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Caveat, August 6, 1981

GOLDEN GATE UNIVERSITY · SAN FRANCISCO · FOUNDED 1901

the Caveat

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NEW ASSOCIATE DEAN: Jon Pevna-Manhan

by Leslie Tick

Jon Pevna-Manhan has been hired to replace Marge Holmes as Associate Dean of Student Affairs. He will officially assume the position on May 1, but will be working here on a part time basis until then, to help the transition move smoothly.

Pevna-Manhan has been involved in judicial administration since he graduated from the University of Southern California Law Center in 1970. From the time he was an original Nader's Raider (as a 2nd year student) to his last position as the Executive Officer of the Criminal Justice Planning Committee of the Judicial Council of the California Supreme Court, Pevna-Manhan has been "trying to implement changes in the system before I actually work in it, by improving the administration of the court system."

He's now looking forward to working in in law school - at the opposite end of the spectrum - "to work on improvements from the very beginning."

Pevna-Manhan has been the Assistant Director of a Judicial Administration Program at USC, and has also taught Civil Procedure, Criminal Procedure, Judicial Administration and Discretion in the Criminal Justice System, at a variety of different law schools.

Pevna-Manhan said his favorite job thus far was as director of the program at USC because it gave him ongoing contact with students and people starting out in the field. He's interested in developing the same kinds of contact and involvement at Golden Gate.

He sees the role of education as an ongoing process that continues long after graduation. "One of my priorities at GGU will be to develop a strong alumni association. Such a group could provide advice, counseling and exposure to different fields of law, for students, and outside input from peers for faculty and administration." He also suggested the possibility of working alumni into the new writing and research program for first year students.

Pevna-Manhan sees the student bar as being a potentially strong force in the law school decision making process.

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ABOUT THE WEATHER..

by Suzanne Marria

Within the next two months, the administrators of several large S.F. hospitals will decide whether or not to allow the military to manage their hospitals in the event of a nuclear conflict.

The Department of Defense met with Bay Area hospital administrators Feb. 26th to promote the Civilian Military Contingency Hospital System (CMCHS). Through the plan, hospitals sign a Memorandum of Agreement with the DOD committing the hospital to provide a "minimum of 50 beds" per institution for military casualties from a "future large scale conflict."

A local community health worker who attended the Feb. 26th meeting reported that the DOD based the plan on a projection of a future large scale war "overseas which will probably begin and end very rapidly and produce casualties at a higher rate than any other war in history. The quickened pace and high intensity may not allow time to build the necessary military support base here in the U.S. to care for

cont.p.7

Partytime!

END OF YEAR PARTY SLATED FOR FRIDAY, APRIL 17

The SBA and PAD will co-host the annual End-Of-Year Party on Friday, April 17. Everyone is invited to attend! So, come one, come all to the 5th floor auditorium from 3 to 6 p.m.

Beer, wine, snacks and music will be provided. If you have any special favorites, bring enough to share!

Anyone volunteering to help clean-up will be welcome.

FAREWELL PARTY FOR ASSOCIATE DEAN MARGE HOLMES

Students, faculty, and staff are invited to attend a farewell party for Marge Holmes on April 15, her last day at G.G.U. The party will be from 3 to 5 p.m. in the Staff Lounge on the 6th floor.

Letters to the Editor

To the Ed.:

Based on the proposed 18.1% tuition ceiling increase, law students will pay up to $176 per semester hour next fall. This 18.1% increase, viewed with last year's 23%, is excessive. From a student's perspective, this trend is alarming.

Do rising costs call for an 18.1% increase? And if so, what benefits will the students receive in exchange? Will the law school establish a tutorial program? Will adequate student representation on the FsC be restored under the new administration? Will GGU's curriculum expand? Will there be additional faculty supervision of the 1st year Writing and Research program?

In evaluating the recommendation for tuition increase, the FsC Budget Committee should encourage student suggestions and remember that student loan levels have remained static.

Finally, if the Board of Trustees does approve an increase, let us hope they also make a firm committment to effectively reduce future tuition by working to raise scholarship/financial aid funds.

Fletcher Smith

Editor,
Caveat
Golden Gate Law School

The Caveat of March 31, 1981 contains a lie.

A letter on page 3 of that issue alleges that a Visiting Professor left school for a month.

The assertion about his absence is blatantly false.

In fact, the Visiting Professor missed four classes in two weeks, half the time misrepresented in the unfair and inaccurate letter. The missed classes were taught by a colleague after the law school administration vetoed make-up classes scheduled by the visiting professor who was absent from school in the normal course of academic responsibilities, and at the invitation of a university in an old and valued ally of the United States.

Facts are often as important as law--something the Visiting Professor might have stayed behind and taught had he realized how unkind, ungenerous and unreasonable some people can be.

Nonetheless, the Visiting Professor demands a retraction of the libelous and offensive material.

Henry W. McGee, Jr.

Dear Editor:

It is very important for readers to note a correction to my letter printed in last week's issue of the Caveat. I mistakenly indicated that Professor McGee was absent from school for a month, where in fact, he was only gone for approximately 2 weeks. I apologize for any harm or offense that he may have experienced in light of this error. Additionally, I want to emphasize that the point of the letter was not to express a personal attack of the individuals; instead, the "system" itself is what needs to be attacked, criticized and reformed.

Marcia Minuck
Cherie Shanteau

Dear Editor:

RE: Minuck's letter about Professor's absence and Bang per buck of tuition

I'm glad that GGU professors are invited to lecture at other law schools and argue before the California Supreme Court. This is a credit to our faculty and only adds to our school's reputation, inuring to the student's benefit in the long run.

Have we suffered so much by spending a few class sessions with Prof. Moscowitz or coming to Torts fifteen minutes early?

Andy Cooper

To the Editor: April 1,1981

A FINAL RESPONSE: FIRST AMENDMENT EQUAL ACCESS LIVES AT GGU!

As a coauthor of the petition which was presented to President Otto Butz advocating the protection of first amendment rights here at GGU, I am pleased at the vigorous responses which have emerged from the usually uninterested student body. This type of open, free debate is essential to any institution of higher learning, whether it be public or private.

I must respond, however, to a few of the pointed criticisms and attacks which have been made against those who support the right of free speech at GGU.

The most cogent and thoughtful argument advanced by some of the students' letters was that since GGU is a private university, the protection of first amendment liberties is not required. This argument has some merit, particularly if one aligns oneself with the Supreme Court Justice Rehnquist. Nevertheless, it is still far too simplistic in its analysis of the present situation.

Speaking from a "Con Law" perspective, whenever the issue of free speech has been raised, the court has looked to see whether a "public forus" or the functional equivalent thereof was present. Therefore, the issue is whether ir not private univ-

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AN EXTREMELY SHORT STORY

by Randy Colfax

Spring came suddenly and Sam found himself wandering alone among the flowers and the lovers. Even torts failed to cheer him. He would start to read a case and then realize that he had been staring at the book for several minutes without reading. He would try to strike up a conversation with a fellow student and almost immediately feel that both he and they were completely hollow.

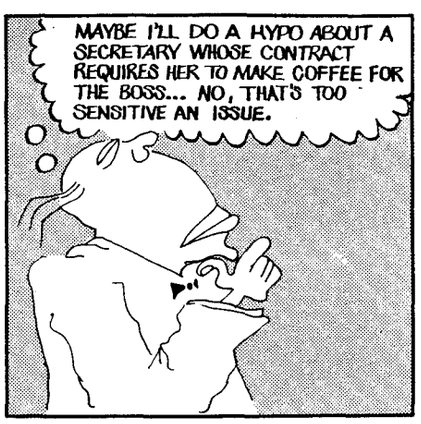
Sam's only consolation came in the knowledge that his school had gone into the business of providing a forum for the Marines to exercise their right of free speech. He was sorry that the Army, Navy, and Air Force had not been given equal access, and he was sure that nobody had even considered the winos from Mission Street, the preachers from Market Street, and the barkers from North Beach. Still, he was glad that the Marines were the chosen group. His ego almost totally wrecked by law school and his recent encounter with Cathy Rigley, Sam dreamed of joining the Marines instead of finishing law school. There was no doubt in Sam's mind that the Marines were true men, such men that they could get along fine without Cathy Rigleys.

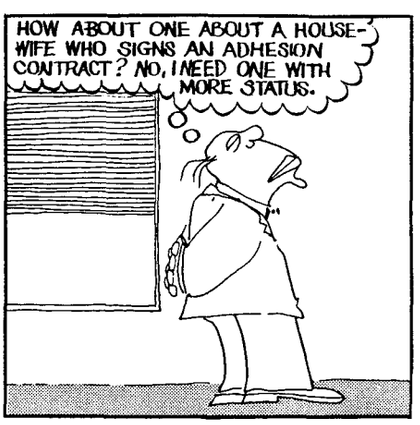
If he joined the military, Sam would not have to worry about what to do anymore. There would always be orders to follow and no more complicated legal principles to learn. Sam imagined himself among the glorious fireworks on a battlefield where the only real rule was to end other men's lives. Surely that would be better that studying the writings of a bunch of old men who were trying, in their pitiful and pollyannish way, to set things right.

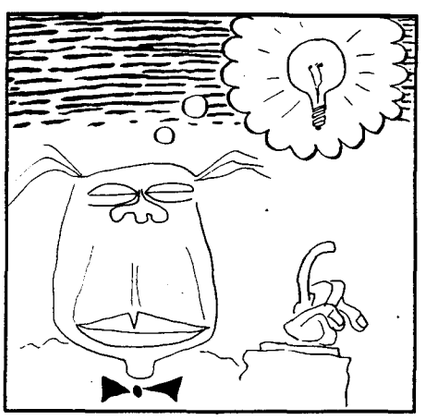
In the end Sam decided to go on with his study of law. At least he had a lot of experience with it. At home, Sam kept his clothes in a filing cabinet, and he had been filing briefs for years.

Next: THE WAGON STOPS AT GUERRERO

Loophole©
by hal malchow







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ANNOUNCEMENTS

RESULTS OF SBA RUN-OFF ELECTION

Day VP....Jim Fisher
Secretary....Leslie Tick
4th year night....Dan Clifton
Dave Haas
2nd year night....Barry Roberts

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HELP WANTED

The Alumni Forum newsletter is seeking a first year student as reporter-assistant editor for next year's paper. We publish three times per year stories and information about the school, its faculty and students and its alumni.

If interested, place your resume or short information sheet about yourself in the Alumni Forum mailbox in the Faculty Center. Include your phone number so we can contact you.

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CLASS OF 1982: NOTE THESE CHANGES IN GRADUATION PROCEDURE!

Registrar Wally Walker has informed the Caveat of the following application deadlines for all students graduating in the class of 1982 -- summer, '81; fall, '81; or spring, 82.

Students should note that the Registrar's Office is now requiring students to pay the basic graduation fee of $25 at the time they submit an application to graduate.

Summer, '81 graduates: deadline for submitting application and payment of fee is June 12, 1981.

December, '81 graduates: deadline for submitting application and payment of fee is September 4, 1981.

May 29, 1982 graduates: deadline for submitting application and payment of fee is January 31, 1982.

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The Institute for Appellate Advocacy, sponsored by the ABA, will be held at GGU on April 22, 23, and 24.

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REPETTI SELECTED AS NEW FINANCIAL AID DIRECTOR

Associate Dean Marge Holmes informed the Caveat that Angela Repetti has been selected to replace retiring Director of Financial Aid Paul Jain. Ms. Repetti is presently on the job and has met with Dean Holmes regarding some of the particular concerns of law students.

Dean Holmes is "extremely encouraged" by Ms. Repetti's response to law students concerns. Students are urged to stop by and meet the new Financial Aid director.

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WOMEN'S ASSOCIATION ANNOUNCEMENTS

* On Sunday, April 12th, at 6 p.m., the Women's Association is sponsoring an end-of-the-year potluck in honor of our graduating women. Joyce Saltalamachia has generously offered to have this festive event in her home in Oakland. All women in the law school community are invited to join in the celebration. Directions to Joyce's house may be picked up from either Joyce in the Law Library, or DeeDee in the faculty center.

Please sign up for a dish to bring on the Women's Association bulletin board (2nd floor). A-D: Salad/Vegetable; G-T: Main Dish; and U-Z: Dessert/Beverages.

* On the last day of classes, Friday, April 17th, two caucuses of GGU women will be convening as follows:

12:00 Noon, Room 326 -- LIL Meeting; Discussion about the political position of lesbians at GGU; planning for next year.

3:00 p.m., Room 322 -- General Women's Association Meeting; structuring our priorities and leadership for the fall.

Both meetings are extremely important. Please make an effort to attend, even if you don't think you will be able to take an active role in organizing. We need each other's ideas and visible support. The later caucus has been planned to coincide with the always-fabulous end-of-the year SBA party.

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INTERNATIONAL COMMUNICATIONS CONFERENCE APRIL 9 & 10

The Press Club of San Francisco is holding a conference on international communications on April 9 and 10.

All those interested in attending should contact Pat Bergstresser at 775-7800.

ersities, such as GGU have historically been locations associated with the exercise of free speech.

I will concede, for the sake of argument, that the hallways of a university traditionally have not been areas of free and open debate on public issues. But one could argue that an auditorium or some other similar location on a private university campus has indeed been traditionally used as a public forum. I can personally recall several instances in which our auditorium was used as a public forum, including the mayoral candidate debate as well as the hearings of the Commission on Judicial Performance.

GGU is not unique among private universities in its offering of a public forum. In fact, public forums have traditionally existed on the campuses of the vast majority of private universities.

Looking specifically at the history of GGU, we find that a public forum has been regularly provided ever since the university's inception in 1901. Once a tradition has been established, consistent with the customs of most private universities, equal access must be given to all groups who desire to use the public forum. This of course can be done within appropriate time, place, and manner restrictions in furtherance of the university's interests as a private university. Isolating the forum to one specific area of the campus certainly would be a valid restriction. But the university's interests in these restrictions must be separate from the intentional suppression of ideas.

The issue here, then, is whether the administration at GGU has been arbitrary and invidiously discriminatory in the manner in which it allows access to its public forum. If so, it must be reminded of its responsibility to provide equal access to all. If the administration rejects this responsibility, it must choose the only acceptable alternative left: to ban ALL outside groups, recruiters, speakers, etc., from using this campus as a public forum. This is a harsh alternative indeed, but, in my view, it is the only one left which is fair.

In response to all the other comments published in the Caveat, all I can say is that it is obvious that supporting free speech for military recruiters does not mean one condones or agrees with what they say or do. Also, I must say in all candor that I do not understand what the CONDUCT in El Salvador has to do with the free SPEECH issue. Raising such a controversial and important issue in this debate needlessly diverts attention from the fundamental issues involved here and is disingenuous at best.

I hereby reaffirm my support for the petition supporting first amendment rights here at GGU. At the very least, the SPIRIT of the first amendment must be respected in every sector of society. There can be little hope for the rest of society if even we as students of the law can not respect and believe in the free expression of ideas.

Think about it.

Gregory M. Alonzo
(2nd year day)

A concurrence....(from another co-author)

I totally concur with Mr. Alonzo's explanation of the issues involved in this controversy. I myself regard the military with a great deal of distrust, suspicion, even outrage, not to mention the question of competency. However, this is not the issue in question. While I recognize the need for vocal activist groups in pointing out the major social issues of the day, I must also reluctantly concede that many proponents of social activist views tend to expand any issue, if at all possible, to such universal socio-economic and political proportions as to obscure the bottom line. Here, the bottom line rests on the first amendment. It is unfortunate that no one has tried to effectively rebut the constitutional arguments regarding free speech, with the exception of the private property argument, which I believe must fail. An argument could be made that, by allowing the Marines to occupy the hallways rather that restricting them to areas previously designated for recruitment, GGU is guilty of a discriminatory application of its rules in favor of military recruiters, and against non-military users regarding the school's capacity as a public forum. A uniform application of the rules would result in the containment of military recruiters in the designated areas along with recruiters from other organizations. This would have far less of a chilling effect on the exercise of first amendment freedoms that the banning of all recruiters, or even just banning the military.

Banning the military from campus while allowing recruitment by major multinational corporations is an inconsistency which will frustrate any attempts to isolate the campus forum from socially repugnant forces. In fact, the presence of these same repugnant forces on campus has been the trigger which has set off this most stirring and rewarding dialogue. It is actually in the interest of all activist groups to allow ideological-

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ANNOUNCEMENTS cont.from p.4

N.L.G. MEETINGS --

COURSE CRITIQUES AND FINAL

MEETING OF SEMESTER

First year students: Wondering what courses to take next year? The N.L.G. is sponsoring a discussion led by second and third year students on selecting courses and instructors -- what's good, boring, heavy workload, etc. Save yourself hours of course planning. Come and bring your questions:

-Should I take all the Bar courses next fall?

-Do I need to take Evidence in order to get a job?

-Is there any way to survive the boredom of Wills and Trusts?

The discussion will take place at noon, Thursday, April 9 in Room 322. It will be offerred for night students at 5:30 p.m. in Room P-9 on the same day.

Final N.L.G. Meeting: The Guild will meet for the last time this year on Tuesday, April 14 at noon in Room P-5. Topics of discussion include closing old business(the Marines, remaining programs, and chapter structure), plans for the summer, and more.

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P.A.D. ANNOUNCEMENTS

Initiation of New Members -- All new P.A.D. members will be initiated in a joint ceremony with the Hastings Law School Chapter on Friday, April 10 at 5:30 p.m. The initiation will be held in the Hastings Moot Courtroom, 198 McAllister Street in San Francisco. Following the ceremony, there will be a dinner/dance at the Fort Mason Officers Club. Charges will be $14.50 per person for the dinner/dance, which begins at 6:30 p.m. These events are for P.A.D. members only.

Election of Officers -- Elections will be held on Tuesday, April 14th at noon in Room 326. Voting is limited to P.A.D. members. Officers for the 1981 school year will be elected.

P.A.D./SBA End-Of-Year Party -- As detailed elsewhere in the Caveat, the traditional end-of-year party is slated for Friday, April 17, from 3-6 p.m. in the 5th floor auditorium. All welcome!

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There will be a BALSA meeting on April 9th, in the Conference Room of the Law Library at 5:15 p.m. It is most important that all members attend. Election of officers will take place at this time. Nominations are also welcomed.

LAW SCHOOL ENROLLMENT OF WOMEN AND MINORITIES INCREASES NATIONWIDE

Law school enrollment of 125,397 students during Fall, 1980 included 42,045 women and 10,642 minority students. This represents and increase of 3,418 women, who now comprise 33.53 percent of the total enrollment compared to 31.45 percent in 1979. Minorities added 634 students to the total enrollment and increased their representation from 8.15 percent in 1979 to 8.49 percent.

The total number of men declined from 84,174 in 1979 to 83,352 in 1980

The findings were made by the annual survey of the American Bar Association Section of Legal Education and Admissions to the Bar. The survey covers the country's 171 ABA-accredited law schools.

According to James P. White, Indiana University School of Law and consultant to the ABA Section, these figures follow the 12-year pattern of substantial growth in the number of women students. In 1968, the total law school enrollment of 62,779 included 3,704 women.

The number of minority students in the first year class nationwide also increased in 1980, from 3,822 in 1979, or 9.39 percent of the total number of first year students, to 4,112, or 9.72 percent of the total number of first year students.

Hispanic Americans other than Puerto Ricans accounted for the largest increase in first-year enrollment of the minority groups, from 267 to 378. Blacks increased from 2,002 to 2,144.

Dean White concludes that the enrollment of minoities has not been significantly affected by the 1978 Bakke decision, which barred racial quotas in university admissions programs.

The total enrollment figure of men and women represents a 2.11 percent growth over 1979. Dean White noted that part of this growth is attributable to the addition of two provisionally approved law schools to the ABA list, Mississippi College and George Mason University. Exclusive of these two schools, total enrollment increased from 122,801 in 1979 to 124,680 in 1980.

LETTERS TO THE EDITOR cont.

ly opposing viewpoints a platform on campus. The strategy should be to target these opposing viewpoints by getting them out in the open so that they may be effectively torpedoed. Effective and thought-provoking debate is the most powerful weapcn the activist anti-militarist forces can deploy.

Michael J. Steuer
(all military puns intende
(2nd year day)

ABOUT THE WEATHER..... cont.from p.1

all the casualties returning in the early stages of the conflict."

Seventeen areas in the U.S. have been selected for the CMCHS agreements. Each hospital contracts to commit a given number of beds and agrees to later increase the number of beds "as the need arises."

Military personnel would be responsible for "co-ordinating all aspects of implementing the plan." The DOD would have immediate access to current personnel information and the right to solicit additional information from employees.

Strong negative reaction to the proposal surfaced at S.F. General and the U.C. Med Center, two local hospitals currently considering the CMCHS-DOD agreement.

AFSCME local 1650 at the U.C. Med Center recently issued a letter vehemently objecting to the plan as another example of Reagan administration priorities which promote expansive military growth and spending at the expense of human services funding and programs. The union points out various provocative aspects of the CMCHS-DOD plan: it commits these hospitals to accept direct military command and management; it prioritizes military, not civilian, use of beds, services and personnel; reliance on these agreements will likely enhance U.S. military willingness to engaged in major conflicts. Further, the union notes that the DOD has only approached hospital management for discussions and not consulted with hospital unions or municipal governments.

This author notes that the most salient aspect of the plan at this stage is to establish a contractual obligation which gives the military exlusive management control of hospitals currently used for public health care. The number of beds committed and personnel to be used in no serious way will meet actual needs in such a conflict. Nor does the plan prepare existing public hospitals or related agencies to meet the needs of any such military conflict. The plan "assumes" no conflict or casualties will occur within the U.S.

The S.F. Board of Supervisors Health & Environment Committee has scheduled a hearing of April 14 to consider the impact of the plan if adopted. AFSCME is calling on the community to help reject the plan by: (1) attending a protest rally at the U.C. Med. Center APRIL 10 at 12 noon;
(2) sending letters opposing the CMCHS-DOD plan addressed to Supervisor Nancy Walker, Chairperson of the Committee.

A copy of the AFSCME letter and a fact sheet on the CMCHS-DOD plan are on the NLG bulletin board on the second floor of the law school.

PEVNA-MANHAN cont.from p.1

"There are always conflicts between students and administration - but those differences aren't insurmountable. If students are not happy, it reflects in all aspects of the school."

"Students need to develop pressing priorities for the school and for themselves, to be presented to me and to the new dean. When there are so many issues, people's energy tends to scatter. It is very important to set priorities."

Pevna-Manhan also feels it is important to develop mutually (between students and administration) agreed upon procedures for making changes in organization and student representation. This would be an insurance of sorts against changes in power such as were made by the faculty last summer.

"It is encumbant on students and faculty to be reasonable with each other. Whatever the problems were in the past, we're starting with a new administration. We must establish positive attitudes and a committment to deal with each other as mature adults."

THE CAVEAT

The Publication of
Golden Gate University School of Law

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LSAT SCORES

The following excerpt from the San Francisco Chronicle of Sat., Feb. 21, was submitted by our Placement Director, Portia Stewart:

SCHOOL ENTRY TESTS DECIDING FATE OF MILLIONS

by William Grant

Sandra Golvin is a successful attorney in the Los Angeles office of an international law firm, but she almost did not make it into law school. Her test scores were too low.

Her problem is a familiar one.

The United States is the most test-conscious nation in the world. More than 3 million people take the major tests that help govern admission to colleges and to graduate and professional schools each year.

Millions more take other kinds of tests that determine everything from who will be placed in which elementary school reading class to who will receive a license to sell real estate.

Because people have become so fearful of the power of tests over their lives, a whole industry has sprung up, offering courses that promise to help raise test scores, and there is a heated national debate over the use and -- critics charge -- widespread abuse of the tests themselves.

Today, 25,000 people will gather in groups of several hundred in large rooms all across the country to make tiny pencil marks on a computer-graded Law School Admission Test (LSAT) answer sheet.

Many of them know that about 200,000 applicants this year will try to win admission to about 48,000 openings in the nation's law schools.

For many, the LSAT score will make the difference of going to a top law school or just an average law school -- or to no law school at all.

Some, like Golvin, will find that good grades do not necessarily offset low test scores. Golvin had a 3.6 grade point average in sociology, her major at the University of California at Berkeley, and a 3.2 average overall. But her score on the LSAT was only 580, just slightly above the national average.

That combination should have meant she would get a 2.2 in law school, according to a computation many law schools make from an applicant's test scores and grade point average. In fact, she got a 3.7 and finished third in the 1978 class at San Francisco's Golden Gate University.

"Everyone I have ever worked with has said I do high quality work," Golvin says.

But the LSAT and the other admissions tests do not measure the potential quality of work after graduation. They are an attempt to measure how much chance a student has of success in college, graduate school or another advanced academic program. * * *

And it is the nation's law schools that have a reputation among admissions experts as depending most heavily on test scores.

That helps some students. John Rubin, a 1976 graduate of Golden Gate, was able to get into law school partially because his 650 LSAT score counted for more than his C average as an undergraduate at Valley State College.

Even at Stanford, one of the nation's top law schools and one where officials insist test scores are not used to eliminate potential students, only 1.2 percent of the applicants for the present first-year class who had almost straight A grade averages but low test scores were admitted as compared to an admission rate of 32 percent for those applicants with only B+ grades but very high test scores.

"It would be disingenuous not to admit that the LSAT has a major role to play," says Professor Jack H. Friedenthal, chairman of the law school admissions committee at Stanford.

"Those scores are universal. The test is the only thing everybody has taken," he says. * * *

Point of Information:
Sandra Golvin is an associate with Graham & James, a prestigious medium-sized law firm in Los Angeles. John Rubin has a successful law practice in San Francisco.

ANNOUNCEMENT

The National Association of Black Women Attorneys (NABWA) will hold its Eighth Annual Convention from May 21 through May 24, 1981, at the Capitol Holiday Inn in Washington, D.C. The theme of this year's convention is "WE HAVE TO DO IT OURSELVES." This year will feature the fourth scholarship award contest, which is open to black female law students. Registration materials for the convention and information on the writing competition are available in the Dean's office, or interested persons may contact the National Association of Black Women Attorneys, 1625 Eye Street, N.W. Suite 626, Washington, D.C. 20006 (202/822-9124).

BOOK REVIEW

The following is excerpted from Law & Liberty, A Project on the Legal Framework of a Free Society, from the Institute of Humane Studies, Winter, 1980.

THE RULE OF LAW IN ENGLAND

by Peter J. Coleman

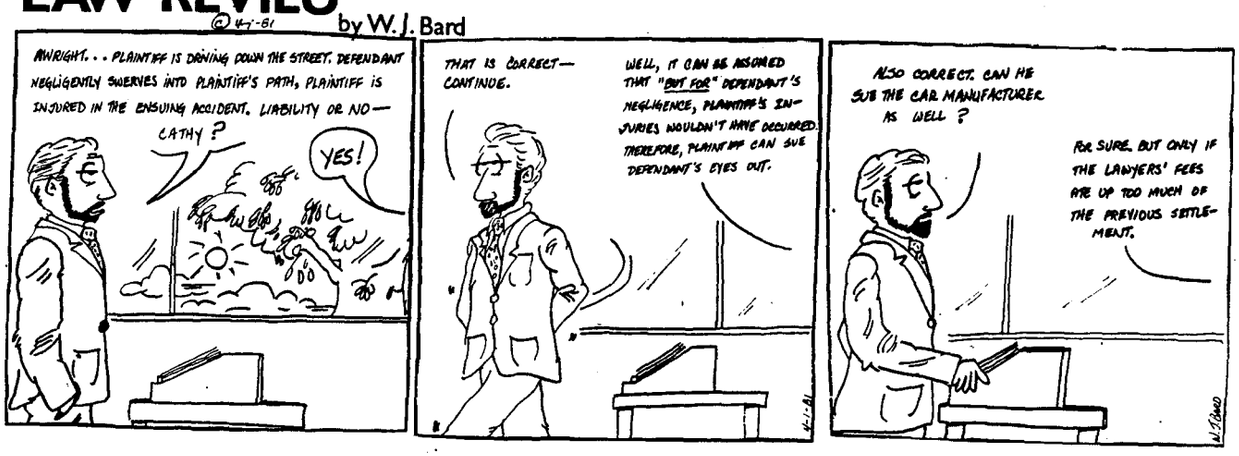
A newly published collection of essays on law and order in England in the seventeenth and eighteenth centuries opens up a fresh, new, and essentially non-ideological world for our inspection. Based primarily on legal records, the repository of establishment perceptions, but read through the eyes of sensitive and imaginative social historians, these essays reveal the inner life and workings of the legal system in a diverse set of situations.*

The catchy title, An Ungovernable People, notwithstanding, the essays demonstrate that the people were indeed governable, though not necessarily in the ways that their rulers preferred, and certainly not according to some simplistic Marxist formula in which a tiny ruling class imposed order on the masses. To the contrary, all members of society, from the lowliest on up, appreciated with the shrewdest of insights, that effective government depended for its success on the consent of the ruled. Governors and governed alike also appreciated what might be called "the rituals of law and order" -- that disobediance was a legitimate way of protesting unpopular policies or the failure of government to enforce the law, always provided that protest stopped short of overthrowing authority itself. If and when that point was reached, both sides recognized the right of government to defend itself, if necessary by draconian measures. The people were ungovernable only when the legal system failed to satisfy popular expectations or when it was perceived to be unjustly perverted by vested interests.

It is important to understand at the outset that the world of the Stuarts and Hanoverians was dedicated to the proposition that order was among the highest goals of public policy and that government had an obligation (indeed was created) to achieve that objective. This meant that disruptive conditions should not be permitted to develop. Thus, when grain riots broke out in Essex in the 1620's, the authorities (both central and local) had two choices -- they could crush the insurrections with whatever force was required, or they could respond by enforcing the prohibition against grain exports in time of shortage. They did both: they hanged some of the leading agitators, but they also ensured a supply of wheat at reasonable prices. Similarly, Yorkshiremen debased the coinage with the acquiescence of local clothiers because the central government had failed to provide an "honest" circulating medium. Local people had no sympathy with counterfeiters. The government was successful against debasers only after it brought the precious metal content of coins up to an acceptable level. The Yorkshire "coiners" then went out of business because there was no longer any demand for their services. Colliers near Bristol also defied unpopular laws establishing turnpikes along the roads they used to haul coal to the city. They readily appreciated that the revenues were to be used to improve the roads for wheeled traffic, the carriages of the local elite, and that the burden was to be shifted from these landowners to the haulers of coal. Even debtors in the King's Bench prison in London acted out similar protest roles, challenging the encroachment of authority into their privileged, hierarchical, and largely autonomous world. The debtors' prison could function only if governors and governed cooperated. Even the Wilkites -- usually treated as radical challengers to the established legal order -- are seen in these essays in a very different role, that of manipulators of

cont.p.10

LAW REVIEW



BOOK REVIEW

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the courts in London and its hinterland. Like the grain rioters, colliers, coiners, and debtors, the Wilkites were really conservatives. They demanded that the elite obey the rule of law: that policy makers, administrators, and enforcers act and be perceived to act in just and lawful ways.

Set forth in these extended essays, then, is a dynamic set of complex relationships -- the dialogue between local and central authority, between the world as it might be in the eye of some Stuart bureaucrat and the world as it was, and above all between what ordinary people demanded of the legal system and what they actually got. In such an analysis elites and ruling classes surely remain, but their conflict with the inarticulate hoi poloi has become rich, subtle, and almost kaleidoscopic.

What binds rulers and ruled together in these essays is not so much class and class conflict as mutual expectations about what the legal order was expected to provide in any given set of circumstances. Particularly noteworthy was the demand from below that authority play by the rule of law, and the willingness by authority, when pressed, to obey. For ordinary folk, the definition of injustice was overwhelmingly the perversion of good government by the rich and powerful. But if the inarticulate showed extraordinary resourcefulness in pressing for redress of grievances, most of them were no less acute in perceiving just how far they could push their demands. The gallows served to remind the populace of what the prudent limits to protest were. The essays also demonstrate that the rulers had no less an acute perception of when to make concessions and when to act tough. That mutual perception of the boundaries of law and order held English society together. It also meant, of course, that the rulers continued to rule and the governed to be governed. Even so, liberty under the law was not an abstraction granted from above, but a tangible force deeply embedded in the inarticulate consciousness of the people.

*John Brewer and John Styles, editors, An Ungovernable People: The English and Their Law in the Seventeenth and Eighteenth Centuries (New Brunswick, 1980).

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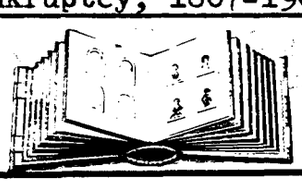

PERPETUITIES IN CALIFORNIA

Back in the days when Britannia was prosperous,
Ruling the waves from Japan to the Bosporus,
Noblemen [7] sought to achieve perpetuity,
Snarling up titles with vast ingenuity.
Still, every time that they managed to fix it all
Up popped some judge who proceeded to nix it all.
Nothing was safe for the suffering gentry -
Even [8] reverters [9] and rights of re entry.
Later the hardy but rough forty-niners,
Coming by ox-carts and primitive liners,
Swarmed to the West, where their virile obscenity
Shattered the somnolent Spanish serenity.
Quickly they drafted their first Constitution,
"We too," they thought, "must restrict devolution.
No perpetuities — thus we prohibit 'em,
Save that sweet charity's sanctioned *ad libitum*." [10]
Next, the electorate's wise representatives,
Seeking secure and specific precedentives,
Clarified everything: "Alienability
Can't be suspended, through writ or agility,
Longer than lives that exist at the start of it;[11]
If you attempt it, it's void, every part of it." [12]
Afterward came an amendment permissional:
"Twenty-five years - but instead, not additional." [13]
Meanwhile the lamp of research had been burning;
Gray had revealed some astonishing [14] learning:
"Careful analysis, after you're through with it,
Proves that Restraints have got nothing to do with it.
Focus your mind on remoteness of vesting;
Here's the infallible basis for testing:
Lives in existence, plus twenty-one years too.[15]
Then it must vest, if the Rule one adheres to." [16]
Those forty-niners — had *they* guessed the true rules?
Must Californians comply then with *two* rules?
This was a doubt [17] that for years had perplexed one.
Then spoke a court — not the highest, the next one:
"Our pioneers meant exactly what Gray did;
No one could reason more strictly than they did.
Gray at the time was an infant or foetus;
Still, in advance they adopted his treatise." [18]
Two rules, and each with its different period!
Woe was intense, lamentations were myriad.
Solace — could no one devise it and pen it?
Yes — the enlightened Assembly and Senate:[19]
"Gray's formulation — the courts now have backed it;
So *in haec verba* we promptly enact it;[20]
Further, suspensions that check alienation
Henceforth are good for an equal duration." [21]
Now the suspension rule functioned more neatly.
One step remained — to repeal it completely.[22]
Out with experiments novel, heretical! [23]
One Rule! Familiar, precise, arithmetical.[24]
Hail, Common Law, with thy wisdom inscrutable;
Awesome, symmetrical, sacred, immutable!
Hail, Pioneers, so scholastic yet gay too!
Hail, learned judges, and John Chipman Gray too!

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