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Alumni Forum, June 1976

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ALUMNI

FORUM

Vol. 1, No. 2

June 1, 1976

Program for practitioners begins

The first in a series of courses to be presented by the newly-established Advanced Legal Education Program (ALEP) at Golden Gate Law School recently was completed.

ALEP is designed to offer practicing lawyers opportunities to enhance their skills and increase their practical knowledge in specialized areas of practice. It's not just an update, but "it's continuing legal education in the true sense of the word," says Judith McKelvey, dean of the Law School.

Courses in the program are conducted as weekly seminar discussion groups, with class members expected to share their knowledge and expertise. "The classes will be kept small because we want a give and take between instructor and participants," says Jay Grenig, project director.

This spring's 10-week course was designed primarily for trusts and estates lawyers to explore and examine the duties and responsibilities of the lawyer as a professional fiduciary. It was conducted by Luther J. Avery, a partner in the San Francisco law firm of Bancroft, Avery & McAlister, who has written and lectured extensively on trusts and estates.

Courses to be offered in September are on arbitration of disputes (including labor disputes, commercial disputes and personal injury claims as well as others) and on administration of

estates. "These two courses will be aimed at attorneys who want to increase their skills," says Grenig. In the future, some courses will be tailored for attorneys who already have experience in the subject while others will be for attorneys who want to increase their skills in a new area.

Certificates are awarded upon satisfactory completion of a course, although courses taken in the program don't apply toward an academic degree or state specialization. Tuition fees, which may vary according to the course, include the cost of specially prepared materials which become the property of the participant; cost of the first course was \$175.

Tax specialty available in joint degree program

By Alex Najjar

Golden Gate Law School, in conjunction with the Graduate School of Taxation, offers a program of joint JD-MBA (tax) and JD-MS (tax) degrees. The MBA and MS programs are the largest graduate tax programs in the country and are the only ones offered by a California institution which satisfy the education requirement of a tax specialty for the California Bar Association.

Law students are showing increased interest in gaining this specialty in law as evidenced by growing enrollment in the Joint Degree Program. Initiated several years ago, the programs permit a JD candidate or graduate to pursue a degree-awarding curriculum in the specialty of tax; over 26 tax specialty courses are offered by the Graduate School.

A candidate for the joint degree essentially is pursuing two degrees concurrently. The student first completes one year of law school, then enrolls in classes for both degrees. Several graduate foundation courses are required for the MBA or MS along with three graduate tax courses and four to five elective graduate tax courses. Six to nine units of tax or tax related law courses contribute to the 30 unit total for the MBA or MS.

Similarly, the Law School credits about four units of Graduate School tax courses toward the candidate's JD. The Joint Program usually takes four years. The MBA and MS degrees also are available to JD graduates; such candidates are given six to nine units credit for tax and tax related courses taken during their law school education.

According to Raymond F. Harless, Associate Dean of the Graduate School of Taxation, the MS program has considerable appeal to attorneys because it is very similar to an LLM (tax) curriculum.

Both the MBA and MS programs are offered on full- and part-time basis at Golden Gate's San Francisco, Los Angeles and Seattle locations.



Law School Dean McKelvey

Moskovitz named to Housing Commission

By Elizabeth S. Sisk

Myron Moskovitz, professor of law at Golden Gate University, was named this year by Gov. Edmund G. Brown, Jr., to head the Commission of Housing and Community Development. Moskovitz views the position as a "logical continuation" of his work in the housing area and welcomes the opportunity to participate in the policy-making end of the field in which he has worked for the past 10 years.

A review of Moskovitz's record in the housing arena reveals the logic of his selection by Gov. Brown for the position. Upon graduation from Boalt Hall in 1964, Moskovitz clerked in the California Supreme Court for Justice Raymond Peters. He then worked in the Office of Economic Opportunity in Washington, D.C., followed by a term as acting directing attorney for California Rural Legal Assistance in Marysville.

Subsequently Moskovitz served on the National Housing and Economic Development Law Project. One of the highlights of his work with the National Housing Project was arguing *Green v. Superior Court*, 10 Cal. 3d 616, the California case which established an implied warranty of habitability for residential leases. Moskovitz was Director of Litigation for the San Mateo City Legal Aid Society before coming to teach at Golden Gate.

The nine member Housing Commission formulates building codes for California and sets regulations for farm worker housing and mobile home construction. It also supervises the Department of Housing and Community Development. In addition, the legislature has requested that the Commission formulate a state-wide housing plan. The recommendations may ultimately result in a state zoning plan, subject to legislative approval.

Moskovitz will continue his full teaching load at Golden Gate, teaching criminal and landlord-tenant law. He prefers the problem approach to teaching because otherwise students read cases "in a vacuum." He also believes it sharpens their analytic skills. With students arguing cases, Moskovitz's approach results in lively classes.

His publications include the *California Eviction Defense Manual*, 1971; *California Tenants Rights Handbook*, 1972; and "implied Warranty of Habitability," 62 Cal. L.R. 1444. Moskovitz has also served as a consultant to *West's California Real Estate Law and Practice* series, 1975. His problem book for criminal law, "Problems in Substantive Criminal Law" will be published by West this summer to supplement the Johnson criminal law casebook.

In addition to his teaching duties, writing, and work on the Commission, Moskovitz is Chairman of the Berkeley Fair Campaign and Practices Commission. He is a past director of the California Housing Coalition.



Moskovitz



Seymour Farber, pictured here in his law office, is the practitioner-instructor who has been teaching at Golden Gate Law School the longest, since 1963.

Practitioners add to faculty

By Steven P. Krikava

Seymour Farber, a partner of the San Francisco law firm of Fleischmann & Farber, spends two hours a week teaching Trade Regulations at Golden Gate Law School. He is one of about 22 such practitioner-instructors who regularly teach courses here in areas of law with which they have had experience.

"About 20 percent of the units taught, in both day and night divisions, are taught by practitioner-instructors," says Judith McKelvey, law school dean. "They are valuable because they have an area of expertise generally not available." Recent courses taught by practitioner-instructors include Admiralty, Federal Civil Rights Litigation, Estate & Gift Taxation and Worker's Compensation.

Farber, who has worked for the Justice Department Anti-trust Division and now has a general business practice with 40-50 percent anti-trust work, teaches a survey course fall semesters on anti-trust laws and a spring seminar on the Robinson-Patman Act. He says he does it simply "because I enjoy it."

Farber began teaching at Golden Gate in 1963, shortly after leaving the Justice Department for private practice. "I wanted to have something that would keep me stimulated and on my toes," he explains.

"Teaching at Golden Gate has been good for me," he says. The school is only a short walk from his Montgomery St. office and he can schedule classes according to his convenience.

Farber has written some short articles on topics in anti-trust law and on labor law. He has given Continuing Education of the Bar lectures on commercial transactions and an anti-trust program for the Practitioner Law Institute.

While with the Justice Department, Farber received a special sustained performance award from then-Attorney General Robert Kennedy.

In community affairs, he is on the board of directors of the San Francisco American Civil Liberties Union and the northern California board of directors of the American Jewish Congress. He is on the Bar Association of San Francisco panel for arbitration of fee disputes and a member of the San Francisco Lawyer's Committee on Urban Affairs.

Farber originally is from New York. He received an A.B. degree from New York University and an LL.B. from Harvard.

Alumni news

Law library open to grads

Golden Gate's law library has instituted a new alumni borrowing policy in response to requests from graduates to make library resources more readily available to them.

Under the new policy, graduates will have library privileges comparable to students currently enrolled in school; any circulating book may be checked out for use outside the library. However, bound volumes of periodicals, reserve items, form books and looseleaf services are non-circulating.

Upon request, graduates will be issued an Alumni Library Card; when applying for the card, graduates should be prepared to show some identification with current address and phone number.

When borrowing a book, the graduate will be asked to leave the card with the book check-out card at the circulation desk. Five books may be checked out at any one time.

Alumni notes

- Carl H. Allen, '32, a San Francisco Superior Court judge retired this spring. After graduation from Golden Gate, he was in private practice from 1933-46 when he was appointed Deputy City Attorney in San Francisco. In 1949 he was appointed to the municipal court bench and in 1960 he was elevated to the superior court. He is presently vacationing in Europe.

- Elizabeth L. Emerson, '69, was recently named to be Disciplinary Administrative Counsel of the California State Bar. She is responsible for administrative processing of formal disciplinary proceedings in northern California and for giving procedural advice to attorneys.

- Norm Stone, '73, is teaching a survey course in legal assisting for paralegals, nights at City College, San Francisco.

- Steve Kleiman, '73, and George Brewer, '67, formed a partnership late last year and are now doing worker's compensation work in Burlingame.

- Frederick W. Bliss, '74, recently was made a junior partner with Ing, Lebb and Yano in Honolulu, Hawaii.

- Patricia L. DeVito, '74, was recently appointed to the Berkeley Fair Campaign Practices Commission by City Councilman William Rumford.



Garcia

Graduate appointed to municipal court bench

By Elizabeth S. Sisk

Louis Garcia was sworn into office as a judge of the San Francisco Municipal Court on February 19, 1976. Judge Garcia graduated from Golden Gate College of Law in 1952 and was admitted to the State Bar in 1953.

Judge Garcia's soft-spoken manner is striking as he presides over Small Claims Court. He patiently listens to complaints, probes for facts and comes to a decision. One party in a recent proceeding felt more comfortable speaking Spanish and Garcia accommodated her easily. He is the first judge with a Spanish surname to be appointed in San Francisco since 1850.

Garcia is particularly sensitive to the fact that Small Claims Court may be the first contact many people have with the legal system. Consequently he makes a special effort to explain the law as he applies it to the cases before him.

At the time of his appointment he was a solo practitioner in general practice and was previously a partner in the firm of Garcia, Wong, Haet & Dominguez. He described himself as "a poor man's lawyer." Garcia has found the experience of a large practice with smaller cases to be excellent preparation for the range and nature of the problems which are presented to him in his new position.

One of his most vivid memories of classes at Golden Gate when it was located at the YMCA on Golden Gate Ave. was the sound of basketball games downstairs. He acknowledged that the activity below helped to ward off any drowsiness created by his own pursuit. Garcia estimated that 50 students began in his class with about 15 finishing. He noted that approximately one-third of the graduates were women.

Garcia is a former member of the State Fair Employment Practices Commission and the San Francisco Human Rights Commission. He is currently a member of numerous legal associations including the Lawyers Club of San Francisco, Bar Association of San Francisco, California Trial Lawyers Association, National Legal Aid and Defender Association, Criminal Trial Lawyers Association of Northern California, San Francisco Lawyers Committee for Urban Problems and the National Senior Citizens Legal Center.

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Referral fees: Should they

Editor's note: *The "Issues forum" page is intended to be a space in this publication where viewpoints on issues of concern to practicing attorneys may be expressed.*

The writer of the article below was asked to respond to the following question: "Should the present rules covering (forbidding) payment of referral fees between lawyers be substantially changed or abolished?"

Darryl C. Henning is a 1974 graduate of Golden Gate Law School. He recently formed a partnership with Frank Offen, also a 1974 graduate, and they now have a general practice in San Rafael.

Comments from our readers on the issue of referral fees or on the article below are invited and will be printed on the "Issues forum" page in our next publication. However, due to space limitations, all such letters are subject to condensation.



Henning

Staff feature

Payment of a referral fee, an amount paid to an attorney for referring a client to another attorney, is clearly prohibited by the Rules of Professional Conduct in California (2-108(3) unless: the client consents after full disclosure, the division is made in proportion to services performed and the total fee charged by all persons licensed to practice law is not increased solely by reason of the provision for division of fees. The ABA Code of Professional Responsibility expressly makes it a cause for discipline in DR 2-107(A)(3) with a slightly different phrase "total fee of the lawyers does not clearly exceed reasonable compensation for all legal services they rendered the client."

On the other hand, EC 2-30 (ABA code) provides a lawyer should not accept employment when he is unable to render competent service, and California Rule 6-101 provides a "shall not wilfully perform legal services" rule for the attorney who "knows or should know, he doesn't possess the learning and skill . . . unless he professionally consults another lawyer" who does.

The purpose of the rules is to protect the consumer and to preserve the integrity of the profession. The result of the rules is a conflict nobody wants to talk about: the referral fee. Generally,

Personal opinion

Referral fees do

Referral fees — fact or fiction, proper or improper? According to the Rules of Professional Conduct, Rule 2-108, a member of the State Bar "shall not divide a fee for legal services with another person licensed to practice law who is not a partner in or associate of his law firm or law office, unless . . . (2) The division is made in proportion to the services performed or responsibility assumed by each . . ." Referrals for a split fee, without regard to services rendered, is thereby precluded.

But does this practice prevail anyway? Rationally, certainly such a rule would not have been promulgated against a non-existing practice. Moreover, if one takes as true all the rumors regarding the prevalence of referral fees, one must conclude they are indeed a reality.

Query for a moment, however, just where the harm is in allowing referral fees. Is the referred-to lawyer hurt? Hardly — he's getting a case he would not otherwise have had. Sure, he has to give up a percentage of the fee to the referring lawyer, but he's still coming out ahead.

Is the referring lawyer hurt? No, again. He is being compensated for giving up a potential money-making case for himself, and for risking the possible loss of his client who might continue going to the referred-to lawyer in the future.

And most importantly — would the client be hurt by allowing referral fees? Again, no. The client is being referred by one lawyer, who is either too overburdened, too apathetic regarding the subject-matter of the client's case or lacking in sufficient expertise to handle the case, to another lawyer who is less burdened, more interested and/or perhaps more experienced in the required area of law.

The fee charged will most likely be the same, regardless of

be allowed?

referrals are either an informal "I'll-trade-you-this-PI-for-a-probate," or a flat dollar amount or percentage of the fee collected. It might be questioned whether the rules can reach these informal transactions.

Proponents of bringing the practice out of the closet argue a benefit to the client by providing superior and probably cheaper counsel in specialized or unusual areas, rather than encouraging a lawyer to keep the client and "learn while he earns," which causes delay and added expense to the client. The reluctance to refer is based on a fear of losing the client altogether. One view is that the referral fee — if the referring lawyer is free to tell his client about it — would maintain the relationship: the client would know who was in charge.

Those who oppose referral fees point out that paying from 10 percent to 30 percent of the fee merely to meet the client is not economically sound, and allowing referrals would result in subtle inflations of the fee to make up the difference. Their position is that true professional responsibility mandates the referral itself when necessary and, current image problems apart, it is still to be assumed the majority of the profession is responsible. If some are not, remedies of malpractice and bar discipline should be sufficient to insure responsibility.

harm anyone

which lawyer handles the case — contingency fees being the normal 33½ – 50 percent depending on the type of case, and the hourly rates, though varying, averaging \$50 an hour. The fee area does present one possible area of abuse to the client, however. In order to recoup his "loss" in paying a percentage to the referring lawyer, the referred-to lawyer could demand a larger fee from the client. This leads to my next argument, however — if such practice is occurring anyhow, why not bring it above board and regulate it at the State Bar level?

The remaining provisions of Rule 2-108 of the Rules of Professional Conduct, not set forth above, provide that before a fee may be split between attorneys, the client must consent to the employment of the additional lawyer after full disclosure that a division of fees is to be made, and that the total fee charged by all attorneys must not be increased by reason of the provision for the division of fees. Such provisions are fully applicable to the referral situation as well, and would remedy the possible abuse to the client of increased fees.

In conclusion, therefore, I propose that the present rule barring payment of referral fees between lawyers be substantially modified to allow such payment. None of the parties involved is harmed by the referral fee practice, and each even obtains some benefit therefrom. Rule of Professional Conduct 2-108, as modified above, and the State Bar, would be available to prevent possible abuses in the fee division area, thereby eliminating the major argument against allowing referral fees.

DARRYL C. HENNING
Attorney at Law

Mother, daughter turn practice into family business

By Steven P. Krikava

Helen and Sylvia Shapiro, '72, disagree on how the mother-daughter team decided to attend Golden Gate Law School together; each says it's the other's idea.

Daughter Sylvia Shapiro was admitted to another law school after being graduated from the University of California-Berkeley. She quit before the end of the first year because the experience wasn't satisfactory.

However, she still was interested in law, as was her mother, Helen, who had been working in her husband, Carl's, law office since 1951.

"Sylvia claims I wanted to go to law school and she agreed to go with me," says Helen Shapiro, "but that's not true; I agreed to go back with her." They chose to attend Golden Gate after a family friend had spoken highly of it.

The whole idea was to provide support for each other, and "it certainly did at first," says Helen Shapiro. "I was old enough to have some anxiety about whether or not I'd make it, but I studied like a fiend." After first semester, when they both got good grades, they knew they were committed.

"It worked out very well for me," says Sylvia Shapiro. "I didn't have anyone to study with at the other school. But there also was an element of competition with Helen; there was no way I was going to let her finish without me." Sylvia Shapiro finished at the top of her class.

Both women were pleased by the support they got from the school and from John A. Gorfinkel who was dean of the law school when they started. Helen Shapiro especially appreciated the support because she nearly was crippled by arthritis while she was in school. "By Christmas (of the first year) I was using a cane," she says.

"As far as I'm concerned," she continued, "law school was a salvation. If I hadn't been so busy, the pain might have ruined me, but the work really made it impossible to pay much attention to pain."

Since graduation, they have been in the general practice San Anselmo law firm of Shapiro, Shapiro & Shapiro with husband and father Carl. Helen Shapiro says "As long as Carl practices, I'll practice with him." But Sylvia Shapiro isn't as sure that she wants to stay with the family firm.

She says she's sometimes frustrated by private practice and if she could be doing what she most wanted, she'd be working to advance the economic status of women. However, knowing that someday she could take over the entire practice is a strong inducement to stay.



Sylvia (left) with Helen Shapiro.

Student news

Team wins mock trial

A team of three Golden Gate Law School students took first place in the Western Regional Championship of the National Mock Trial Competition early this spring. Members of the team were Gloria Dralla, Sara Simmons and David Stanley.

The competition requires each team to prepare an entire case for trial, representing both plaintiff and defendant. The mock trial then is argued before members of the Santa Clara County Superior Court.

As Western Region champions, the team went to Houston for the national finals. There they competed with teams from Harvard, Notre Dame, Villanova, University of Texas, University of Washington and Emory University. The team's counselor was Law Professor Bernard L. Segal.

Second in client counseling

Two Golden Gate Law School students, Marge Holmes and Jim Ruben, placed second in the Western Region Client Counseling Competition. The annual competition is sponsored by the American Bar Association—Law School Division.

The competition involves a sketchy fact situation which the teams of two are allowed to research the issues, according to Les Minkus, Golden Gate Law Professor who counseled the team. But the major part is an actual interview with a simulated "client," followed by a memo summarizing the interview.

The teams are judged on the basis of their ability to conduct the interview and on the memo. The winning team in each of nine regions goes to a national competition. The competition is open to all law schools.

Update

- Michael D. Devito, professor of law, was reappointed to another one year term on the Law School Admissions Council. The council is a group of persons involved in law school admissions who study and deal with admissions problems and procedures. Devito also is a member of the council's Test Development and Research Committee.
- Lawrence H. Jones, professor of law, spoke to a group of police chiefs and police administrators on Jan. 13 about tort liability for police. The lecture was part of an Executive Development Course held in St. Helena.
- Statistics from the October 1975 California bar exam showed 78 percent of the Golden Gate graduates who took that exam

passed; 95 percent of the students in the upper half of the class passed.

- Golden Gate Law School graduated 195 students on May 30 at Nourse Auditorium in San Francisco. That figure includes 28 students who had met all their requirements by the end of the fall 1975 semester.
- CORRECTION: Bruce J. Russell and Mark L. Webb placed first in the brief writing competition of the 1974 National Moot Court competition. This information was reported incorrectly in our last issue. Steven Winter and Elaine Andrews, mentioned in the erroneous article, were competitors in the Traynor competition.



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Editor, Steven P. Krikava; Associate editor, Elizabeth S. Sisk; Business manager, Alan Stevenson; Contributing editor, Alex Najjar.

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