designated the shipyard a defense facility. Appellee continued working there and was charged with violating the S.A.C.A. in that he unlawfully and willfully held employment at the shipyard knowing that it had been designated a defense facility.

The part of the S.A.C.A. in question was held to be overbroad in the same way, thus having the same effect as the regulation in the Keyishian case. Although the government's intentions – protecting defense plants against sabotage and espionage – were justifiable, the court said that the means chosen cut too deeply into rights of association; under this statute one is conclusively presumed guilty by association alone, for it's never questioned whether this individual's association poses any threat to the government. One is thus put in the position of giving up one's organizational affiliation, regardless of whether it's a threat, or giving up one's job.

"It would indeed be ironic if, in the name of national defense, we would sanction the subversion of one of those liberties – the freedom of association – which makes the defense of the Nation worthwhile." (Robel 264) (U.S.)

The circumstances surrounding the Davis case indicate that there are a substantial number of people who are determined to curb freedoms which have recently been established by the Warren Court. As the nation swings further to the right, one uncomfortably wonders about the destiny of these recent rulings.

Mrs. Patricia Waks
2nd Year Day

GOLDEN GATE COLLEGE BOOK STORE

This Christmas season the Bookstore will handle UNICEF greeting cards.

I invite you down to look at the selections for this year; they are, as usual, beautifully done.

The proceeds from the sale of UNICEF cards provide budget for the United Nations Childrens' Fund which helps feed, clothe, shelter and medically care for children all over the world.

Even if you don't care to make a purchase, I'm sure you'll find the designs attractive and stimulating.

Walt Stevenson
Bookstore Manager

LETTERS TO EDITOR

Contratulations on your publication! An excellent contribution to the school.

Attorney Darrell W. Stevens
Oroville, Calif.

Dear Editor:

I protest the so-called moratorium October 15, 1969. This law school is not a tool of the faculty and an ad hoc committee of students who wish to further their own political and social goals.

Our professors say they cannot in good conscience teach on October 15 (fourteenths and sixteenths are a different matter!), and we all applaud the fact that they have consciences. But why should they deny a day of education to students who want and deserve that education? Surely there is some appropriate sacrifice our professors can dream up for themselves that would allow the students their full rights.

This "moratorium" is actually in response to a request by protest groups to join a nation-wide day of protest (Caveat, Sept. 1969). So let's drop the fiction that this event springs, "simon-pure," from anybody's conscience. And the protest seems hollow at this point, with the troops being brought home and the draft being drastically cut and hopefully ended soon. I am very profoundly sorry our faculty has consented to be a part of a movement that has not yet had its fill of disruption, violence and injustice.

Very truly yours,
Dale L. Lowe
1st Year

(Ed. Note)– Mr. Lowe's letter was in response to a unanimous decision of the faculty not to teach classes on October 15th. The moratorium was also supported by an eleven-to-three vote of the Student Bar Association Board of Governors. An ad hoc committee led by Eric Zubel and Marlene Fox opposed the faculty action at that time. In all fairness to the faculty, Mr. Lowe is remiss in his letter in not pointing out that the faculty held make-up classes. His other comments can stand or fall by themselves. The opinion of our staff on the Vietnam war is expressed in our page one editorial.

LEGAL CLINIC – MANDATORY FOR ALL STUDENTS

The legal clinic program recently inaugurated at Golden Gate Law School is a long overdue step in the right direction, but it doesn't go quite far enough. Rather than a select 40 students, the program should be mandatory for ALL law degree candidates.

Unless the student is going to devote his life to intensive legal research, plunging himself into the sacrosanct catacombs of some world-famous law library, never again to emerge into the light of day, one must of necessity deal directly and intimately with people in the practice of law.

Each of us knows at least one scholarly type who can not only appropriately quote Witkin chapter and verse from memory, but also fully understands and correctly applies what he quotes. This is very nice and perhaps even desirable, but how does he relate to people?

It might be to the student's advantage to see if he has the mettle to cope on a day-to-day basis with the trying and turbulent realities of the practice of law.

This concept is not novel. All professions relating in any meaningful way to people and their problems have field placements as an integral part of their educational framework. Some obvious examples are: practice teaching, nurse's training, medical and dental training, and social work.

The practical experience should not be required before the second year in the day program and the third year at night. There are sufficient traumas inherent in the initial study of the law without superimposing one more. In addition, a natural selective process takes place at the completion of the first year and those who survive the experience are more apt to complete the entire program of study.

At the time of registration, each student would indicate the area or areas of the law that especially interest him. Law firms, throughout the area, having been previously contacted by the administrative faculty, would offer placement positions for the students. As nearly as possible, each student would be placed according to his first or second preference.

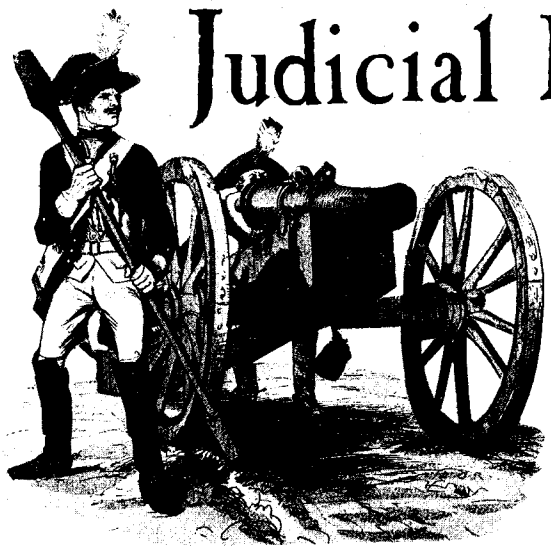
One attorney from each firm would be directly responsible for the training and supervision of the student who would receive credit, a grade and a comprehensive evaluation from the field supervisor.

In this way, the fledgling law student would be given a first-hand opportunity to decide, academic prowess notwithstanding, if he could be an asset to the legal profession.

Judith R. Gordon
Third Year Night

A RICHARD M. NIXON PRODUCTION

The Canons of Judicial Ethics



One man must disarm the opposition to protect a vital portfolio!

Starring Clement Haynsworth, in the role created by Abe Fortas!

NEW CODE OF ETHICS

The House of Delegates of the American Bar Association adopted a completely new Code of Professional Responsibility for lawyers to replace the sixty-year-old Canons of Professional Ethics. The vote on adoption at the ABA's annual meeting this year in Dallas was unanimous.

The new code reduces the former forty-seven canons to nine which state the basic obligations of lawyers in axiomatic terms. But it also includes "Disciplinary Rules" setting both enforceable standards of conduct and "Ethical Considerations" which state the principles on which the "Disciplinary Rules" are based.

Among the provisions of the new code are those which:

1) Permit attorneys to use "an earned degree or title derived therefrom indicating his education in the law." This for the first time will allow use of the Doctor of Jurisprudence or J.D. now being offered as a first degree in most law schools, on business cards, letterhead, etc.

2) Incorporate in part the ABA fair trial-free press standards for lawyers in the area of pre-trial and trial publicity.

3) Prevent a lawyer from limiting his liability to a client for personal malpractice.

4) Call on public prosecutors or other government-state attorneys to reveal evidence to defendants which tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment.

5) Prohibit an attorney from handling legal matters which he knows or should know that he is not competent to handle, without associating with him a lawyer who is competent to handle it."

CAVEAT staffer, Mrs. Patricia Waks, posed for our photographer John Herbert.

WHITE JURIES AND BLACK DEFENDANTS

continued from page 2

been in a room alone with twelve black or twelve non-white people.

In this mood, the law student may undertake examination of the failure of the creative imagination which has permitted majority decisions such as SWAIN vs. ALABAMA, 380 U.S. 202, 85 S. Ct. 824 (1965) and denial of mistrials in the several cases mentioned above. Even those who oppose racism in our society are hampered by the pervasive rigidity and solidity of the forms and institutions and legal concepts which enshrine and perpetuate that racism.

Lawyers who believe that the law can be a responsive as well as a repressive instrument should institute a close watch upon the use of the peremptory challenge, widespread publication of the results of careful observation, and a consistent attack upon the abuse of the peremptory challenge.[2]

(1) Exclusive use of voter's lists to select jury panels, selection from those who maintain residence at the same address as that at time of registration, those who return postcards or respond thereto, excuse of wage earners, excuse for the convenience of employers who will not pay wages during jury duty, etc. See Testimony of Alameda County Jury Commissioner in PEOPLE vs. NEWTON, No. 41266, Superior Court, Alameda County, July, 1968, No. 1 Crim. 7753 in the Court of Appeal, First Appellate District, Division 4. For reasons relating again to discrimination and economic oppression, black people are substantially under-represented on the voter's rolls; those in the ghetto areas move more frequently than middle class white persons, and are heavily concentrated in the wage-earner categories which are excused from jury service.

(2) Excellent legal analyses of these problems are found in Kuhn, "Jury Discrimination, The Next Phase," 41 So. Cal. L. Rev. 235 (1968) and Note (J. Rhine) "The Jury, A Reflection of the Prejudices of the Community." 20 Hastings L. Journal, p. 1417, (May 1969). See also the dissenting opinion of Justice Goldberg in SWAIN vs. ALABAMA, SUPRA.

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IF YOU THINK YOU'RE RIGHT

continued from front page

by the Constitution of the United States in that it discriminates against him because it fails to exempt him from military service solely on the ground that his conscientious opposition to participation in war in any form may not necessarily be based on religious training and belief. Such classifications as between religious and non-religious militate against atheists, agnostics, and other general "non-believers." In fact, it might well be argued that classifications based on religion are usually deemed arbitrary and discriminatory per se and to be valid must be necessary in the least.

Federal Judge Stanley Weigel, before whom the case was tried, made quite clear his personal view that the draft law as written was unconstitutional and expressed the hope that Judge Wyzanski's ruling in Sisson would be upheld by the Supreme Court. However, since there was precedent in this jurisdiction upholding the Selective Service Act and the Sisson case was already before the Supreme Court, Judge Weigel decided to take a motion for acquittal under submission in the case at hand. The judge did make clear that unless the prosecution could introduce further factual evidence against the defendant in the interim he would "acquit Martin the day after the U.S. Supreme Court upholds Judge Wyzanski's ruling in Sisson." Of course, if Sisson is overturned, it will be another story.

While the enormous ramifications that might have developed if Bill Martin had been found guilty and his case directly appealed to the U.S. Supreme Court did not materialize and the decision remained in limbo, nevertheless, the personal commitment of this one human being is a symbol of what is a growing national revulsion against the interests of the military-industrial complex.

NOVEMBER EXAM SCHEDULE

As of publication, Tax I was the first scheduled mid-term on Thursday, November 13. The Community Property FINAL was scheduled for Monday, November 17th followed by a Commercial Transactions mid-term on Tuesday, Nov. 18th. A Tax II FINAL concludes the first round of exams on Wednesday, Nov. 19. Poverty Law students are required to submit papers and have no final exam. Some professors are cancelling classes on Nov. 10th and Nov. 11th to permit students more time to study for exams. Please watch the bulletin boards for further details. Classes resume on Nov. 20th, unless otherwise advised. Thanksgiving recess begins Nov. 27th.

SPEAKERS, continued from page 1

Bar Association will provide the opportunity for Bay Area law students to actively participate in legal seminars for high school students. The purpose of this program is to acquaint youth with a knowledge of the law and legal system in a manner which cogently relates to their daily existence. This program will hopefully generate a positive outlook as to the advantages of the system and the potential for change within the existing structure. High school students should be apprised of the protections which the law affords to them and their families, and the agencies accessible to make this protection meaningful. They must learn not only how the law relates to them at present, but the future ramifications of a police or juvenile court record. These classes will also provide a propitious forum to stress increasing opportunities for law school scholarships and minority enrollment.

The program is designed so that either a student or an attorney will schedule regular appearances in classes at local secondary schools. Although the format will be left to the discretion of the individuals, it is suggested that open discussion be encouraged and lecturing be kept to a minimum. Hypothetical fact situations, which may be utilized to structure the discussion and stimulate initial interest and participation, have been prepared. Each law school will maintain its own teaching pool and individual students may autonomously arrange the scheduling of their teaching commitments.

Initial contacts with the principals of several Bay Area schools have been established by interested attorneys but the ultimate success of this program will depend upon the willingness of law students to utilize their unique ability to establish rapport with young people. This is a meaningful opportunity to serve a vital community need. With the utilizaton of prepared materials. time expenditure will be kept to an effective and rewarding minimum.

Please sign the list on the Law School bulletin board. Students should indicate any preferences for particular school districts or areas of the city conveniently located for them. Individuals will be contacted directly by the Constitutional Rights Foundation which will coordinate available students with high school teachers requesting their services. In order that these teachers may effectively incorporate this program into the fall curriculum, prompt response is essential.

Harvey R. Levinson Bay Area Coordinator
High School Speakers Program