

4-1992

## Caveat, April 1992

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# THE CAVEAT

VOLUME XVII, ISSUE 7

APRIL 1992

## ABA/SBA "CLEARINGHOUSE" TO PROVIDE SUMMER TEMP WORK FOR GGU LAW STUDENTS

by Jeremy Blank

In response to student concern about summer jobs, the ABA and the SBA have joined together to start the Research Projects Clearinghouse (RPC) at Golden Gate. The RPC will serve as a middleman between attorneys who need short-term legal work, and student "independent contractors" who will perform that work. Qualified students will be placed on a rotating list, and when an attorney or firm calls the RPC with a project, they will be assigned to the first student on the list. The student will perform the work, submit it to the attorney, and will be paid approximately \$10.00 per hour for their time.

This system has several benefits. First, although the RPC will be only a part-time position for students, it will provide supplementary income, and will allow students to put legal research experience on their resume. It will also help garner exposure for GGU students, and give potential future employers an idea of the quality work they can perform. Firms and solo practitioners will benefit too, by not having to hire full-time clerks in these recessionary days.

The tentative start-up date for the RPC is June 1. All students who have earned a B-minus or higher in Writing and Research, or who have written onto Law Review, are eligible. (Students with grades of B or higher will receive priority placement). Although the priority deadline for submitting applications has passed, resumes will still be accepted. Please place them in the ABA/LSD box on the 14th Floor.

The RPC is also looking for students to solicit law firms for participation in the project during the last two weeks of May. A small stipend for this task may be available. Inquiries may be made by speaking with an ABA officer or by submitting a letter of interest to the ABA mailbox.

A similar program at the University of Arkansas Law School has met with great success, billing 4000 hours in only six months. Hopefully, Golden Gate's RPC will surpass this achievement.

## ENVIRONMENTAL LAW: HERE TO STAY

by Alex Naar

This edition of the Caveat addresses some of the current issues, here at Golden Gate and also out there in the "real world," in regard to environmental and natural resources law. The main distinction between these two areas of law is that natural resources law focuses on the access to, and control of, natural resources, while environmental law concerns itself with the consequences of the use of these resources. These areas of law involve much more than the saving of birds and trees. Indeed, much of the emphasis is on how we the people are connected to the environment. We all want to live in a healthy environment and we demand clean air and safe drinking water. The development of environmental and natural resources law reflects the changing attitudes that society has about the environment, which is encouraging for our future.

The September 1991, issue of Trial magazine was devoted to "protecting the environment," a concept, the editors noted, which "is increasingly being interpreted in federal and state agencies, as well as the courts, as protecting human health from environmental threats." That Trial would focus an entire issue on the environment and environmental law (cont'd next page)

## SPECIAL GREEN ISSUE!

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- GRADING POLICY UPDATE
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## CONFLICT OF INTEREST (Cont'd)

are most certainly capable of producing far more revenue on a sustainable basis. Unfortunately, most of the world's tropical countries are engaged in short-sighted greed and a perceived need of immediate relief from their poverty.

In the United States today, similar arguments about sustaining the last stands of trees in our national forests and preserving the biological and geological integrity of other natural areas rage on, pitting today's loggers and their families against the spotted owls of tomorrow, and mining companies and off-road enthusiasts against desert wildlife and naturalists. Environmentalists' opposition accuse us of eliticism in protecting only our selfish interests in the preservation of natural areas to the exclusion of others from their "right" to profit from the earth's riches which exist in these areas. This "right," they argue, has been the tradition in our country since its inception. But these non-environmentalists don't understand the value of sustaining these resources for the future, nor do they understand that wilderness experiences and ecological protection do not easily translate into dollars and cents, as do lumber and minerals, which have clear economic value as commodities. And even if there was some right to exploit natural resources, that right should not be absolute. The 'tragedy of the commons' merits revisiting.

Consider: Who pays for and who profits from polluting the public's oceans and waterways? Who pays for and who profits from driving the public's natural wildlife to extinction? Who pays for and who profits from exuding tons of chemicals into the air making it unhealthy for us to breath? Who pays for and who profits from liquidating all the forests?

Forests and wilderness lands are a part of our lives, catering to many different human needs. To those who appreciate the benefits of these areas as they exist in their natural state, living in a world without them would be unimaginable. Whether our children's children see lush, exotic forests and ancient deserts intact depends on actions and decisions we make today.

Given these tough economic times, maybe there are no easy answers. Maybe compromises will have to be made. But if you feel that a healthy environment is the cornerstone of a better world, and that quick profits should not dictate the fate of our planet, then urge your representatives to act responsibly towards our environment and vote with these concerns in mind. Remember, the concept for today and for tomorrow is "sustainability." (Facts and information from Environmental Science - A Framework for Decision Making, by Daniel D. Chiras.)

## MINING ACT (Cont'd)

developed excavating techniques make it possible and economically feasible for the miners to excavate 50 tons of earth to recover a single ounce of gold leaving behind horrendous scars on public lands; scars that will remain for countless generations due to the fact that these mined lands, unlike lands mined for coal, do not have to be reclaimed.

The economic windfalls created by this law are equally depressing given our soaring deficit. Miners are allowed to take ore from the public's lands without paying any royalties, allowing them to buy land and the minerals beneath it for \$2.50 or \$5.00 an acre. This results in abuses such as one that occurred near the Keystone ski resort in Colorado. A claim was purchased in 1983 for \$2.50 an acre and then offered for sale in 1988 for nearly \$11,000 an acre. Other examples exist, such as claims used for non-mining purposes such as vacation housing. In 1989, approximately \$1.6 billion in gold was mined in Nevada, from this not one cent in royalties was returned to the U.S. Treasury. A government study reported that there is widespread abuse of the Mining Law as it is used for non-mining purposes. It is estimated that "no minerals have ever been extracted in 197,000 of the estimated 200,000 claims."

Perhaps if the United States was as vast and limitless as it seemed in the days of Ulysses S. Grant this law would be more sensible. But as population explodes

the country and its supply of natural resources and open space get smaller and smaller, and we have few public lands left that are safe from exploitation in the face of such legislation.

This problem has not gone unnoticed by our elected representatives, however. Last Spring, Senator Dale Bumpers (D-AR) introduced S.433, The Mining Law Reform Act of 1991. This bill includes reforms such as giving agencies such as the forest service the ability to disapprove mining projects in unsuitable areas. It establishes a uniform permitting and review process for a proposed mining operation, based on the land use plan. The bill also requires reclamation of the mine after it closes and requires mining companies to post bonds and create a hardrock mining reclamation fund for clean up of mine sites, and the provides opportunity for citizen's suits to enforce the law.

On the fiscal issues, S.433 requires annual charges for holding a mining claim and sets up a 5 percent royalty on hardrock mining operations. While this proposed reform is a step in the right direction, it is not a sure thing yet. Thus far, Senators Fowler (D-GA), Harkin (D-IA), Leahy (D-VT), Levin (D-MI), Mikulski (D-MD), and Pryor (D-AR) have cosponsored the bill. If you would like to help get the Mining Reform act passed write to your Senator and ask them to cosponsor Senator Bumper's bill, S.433. Write to California Senators Alan Cranston or John Seymour, U.S. Senate, Washington D.C. 20510, or contact the Sierra Club for more information.



## EXPLORING GGU'S ENVIRONMENTAL LAW CLINIC

by Christine Wagner

### WHAT IS IT?

The Environmental Law Clinic is just one of the clinical courses offered each year at Golden Gate University School of Law. The clinic gives interested students an opportunity to obtain course credit while gaining practical legal experience working under the supervision of an attorney in the field of environmental law.

The clinical course can be taken for 2-3 units, with each unit demanding 60 hours of work over the course of the semester. This works out to be approximately 4 hrs/wk/unit over a 15 week semester. While you won't have to study for a final, you will have some kind of writing requirement in addition to a seminar component where students and the director meet to discuss what's going in their clinic placements and in the field of environmental law in general.

### WHERE IS IT?

In coordination with the clinic director, former EPA attorney Bill Wick, the student is either placed with a contact agency or obtains approval to work with the agency of their choice. Remember that Environmental Law is only offered in the fall and is a prerequisite for the clinic in most circumstances, and that if you have in mind an office or agency where you want to work, you should probably make arrangements with them as early as possible. This semester's internship locations included the Department of Justice Lands Division, the Natural Heritage Institute, the United States Department of Agriculture, Earth Island Institute, and the Law Office of Michael Freund.

### WELL, HOW IS IT?

At the Department of Justice (DOJ), the litigation arm of the United States, Arnold Robbins worked on piercing the corporate veil to determine who might be a "Potentially Responsible Party" (PRP) liable for the costs of a CERCLA (Superfund) site clean-up. Arnold also summarized depositions for an asbestos case and researched a jurisdiction issue regarding a court's power to approve environmental consent agreements signed by those who were not original parties to the action.

Tahir J. Naim (a.k.a. TJ) worked on CERCLA cost recovery issues as well, which he said seems to be the major area of emphasis for the Department of Justice's Lands Division these days. Working in litigation, TJ also became familiar with the procedural rules of discovery, and said he reviewed documents by the crate load.

David Dobson's externship was with Earth Island Institute, a private, non-profit environmental organization which focuses on environmental issues from a more global perspective. David worked extensively

on the Sea Turtle Restoration Project, a project aimed at protecting the species from extinction by lobbying for worldwide implementation of turtle excluder devices (TEDs) on shrimp trawling vessels, which is the biggest human cause of sea turtle mortality. David's legal research covered areas of international and environmental law, treaties, endangered species protection, and law of the sea. David drafted a United Nations Resolution calling for worldwide adoption of regulations requiring the implementation of such devices. David said, "I am seeing the results of my work beginning to move out into the world," as his draft resolution is being passed around among environmental groups and government agencies internationally.

**The clinic is an excellent opportunity to get exposure to real-life issues in a practical setting, while being truly involved in a worthy cause, whether it's saving endangered sea turtles, developing global environmental policies or policing misuse of toxic substances in your own backyard.**

Deborah Aptaker worked at the Law Office of Michael Freund, a solo practitioner. Most of Freund's environmental practice and Deborah's work involved Prop. 65 cases, which prohibit industrial polluters from producing the statutorily listed carcinogenic and mutagenic toxins in excess of a "safe harbor level" and without a proper warning to the public. Deborah learned a great deal about the science behind "risk assessment reports," she wrote interrogatories based on such reports, and "honed in on a lot of research skills." Deborah said she also learned a lot about pre-trial advocacy, with some of her assignments addressing the court through a motion in limine or a set of proposed jury instructions.

Christopher Hagen externed at the Natural Heritage Institute, a private, non-profit organization dealing with all aspects of environmental law. Among other projects, Chris integrated principles of environmental and human rights law which were compiled into a document being presented to developing countries seeking to adopt environmental policies and proposals of their own, eventually to be presented to the United Nations at the Earth Summit in Rio de Janeiro, Brazil, this summer. Chris also worked on water rights cases involving such parties as California Indian Legal Services, Cal Trout, Pacific Gas & Electric, and the State Board of Water Resources.

Bob Eheler and I externed at the U.S. Department of Agriculture, Office of the General Counsel. There we worked on environmental issues dealing (cont'd p. 8)

## THE CULTURAL DEFENSE by Ed Taylor

An obscure tribe in Laos practices a form of courtship known as "marriage by capture." When a man in the tribe decides he wants to marry a particular woman, he simply kidnaps her and has "his way." Recently, a tribesman was charged with rape when he came to the United States and practiced marriage by capture on his intended wife, a woman from his tribe who was also living in the U.S..

This scenario, and countless other similar but less dramatic ones, raise the question: Can conduct which violates the criminal code of our mainstream culture but is acceptable in another culture be excused? A symposium sponsored by the Asian Pacific Law Students Association addressed this very issue. Those who spoke on different aspects of this question were the Honorable Judge Leonard Louie; Jayne Lee, a Stanford teaching fellow; James Costello, Deputy District Attorney; David Coleman, Contra Costa County Public Defender; Jan Linklikner, San Francisco Public Defender; and Professor Helen Chang of Golden Gate University.

As the law now stands, use of one's cultural background as a "defense" (herego "the cultural defense") can only arise in certain limited ways. Judge Leonard Louie pointed out that criminal law by natural forces one to compartmentalize, and a piece of evidence such as one's cultural background would only be allowed before a jury if it could fit into the proper compartment. Currently, the law takes cultural background into account only in specific intent crimes such as murder, rape and larceny and then only to determine the question of the defendant's mental state. Cultural background has no place in general intent crimes.

The symposium also addressed the question of whether the cultural defense should or could be broadened. According to Jayne Lee, one of the main reasons for allowing the defense is because it allows the defendant's culpability to be taken into account with greater precision. For example, if an individual committed a "criminal act" because of lack of awareness of the morays of mainstream American culture, it is argued that that person does not have the same culpability as a defendant who knew he was defying the morays of the society. The cultural defense allows such lack of culpability into evidence.

*"[H]er defense was the fact that the man was born in East Los Angeles--'a world in and of itself--not mainstream America.'"*

Jan Linklikner related how she used the "cultural defense" to free a Mexican American who had been charged with auto theft. She had argued the man did not know or have reason to know the car was stolen. Central to her defense was the fact that the man was born in East Los Angeles -- "a world in and of itself--not mainstream America." The man claimed he had (cont'd p.8)

## GRADE POLICY UPDATE:

It's in the faculty's hands now. A few weeks ago some students met with the Academic Standards Committee to present their proposal for changes to GGU's grading policy, which included doing away with the 2.15 g.p.a. graduation requirement entirely, removing forced low means, encouraging more honest grading by the faculty and adding plus and minus grades. The Committee consists of Professors Lani Bader, Elaine Andersson, Margaret Wynne, Bob Calhoun and Mort Cohen. Dean Pagano also sat in on the meeting.

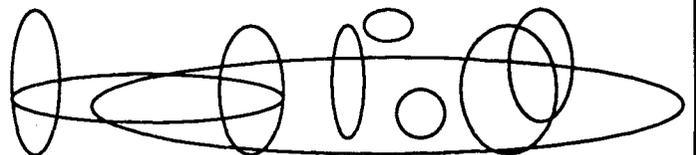
In the wake of the ABA Inspection team's satisfaction with current grading policies, most of the Committee members did not seem very receptive to any changes. Furthermore, some members failed to even recognize the students' input into more equitable means of increasing the bar pass rate, as if the overwhelmingly supportive student referendum never existed.

**We all want a higher bar pass rate, but "notice" aside, there are issues of human fairness here, and we pay too much to have them ignored.**

On the positive side, one Committee member is in strong support of eliminating the 2.15 graduation requirement and has proposed a forced curve akin to the one used at USF, which would guarantee a more equitable distribution of grades within each class, including a more accurate reflection of our top students' performance.

The process for policy change seems to exclude any more input by the students. The Academic Standards Committee will make their recommendation to the full faculty and the issue will be discussed at an upcoming faculty retreat. Dean Pagano seemed confident that no changes in policy would take place this year, and regardless, any future changes could not affect current students.

The end of school is upon us and the harsh reality is that we the students have little, if any, bargaining power, despite our \$14,000 a year. However, that \$14,000 should at least buy us an audience with a faculty member to counter the Committee's insistence that they know what we want and what is best for us. We all want a higher bar pass rate, but "notice" aside, there are issues of human fairness here, and we pay too much to have them ignored. -- Miles J. Dolinger



**\*\*\*CLUB AND SBA ACTION NEWS\*\*\*** by Joan Cox

The **AMERICAN BAR ASSOCIATION, LAW STUDENTS DIVISION (ABA/LSD)** has two great networking opportunities this summer: the ABA/LSD Fourteenth Circuit Summer Caucus and the ABA Annual National Assembly. This summer's Fourteenth Circuit summer caucus meets on Saturday June 6th at GGU. Representatives from all Bay Area law schools will attend. The main topic for this caucus will be preparing for the ABA Annual Assembly. Harvie Schnitzer, former ABA/LSD Fourteenth Circuit Governor and GGU Law graduate, will speak on the transition from law student to lawyer. Lunch will be provided and all ABA/LSD members are welcome.

San Francisco is the site for this year's Annual Assembly, so there has never been a better time to join the ABA/LSD. Lawyers and law students from all over the country will convene in the City from August 6-9 to pass resolutions on ABA policies and procedures, discuss changes and innovations in different sectors of the law, and to socialize. ABA/LSD members can participate in "big bar" as well as Law Student Division activities. Planned social activities include a banquet and a dance.

To participate in the ABA Annual Assembly, you must be a member of the ABA/LSD and submit a registration form and \$40 Assembly registration fee to the ABA by July 16. Students are not required to have participated in the ABA/LSD prior to the Assembly. This is the perfect opportunity to attend the legal event of the year without the cost, travel and preparation usually required for convention attendance.

ABA/LSD membership applications are available on the third floor ABA board. The cost is \$15 a year for basic membership which includes subscriptions to the ABA Journal and Student Lawyer magazine.

Congratulations to the newly elected officers of the American Bar Association Law Student Division: Michelle Shuster was elected Governor of the 14th Circuit and now sits on the Board of Governors. The new GGU chapter officers are: Jeremy Blank, President; Joe Hoffman, Vice President; Lisa Burdick, Secretary/Treasurer; Kathleen McGinn, Publicity; and Tonya Prioste, Social.

**APLSA** sponsored a highly successful panel addressing the issue of the "cultural defense." (See enclosed article.) New officers: Ron Dong, President; Jadine Gee, Vice President; Myron Eng, Treasurer.

**ENVIRONMENTAL LAW SOCIETY (ELS)** - While schmoozing at the University of Oregon Environmental Law Conference last month, ELS President Alex Naar connected up with Jim Wheaton, Director of the Environmental Law Foundation (ELF). Based in Oakland, this small non-profit group's mission is to intervene legally on behalf of communities that are at risk to exposure of toxics, specifically targeting communities that haven't traditionally been represented by the

mainstream environmental groups, i.e. economically disadvantaged and/or minority communities.

Alex and Jim are planning to have 3-6 GGU law students working there this summer, to be a de facto (or prototype?) environmental clinic of sorts, with similar opportunities to continue throughout the next academic school year.

The ELS recently submitted a proposal to the faculty outlining an Environmental and Natural Resources Law Certificate Program to recognize students who focus in this area. The proposal lists course requirements, final writing requirement and a minimum number of hours of practical experience.

**LEGALS** - On April 16, to commemorate Individual Human Rights Day, LEGALS hosted a panel of leading advocates for gay and lesbian civil rights: the Honorable Donna Hitchens, a California Superior Court Judge, attorney Paul Wotman, who set landmark precedent in employment discrimination lawsuits, including a \$5.3 million victory against Shell Oil on behalf of a gay executive with 17 years experience, and attorney Ora Prochovnic, an expert in the areas of domestic partnerships, adoptions and other family law issues.

**PHI DELTA PHI** conducted a canned food drive during the week of April 13-17. Students were able to avoid being called on during the week by bringing a can of food to the classes of participating professors. All donations were given to St. Anthony's Food Bank for distribution to the homeless in San Francisco.

**PILF** - The second annual pledge drive for PILF's Loan Assistance Program ended on Tuesday, March 31. Preliminary figures indicated that PILF achieved its goal of \$10,000 in pledges from students, faculty, and the administration. Thanks to the efforts of a wide variety of participants, this was PILF's most successful pledge drive ever.

In February, GGU endowed a further \$75,000 to PILF's Loan Assistance Program, the interest from which is used to fund graduates working in public interest law. Proceeds from this year's drive will be added to the interest from PILF's existing endowment fund to enable graduates to be awarded grants next year.

The **SPORTS AND ENTERTAINMENT LAW SOCIETY** and **PHI ALPHA DELTA** hosted Jeffrey Moorad of the Law Offices of Steinberg and Moorad, the most prominent sports law corporation in the Bay Area at GGU on April 9th. Moorad represents such super athletes as Will Clark and Matt Williams of the SF Giants and Steve Young of the 49ers, Warren Moon of the Houston Oilers, and many other All-Stars and NFL Pro-Bowlers.

(Club and SBA News continued on page 9.)

## Profile by Susan Kalra

*Professor David Oppenheimer has worked as a civil rights prosecutor for the State of California. He founded and directed an employment discrimination clinic at Boalt Hall. He also helped direct an in-house civil rights clinic at the USF law school, which handled cases concerning employment and housing discrimination, federal civil rights, criminal defense, and applications for refugee status for Central American political refugees. Professor Oppenheimer teaches torts and civil procedure at GGU.*

**CAVEAT:** You have done a great deal of work in the area of civil rights?

**PROFESSOR OPPENHEIMER:** Yes. I got involved in civil rights before I went to law school. Through clinics during law school I was able to clarify my goals. During the first summer, I had a student-funded fellowship, something like the PILF loan forgiveness program here. Students would contribute one day's salary toward enabling another student to spend the summer in a public interest job. I worked that summer at a small plaintiff's employment discrimination firm here in the Bay Area. My second year of law school, I was a member of the Harvard Legal Aid Bureau, which is a volunteer student organization, representing the indigent in the courts of Massachusetts. I did discrimination cases and other types of poverty law. In my third year, I spent a full semester in a clinical externship at Equal Rights Advocates in San Francisco.

**C:** What types of civil rights cases have you worked on as a lawyer?

**O:** Most of the cases that I handled were employment discrimination cases. There were a few housing discrimination cases and a few cases involving the right of equal access to public accommodations -- various kinds of businesses and public services. In every case except one, I represented the plaintiff. There was one trial where I represented the defense. That case involved a women's group that was accused of defamation. They published an account of an alleged sexual assault, and they named the assailant. I defended them through the trial and appeal. We lost the trial, but the decision was reversed on appeal.

**C:** You clerked for Chief Justice Rose Bird. Was that a beneficial experience?

**O:** It was a very good experience. It was a terrific experience in terms of learning how a court operates, and it was a very important court during a very important era. Secondly, I found it very exciting to work for Chief Justice Bird. She was a brilliant, important judge.

In my position as a one year clerk, the primary thing that I did was to review petitions for hearings in criminal cases, and advise the court on behalf of the Chief Justice whether the court should grant a hearing. I also did some work on criminal opinions, that is, opinions that the Chief Justice was writing involving issues of criminal law.

**C:** Do you have any suggestions for students who want to pursue a career in civil rights?

**O:** Start volunteering now. Take every opportunity to work with lawyers in the civil rights community, as a volunteer, a work-study student, or a clerk. Take every clinical opportunity, every externship opportunity. Get not only the experience, but get to know people now.

**C:** Here, you are teaching torts. How do you enjoy that, and what makes your approach unique?

**O:** The best thing about teaching here is the students. They come from such diverse backgrounds, and they bring that diversity to the classroom. There is such a free exchange of ideas here. I see discrimination law as a branch of tort law. When I handled discrimination cases, I handled them very much as personal injuries. I see myself as a student, engaged with my students in a quest for a better understanding of what it is that lawyers do and how they solve problems, and how we can solve them more effectively. I hope that there are two things that I convey to my students. First, that lawyering is not simply a business, it is a healing profession, in which our role as lawyers is to help people solve their serious problems. What we need to do is be both analytical about problem solving, and at the same time be empathetic about the problems that have led the clients to our door. Second, I hope I bring a belief that what we do as professionals, because of the social impact the profession has, must be done with consciousness about that social impact, and consciousness about our social responsibility. As people who are licensed to have great influence in other people's lives, we must exercise that influence with caution and self-recognition about the social role that we have.



### THE CAVEAT

Editor-in-Chief  
Miles J. Dolinger

Special Thanks  
Environmental  
Law Society

## CULTURAL DEFENSE (Cont'd)

borrow the car from a man he had met in a plaza who he knew only as "Speedy." Jan argued that while no mainstream American would loan a car without knowing that person's background, in the Mexican American subculture loaning people things of great value without asking questions is a common practice because the greater the value of the item loaned the greater the person's status in the community.

In presenting the case to the jury, Jan compared the activities of the Mexican American with similar behavioral patterns among armed service personnel. The jury, composed primarily of people from the naval city of San Diego, was persuaded and the defendant was acquitted.

Linklikner seemed to think the "cultural defense" could be used more often because there are so many sub cultures in this society. She noted that most of us are at least tri-cultural: We are part of the culture of our workplace, part of the culture of our home and part of the male or female culture.

The panel discussed several arguments against the use of the cultural defense. One was that the deterrent capacity of the law is most effective when punishment is

most certain. Jayne Lee mentioned that the defense undermines the socializing effect of strict law enforcement, since removing the penalty removes the incentive for people from other cultures to learn the ways of the mainstream culture. Finally, it was mentioned that allowing the expanded use of the cultural defense would erode the clarity of the rules, making their implementation a more expensive and chaotic process than it already is.

As one of the more conservative members of the panel, James Costello, thought of one circumstance where he felt the cultural defense could be used. This was where both participants in the crime were from the same culture, both understood the rules and both were operating from the same mind set.

Thus, in the case of the Laotian tribes person living in America practicing the cultural tradition of marriage by capture, James Costello would allow the cultural defense.

This appears to have been what the court did in the case of the two tribes people described above. The transgressing tribesman did not receive the traditional rape sentence, but instead was ordered to spend a few days in jail and do some community service work.

## ENVIRONMENTAL LAW CLINIC (Conclusion)

with the National Forest Service (NFS). Bob's projects included researching jurisdictional questions involving NFS and California Department of Forestry "cooperation," and reviewing new Forest Service regulations to decide whether they conformed to National Environmental Protection Act (NEPA) definitions of Biological Assessments and Evaluations. Most of my time was spent on TRO motions analyzing Environmental Impact Statements and Forest Service Vegetation Management Plans. I also worked on a property issue to determine what remedies the Forest Service had against a trespasser who is residing on NFS land.

All of this semester's environmental externs agreed that the clinic is an excellent opportunity to get exposure to real-life issues in a practical setting, while being truly involved in a worthy cause, whether its saving endangered sea turtles, developing global environmental policies or policing misuse of toxic substances in your own backyard.

Finally, advice to future externs is to approach a clinical externship with the attitude that it is supposed to be an educational experience, which means you should ask a lot of questions and try to get feedback from your supervisors. □

## MOCK TRIAL TEAM PLACES THIRD IN CHICAGO

by Joan Cox

Last month, the Caveat ran a feature on GGU's Mock Trial team (in which, unfortunately, Professor Bernie Segal's name was misspelled -- our apologies, Bernie!). Since then, the team has reaped well-earned recognition.

The trial team captured the silver trophy in the ABA Criminal Justice Trial Competition held at the end of March in Chicago. The ABA program is an invitation-only competition for 20 law school teams chosen for the quality of their school's trial advocacy teaching programs. This is the second consecutive year GGU has been invited. Golden Gate's trophy was awarded for the team's third place finish in the 20-team field. Golden Gate's only loss in the competition was in a split decision to the team from Harvard, which was the ultimate winner of the competition. Golden Gate's team was Heather Elrick, Steven Forster, David Lehr, and James Treppa; they were coached by Professor Bernie Segal with the help of Professor Wendy Rouder and Adjunct Professor Arlin Armstrong.

Congratulations on a job well done!

## FORESTS FOREVER

*"Our duty to the whole, including the unborn generations, bids us restrain an unprincipled present-day minority from wasting the heritage of these unborn generations." -Theodore Roosevelt*

## CONFLICT OF INTEREST

by Terence J. Denigan

Covering about one-third of the earth's land surface, forests provide many direct and indirect benefits. The most notable direct benefits are an estimated 5,000 commercial products, such as lumber, paper, turpentine and others, worth tens of billions of dollars each year. Forests also provide refuge from hectic urban life while inspiring a sense of awe as we gaze upwards to the tops of majestic trees and marvel at the diversity of life.

Indirectly, the forests benefit us by protecting watersheds from soil erosion, thus keeping rivers and reservoirs free of silt ensuring a quality water supply. Forests reduce the severity of floods and facilitate aquifer recharge. Forest lands also perform many important ecological functions, such as providing habitat for many plant and animal species and assisting in the planet's cycling of water, oxygen, nitrogen, carbon.

Despite the great benefits of forests, only about 13% of the world's forest land is under any kind of management. In addition, only about 2% of the world's forest are protected in reserves. With world population growing and the demand for wood, fuel and goods rising, more thoughtful use is badly needed to protect and preserve this renewable resource.

The tragedy of short-sighted, economically motivated "forest management" is evident when one ventures towards the equator, where deforestation is rampant. Unlike the temperate forests of the United States, which, when properly managed can tolerate varying degrees of tree harvesting and replanting while maintaining a state of sustainable equilibrium, tropical forest cannot handle harvesting and replanting. In temperate ecosystems, nutrients are stored and made available in the soil, however in tropical ecosystems nutrients are recycled in the living matter above the soil. The result is that most tropical forest land, when cleared, loses its fertility after only a few growing seasons and cannot sustain the agricultural production for which the forests' destruction is often justified. Furthermore, when corporations clear huge areas of rainforest land for cattle grazing, the first cycle of productivity is often the last, as the land never recovers from grazing. Tremendous areas of the tropics have been converted to this sad state of second-growth, worthless scrub, merely for the benefit of short term cash.

This tragedy is only exaggerated by the fact that tropical forests, when wisely managed ( next page)

## THE MINING ACT OF 1872

by Chris Hagen

The United States has seen a dramatic increase in environmental awareness over the past 30 years. Accompanying this awareness has been a rise in legislation designed to enhance and protect our environment and natural resources. Although these recent trends seem promising we should beware of a treacherous law which is still lurking in the background to undermine these efforts -- The Mining Law of 1872.

The Mining Law provides that hardrock mining, i.e. the mining of gold, silver and uranium, is the "highest and best use" of more than 400 million acres of public lands in the western United States. With mining labeled as the dominant use of the land, management agencies cannot deny a mining proposal regardless of the ecological or recreational interests that might be destroyed as a result of the mine.

This lack of regulation has resulted in an endless list of environmental disasters inflicted upon lands throughout the west, including Denali National Park in Alaska. While the mining industry enjoys its protected status it has gouged nearly 100 miles of unauthorized roads across Denali. Waste waters from active mines exceed minimum health safety standards at every sight tested. One smelter in Montana, owned by the Anaconda Company, has been responsible for the deaths of cattle and horses as far as forty miles away and the death of an entire fishery for 100 miles downstream.

The 1872 Mining Law is a remnant of the wild west when settling of western lands was one of the governments top priorities. This law was an easy way for the government to "dispose of" public lands by allowing prospectors to claim and patent public lands at bargain prices. Today most of our policies have changed and seem to reflect a desire to manage public lands for the use and enjoyment of all citizens. However, this Mining Law stands as a tragic reminder of the frontier days and the infamous exploitative policies of our government's past.

What is dangerous about the 1872 Mining Law is that it does not require mines to meet any operating standards. This was not of much concern in 1872 when mining was done by hand with picks and shovels. Today, the technological advances and the resulting environmental problems simply are not addressed by this ancient legislation. For instance, heap leaching is a new process by which miners leach gold from low grade ores by applying a cyanide solution. The results of this process are tailing ponds containing cyanide in concentrations sufficient to poison wildlife. The long-term effects of this process on soil and groundwater are not yet known but are potentially devastating. Other newly ( next page)

## THE FINAL RAP

"The Caveat's too serious," my friend told me. Well, I take that personally. I remember playing Monopoly with my sisters as a kid. Near the end of the game they would be rounding my "corner of death." But instead of rolling the dice one last time to grant me my prize of their financial obliteration, they would just trash the board, sending my houses, hots and wads of cash all over the room. I used to get really angry, and they would respond, "Miles, you're too serious," leaving me alone to clean up my once-great empire. Yes, maybe it's true. I do have my lapses in self-perception, and the last thing I want is to be too serious. Promise me you will consider "the issues" at some point today and I'll put my Monopoly game away and find some real fun.

So on the lighter side, how 'bout those San Francisco Gian.... Well, okay, then aren't you glad finals are .... Hmmm. Tell me about your summer jo.... You know, the weather is really nice today, want to get a cup of decaf.?

Actually, there are exciting things to anticipate which are only days or maybe even hours away: New faces and places, warm sunny weather (or hot and sticky for you easterners), good fiction, more beer, etc.. Think Rest and Recreation.

Or maybe more pleasure is to be had by thinking of what we will be escaping: No more dimly-lit, orange-carpeted, spirit-embalming, mausoleum-like environments. No more "culturally diverse," orally perverse, coffee-spilling, armpit-smelling, public transportation rides from hell. And no, I don't have any spare change, at least not for you!

Here it is, one last push and that exam creature will be out of your system. Just focus on the horizon and remember to B R E A T H E.

Exam Anxiety Therapy Method No. 23, Pink Meditation: Lay back, close your eyes and clear your mind. Visualize a soft pink light soothing your entire body, inside and out, moving slowly from your toes, to your knees, though the muscles in your legs and abdomen, down the lengths of your arms and into your fingertips.... You get the idea. Now breathe and relax. (Note: Don't forget to set your alarm.)

I've enjoyed using this year's Caveat as a forum for my interests and expression, and I hope I've provided you all with at least a modicum of interest, information and amusement. Have a great break from these academic rigors, and we'll see ya' real soon.

-- Miles J. Dolinger

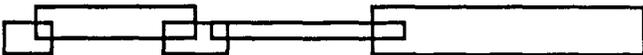
## ...HERE TO STAY (Cont'd)

is significant but not surprising when one looks at the growth of environmental regulation and litigation. As John Cruden, chief of the Environmental Enforcement Section at the U.S. Department of Justice put it, speaking at this spring's ABA Environmental Law conference in Eugene, Oregon, "Environmental law is the fastest growing area of law today." He cited the following statistics: "In 1987 there were 50 Superfund cases filed with a total of 500 defendants. In 1991 this number jumped to 200 cases with a total of 3,100 defendants." Cruden also predicted that these and other cases were on "an ascending plane of environmental litigation," and that there was no end in sight for this continued growth.

As environmental litigation increases so does the demand for attorneys with knowledge of environmental laws. This demand comes from all corners of the legal world. At the state and federal levels, attorneys are increasingly sought for environmental divisions that currently are unable to handle all the regulatory and enforcement work before them. Most large firms have or are opening environmental divisions and there are more and more environmental public interest groups employing attorneys. With this ever-increasing political awareness the sluggish economy is the only thing deterring a marked increase in the number of jobs available in this field.

Environmental law jobs do exist out there, but as we all know, the market for any legal job is extremely competitive. Opportunities to enter this field can be enhanced, however, by taking the various environmental courses offered here at Golden Gate, including Environmental Law, Water Law, Natural Resources and Land Use Regulation. Additionally, our Environmental Law Clinic is a unique option among Bay Area law schools, (see related article). In recognition of this growing interest the Administration is currently looking for a full-time environmental law professor to help expand the course offerings, which might include heading-up the proposed Environmental Law Certificate Program, a program similar to the one now offered in International Law.

The Bay Area is a hot-bed of environmental activity. It is home to all the major national environmental organizations as well as many of the largest corporations involved in resource development. The Ninth Circuit's docket has, over the years, contained some of the nation's leading environmental cases. It only seems natural that Golden Gate has become a center for the study and practice of environmental and natural resource law. Ask the Administration what is being done to further this end, and support your Environmental Law Society. □



**WOMEN'S LAW ASSOCIATION** - Professors Markita Cooper and David Oppenheimer presented an overview of Sexual Harassment Perspectives: "From Good old Boys to the Reasonable Woman" at Women's Law Association's brown bag luncheon meeting on March 31st. New officers: Shannon Dickerson, Rani Stoller, and Geri \_.

#### **STUDENT BAR ASSOCIATION (SBA)**

Congratulations to newly elected officers: Kieran John Flaherty, President; Miles Dolinger, Day Vice President; Alex Lubarsky, Night Vice President, Michelle Shuster, Secretary; Chris McGrath, Treasurer; Alex Naar and Kirsten Keith, 3rd year day representatives; Alison West and Darlene Clark, 3rd year night representatives;

#### **CAL/EPA MADE SIMPLE (SORT OF)**

*by Myron Eng*

Your client's bank wants an environmental audit done on a piece of property before it will approve a loan. The audit finds hazardous contamination on the site, what agency do you turn to? Your neighbor is dumping used car oil into the gutter. Again, who do you turn to?

Until recently, you probably would have shuttled back and forth from one agency to the next, not knowing whether you were going to the correct agency or not and probably getting frustrated and cursing bureaucracy in the process. However, less than a year ago, Governor Wilson created the California Environmental Protection Agency (Cal/EPA) to unify several boards and departments (responsible for the various aspects of environmental protection in California) under one agency umbrella. Currently, the Cal/EPA is comprised of the Office of the Secretary for Environmental Protection, the Air Resources Board, the Integrated Waste Management Board, the State Water Resources Control Board, the Department of Toxic Substances Control, the Department of Pesticide Regulation, and the Office of Environmental Health Hazard Assessment, all of which oversee, license and regulate in their respective areas.

Combining all the disparate environmental regulatory agencies of the state into one unified agency seems to make sense. So does making one person accountable -- without having to go all the way to the governor.

But, the current organizational structure is not the last word! If you think you now finally understand this maze of environmental bureaucracy, think again. On March 16, 1992, James Strock, Secretary of Cal/EPA, submitted a proposal to Governor Wilson calling for the consolidation of the issuance of environmental permits. This plan, as proposed, would consolidate all the boards, districts, and regions into just 7 regions, allowing "one-stop" permitting. Businesses have welcomed the streamlining proposal, but others object to such a merge of authority which would undermine the enforcement powers of the individual regulatory departments.

Ailida Duangjak and Micah Jacobs, 2nd year day representatives; Charles Bass and Stacey Kepness, 2nd year night representatives; Jeff Owen, 4th year representative, and Kristi Carlson, MYA representative.

Kieran Flaherty (who maintains office hours for most of the day each Tuesday) indicated that the SBA has set as its top priority improved space, seating and lighting in all classrooms, and announced the formation of a new committee to address these issues of space.

According to Kieran, the Dean has assured the SBA that next year's incoming class will be limited to 210 students, decreasing the amount of people per large classroom on the third floor by about 20 students. In addition, the administration has made assurances that additional sections of Wills and Trusts and Corporations (two notoriously overcrowded classes) will be available in the upcoming year.

Flaherty's other major goal is increased communication between clubs and the student body. Towards that end, he and other SBA members envision a bimonthly Caveat which would be published in-house using new copy center facilities, and which would publish agendas and meeting minutes from student members of every SBA and law school committee (including law school admissions, curriculum, writing, hearing panel, and the newly formed space committee), as well as student club updates. A new group of editors are currently organizing for next year's Caveat. Contact the SBA if you would like to have input.

#### **TOP TEN REASONS TO SUPPORT BILL CLINTON FOR THE DEMOCRATIC PRESIDENTIAL NOMINATION:**

10. Has no mafia, KKK or northeastern liberal democratic Greek ancestral ties.
9. Wide face means wide popularity.
8. Not a girlie-armed weenie like those other candidates.
7. If elected, promises to implement new "smoking-but-no-inhaling" section in restaurants.
6. Great smirk!
5. Vows to put an end to Pepsi's "Uh-Huh" lunacy.
4. Not afraid to tell prominent foreign dignitaries to "chill out."
3. Will bring chicken farming to the White House.
2. Can't mistake his wife for his mother.
1. Has no platform for the Republicans to attack and is therefore ELECTABLE!