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Caveat, October 1995

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CAVEAT

GOLDEN GATE UNIVERSITY SCHOOL OF LAW

VOLUME XXVI, Issue 2

October 1995

"T.G.I.F."

By Nancy Shepard
Special to the *Caveat*

Ah, Friday... We all look forward to Fridays. For most of you, it's the end of the week—last school day or last work day. But I look forward to Fridays for a different reason. I don't have classes on Fridays, but I go to school. Not the same school the rest of you go to on Fridays. This school is noisier. It's more colorful. Its walls are papered with signs and posters extolling the benefits of walking, not running, and not talking to strangers, and having a hall pass. The classrooms have chalkboards, just like ours; but they are barely visible under the posters of the alphabet, and how a seed grows, and how America was born. The chairs are smaller than ours, and mismatched. By golly, the people are smaller than we are, too.

I volunteer every Friday morning in a third grade class at New Traditions Elementary School. For those of you who are not around children very often, let me remind you of third grade: there is no nap time. The children are 8 and 9 years old (it's important to know who is 8 and who is 9—there is a hierarchy). They are just discovering the opposite sex. They are all future lawyers; they have an especially firm grasp of defenses—duress: "He made me do it"; self-defense: "She started it"; mistake: "I didn't know" (even though I told them last week); and the classic tort defense: "It wasn't me." They are extremely perceptive and they know how to get away with things. They are like animals—they can sense fear. If I look the least bit confused or uncertain, they pounce. "Can I go to the bathroom?" "I

Please see T.G.I.F., page 5.

The Homeless Problem through the Looking Glass...the Tale of the Three Little Words...and Fear and Loathing in Lawyering Skills

By Raoule Duke
Special to the *Caveat*

I must admit that the problem of homelessness (or, as George Carlin would say, "houselessness") is not one that I have ever encountered, although I have been close. It is not a problem I want to encounter if I can help it, but this semester I am being forced to face my phobia head on. For the first time I get to look at the problem of homelessness, not from the outside in, but from the inside out and, hopefully, learn something about it along the way.

My greatest fear is one that Atticus Finch described in Harper Lee's *To Kill a Mockingbird*. How do you get inside your client's skin and walk around? After all this is not a problem that I've ever had to deal with. How am I supposed to give advice to people who live on the streets of San Francisco while I live in a flat in Noe Valley? How do I deal with a landlord that wants to evict them while my landlord invites me up to dinner once a week? Or, how do I help them apply for General Assistance, even though I have dealt with Financial Aid?

All of this flashed through my head as I read the course description for Lawyering Skills: a clinic that would work directly with the Homeless Advocacy Project (H.A.P.) in counseling homeless clients. But, as with most of my decisions, common sense went out the window and I signed up. This class is a true enigma because it is one that is very simplistic and yet extremely complex. All I have to do is talk to people? That's funny, I'm not an attorney. Hell, I don't even have a student bar number, and Prof. Rutberg wants me to help people solve

their problems? However, this is the easy part because I can always run to a real attorney for help.

My problem comes in the quest to understand three little words: Stop, Look, and Listen. Yeah, believe it or not this is all we've been doing every Monday in room #340. I'll bet that sounds easy, but it's one of the toughest assignments I've ever had. Atticus Finch was able to do it with his client because he was objective and he *understood* what his client needed. I have no idea what the hell I'm doing, this school has got me thinking like young attorney larvae, and I don't understand anything.

However I seem, there are some things that I do understand. I don't know how a welfare office is run, but I do know that there are people inside with short lunch breaks. I've never been to a low-income housing unit in the Tenderloin, but I do know what it's like to be cold. In short, I know how to be human. I know what it means to acknowledge someone's existence. To say "thank you," "please," or even "do you need some help?" None of these requires a person oozing with philanthropical motives—they're just humanisms.

One of our assignments was to read a

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ViewPoint:

U.S. and Russia should join forces to enforce peace in Bosnia-Herzegovina

By Paul Addis
Special to the *Caveat*

As the war in Bosnia-Herzegovina creeps toward peace, a new skirmish has broken out over the peacekeeping forces that would be used to enforce a Balkan peace agreement. On the domestic front, Republican lawmakers play the guilt game by claiming that they cannot justify the loss of American lives in a country where the U.S. has no strategic or economic interests. On the international front, Russian President Boris Yeltsin has emphasized that his troops will not submit to NATO command, and that exclusion of Russian troops from the Bosnian peacekeeping force could have a severe impact U.S.-Russian relations. Despite these impediments, the assembly of a NATO peacekeeping force offers the U.S. a chance strengthen both the image of U.S. troops and international relations with Eastern Europe.

Republican lawmakers are correct to point out that sending U.S. forces to Bosnia carries the risk of our men and women coming home in body bags. However, where the G.O.P. is misguided is in playing off of these fears. After all, the G.O.P. had no trouble defending the use of our soldiers in a war over oil, or in the removal of a central American dictator that the U.S. helped to install. The maintenance of peace and tranquillity in another nation is a far more noble cause than either of the last two that our troops have fought for. This is especially true in a nation that is of no strategic or economic importance to the U.S. For once, America will be helping a fellow nation out of purely humanitarian interests. It is high time that the American military did something other than correct mistakes or protect vital corporate interests. Anyone in the House or Senate who has trouble seeing this should resign their post.

One might be quick to point out the fiasco in Somalia as a reason why U.S. forces should stay out of the Balkans. The critical difference between Somalia and Bosnia is the fact that there will be a solid peace agreement in effect when U.S. troops land in Bosnia, which was not true in Somalia. In Somalia, cease-fires were being negotiated as U.S. troops were landing and carrying out their mission. A second key difference between Bosnia and Somalia is that the missions are vastly different. In Somalia, U.S. Marines were on a relief mission to distribute badly needed food and medical supplies to desperate Somalis. The mission of U.S. and NATO forces in Bosnia is essentially a show of force sufficient to deter any drunken mavericks on any of the three sides from violating the peace accord. The U.S. peacekeeping forces in Bosnia will be heavily armed and reinforced by other NATO countries, which is something that cannot be said of the mission in Somalia. Hence, the odds of a U.S. pilot's body being dragged through the streets of a Bosnian town are low.

While the mission of the peace keepers in Bosnia is clear, the team membership is still up in the air. Critical to the team are the Russians, who have historically allied themselves with the Serbians. Russia's presence on a peacekeeping force would be a solid insurance policy against Serbian aggression. Unfortunately, NATO is managing this team and the Russians are not members in NATO. Boris Yeltsin has also made it clear that his troops will not be under NATO command. Thus, there is another problem to be solved.

Fortunately, Presidents Clinton and Yeltsin have arrived at solution to the problem of Russian troops and NATO command by making the only logical choice they could: let our Defense Secretaries work it out. It will be interesting to see how

Please see ViewPoint, page 8.

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THE CAVEAT

Published by the students at Golden Gate School of Law, the *Caveat* mission is to provide a forum for the law school community. Opinions expressed in Letters to the Editor and in by-lined articles are those of their authors, and do not necessarily represent the opinions of the editorial staff, the Student Bar Association, or the School of Law.

Submit to the *Caveat!* The submissions envelope is on the door of room 223. The deadline is the 15th of every month. Submissions to the *Caveat* are subject to editing for grammar, punctuation, and space considerations.

STAFF

Administration.....Travis Whitfield
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LETTERS TO THE EDITOR: Two viewpoints on the JAG controversy

Against JAG on-campus recruiting

Golden Gate University long has held it would not permit groups which discriminate against other groups onto the campus. GGU President Thomas Stauffer unilaterally violated that policy when he required the Law School's Career Services office to provide facilities for the U.S. Navy and Army Judge Advocate General (JAG) Corps to interview law students on campus. His decision permitted the military to bring its "Don't Ask, Don't Tell" policy against homosexuals to Golden Gate's doors. Stauffer's double about-face stunned and angered faculty, administrators and students.

Stauffer's initial decision to grant the military recruiters' requests for campus facilities provoked resistance from faculty and administrators. Previously, the Law Career Services office provided information to interested students and submitted resumes on their behalf; recruitment interviews were held at off-campus locations. Following Stauffer's unilateral decision, members of the faculty and others voiced their objections. Stauffer agreed that such a move violated a long-standing GGU policy against discriminatory groups, and assured those concerned that the military would be barred from on-campus recruitment of law students.

Stauffer later reversed his decision again and issued a memorandum stating that military legal recruiters must be permitted on the campus. He cited the Department of Defense's (DOD) Interim Rule on Military Recruiting on Campus, requiring severance of DOD funding for institutions of higher education which denied access to military recruiters. However, the American Association of Law Schools (AALS) interpreted the specific regulation to mean that only the units of the university denying access would be cut off from federal funds. The Law School faculty supported AALS's interpretation.

Severance of DOD funding would have absolutely no effect on GGU's School of Law because that unit receives *no* DOD funds. The main University's funding would not be affected because it always has permitted the military to recruit on campus. Since the Law School receives no funding to be severed, and the main University's funding remains unaffected, Stauffer had *no* basis for mandating that JAG Corps recruiters be provided facilities for interviewing law students. His blatant endorsement of military suppression sets a danger-

Please see JAG, page 4.

The Caveat accepts Letters to the Editor expressing views on any topic. Opinions from Letters are those of the author, and do not represent the opinions of the editorial staff, the Student Bar Association, or the School of Law. All submissions to the Caveat are subject to editing for grammar, punctuation, and space considerations.

For JAG on-campus recruiting

There is a current controversy in the Law School regarding the permission of the "Judge Advocate General" (JAG Corps) to interview on campus. The JAG Corps is the legal branch of the armed forces. The controversy stems from the military's admitted discriminatory anti-gay policy known as "Don't ask, Don't tell."

Many students and faculty, including myself, are understandably upset by this policy. However, there are different views as to how we should address the problem. While I believe that discrimination is a bad thing, I do not agree that we should deny the JAG Corps or other discriminatory employers access to on-campus recruitment.

The issues are rather complicated due to conflicting policies at Golden Gate University. The Law School has a long-standing non-discriminatory policy based on the Association of American Law School's policy of denying discriminatory employers access to the law school.

On May 30, 1995, the Department of Defense (DOD) published an interim rule regarding the issue of denying military recruiters access to students; this rule is the basis of the University policy. "Military Recruiting at Institutions of Higher Education" (32 CFR Part 216, Federal Register, Vol 60. No 103) states that educational institutions which receive federal funds may not deny military recruitment on their campuses. However, section 216.4 explains that "[t]his prohibition on use of DOD funds applies only to sub-elements of an institution of higher education that are determined to have such policies or practices [denying access of military recruiters]."

On June 7, 1995, in response to the interim rule, the University ordered all departments to allow military recruiters on campus because the University receives federal funding (and has programs on military bases). This clearly contradicted the law faculty policy.

The law faculty has interpreted section 216.4 to mean that this rule is applied independently to different "sub-elements" of a school, for example, the Law School, the Business School, the undergraduate, etc. Since the law school does not receive federal funding, we are exempt.

University President Tom Stauffer cites the last sentence of the "Summary" of the rule, which states: "The new law allows for no waivers." Since we are exempt, however (because we do not receive federal funds), we would not need a waiver to deny access to recruiters.

In response to President Stauffer's order, the law faculty passed a resolution on October 5, expressing its regret that the University would "permi[t] military recruiters access to Law School facilities." They further stated that they felt that President Stauffer was wrong in his interpretation of the law.

Please see Letter, page 4.

JAG, continued from page 3.

ous precedent for allowing discriminatory groups access to the campus and paints a bleak picture for gay, lesbian and bisexual faculty, administrators and students of the law school.

The Lesbian, Gay and Bisexual Law Students (LEGALS) sponsored a protest campaign against Stauffer's decision. On October 11, National Coming Out Day, the group staffed a table on the third floor of 536 Mission to provide information about Stauffer's decision and the opportunity to write him, as well as free bagels and coffee. Students and faculty signed form letters addressed to Stauffer protesting his action. All told, students and faculty submitted almost 200 letters to Stauffer, hoping that the quantity of opponents would gain his attention where quality of argument had not. If you are interested in sending a letter as well, please contact LEGALS.

LEGALS also sponsored a Brown-Bag discussion by Kate Dyer of Steele, Clarence & Buckley. Ms. Dyer traced the history of military policy regarding homosexuals from Alexander the Great to the current "Don't Ask, Don't Tell" policy. She then explained how military commands consistently violate the policy in insidious ways, preserving the discrimination against gays in the armed forces. Ms. Dyer concluded with an invitation for questions and comments.

Students, faculty and administrators must show President Stauffer that they oppose his violation of GGU's anti-discrimination policy by permitting military recruiters on the Law School campus in order to prevent similar instances in the future. LEGALS encourages students, faculty and administrators to write or call President Stauffer to register their protest against allowing discriminatory groups, such as the military JAG Corps, on campus to recruit law students when their school does not receive DOD funds.

Jessica L. Chylik, LEGALS

**REMEMBER TO VOTE!!
NOVEMBER 7 IS
ELECTION TUESDAY**

Letter, continued from page 3.

There are two issues which must be carefully distinguished. First, allowing military recruiters on campus violates the long-standing law school policy. Second, denying the military access to students violates notions of free speech and free choice. As to the first issue, I would encourage the law faculty to change the policy, and allow all employers to recruit on campus. My position on the first issue stems from my opinions about the second issue: by deciding who is not allowed to interview on campus, we deny our colleagues the right to a broad choice of employers. Anti-homosexual discrimination is not the only problem an employer could present. Many firms have poor records regarding their hiring, pay and promotion of women and minorities and many other controversial issues. Companies with questionable environmental practices, such as Exxon and Chevron, hire lawyers through on-campus recruitment. The tobacco industry is subject to considerable criticism, yet they may recruit on campus. Therefore, I find several problems with the law faculty choosing who cannot interview at school.

First, no one should be limiting career choices for students. I wouldn't make decisions for other people, and I don't want other people making decisions for me. I welcome information and input, so that I may make my own educated choices. Those who understand human nature know that people hold on more strongly to things they learn or decide on their own. Our goal should not be prevention (of military recruitment), but education (as to why we disagree with the military's policies). After we have presented our opinions, we must allow our colleagues the freedom of their own decisions. Our entire legal history is based upon reasoned debate—debate implies differences of opinion.

Furthermore, if groups are allowed to decide who cannot come on campus, other students will not know that a decision was actually made, and will not be made aware of limited employer selections or the reasons for the limitations. There is a good chance that the uninformed students would interview off campus and never be made aware of the controversy regarding the objectionable company or organization. Second, as an academic institution, we should not foster censorship, silence or ignorance. I know that the military's "Don't ask, Don't tell" policy is one of silence, but two wrongs don't make a right. We cannot educate people if we do not bring issues to the table.

These two problems flow into the question: who do we deny access to campus recruitment? I do not support the oil companies, and would not interview with them. There are law firms who have faced charges of sexual harassment. Many firms employ very low percentages of people of color. Do we deny access to all of them? This policy could easily become a slippery slope that would leave the Law School with no on-campus recruitment program. Law schools are evaluated by their recruitment programs. All the work that the Career Services Office and so many students before us have done would be dismissed.

The solution is simple: terminate the current policy and allow all types of recruiters access to campus, then use their presence as an opportunity to educate our fellow students as to the problems we have with certain businesses or organizations. We have several effective channels of communication: lunch-time forums, the *Caveat*, table-sitting on the third floor, pamphletting, etc. Keep the lines of communication open, so that our dual goals of education and free choice may be kept alive and well.

Nancy Shepard, 2L

ENVIRONMENTAL ALERT!!

Tired of wasting so many paper cups from all that coffee you've been buying at the ne Plaza coffee stand? Here's an inexpensive, environmentally conscious solution to your problem: purchase a reusable coffee mug from the Environmental Law Society!

HAP, continued from page 1.

story about a lady named Mrs. G., written by Lucie E. White, entitled, "Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs G." (1990). This is a tale of a poor, un-wed mother with five (yes, 5) girls. In short, the attorney tries to do everything right, does everything wrong, and still wins the case (I won't give away any more). But the story isn't as insightful as the message that was conveyed to me and the themes that the author chose: Intimidation, Humiliation, and Objectification. The way I understand it, all of these were working like a well-oiled machine against Mrs. G. because she was an outsider trying to get into a system that would rather pay her off than help her out. She had no power other than that which was given to her. In truth, any one of these three could ultimately have stopped her had she not stood up for herself and affirmed her own dignity (don't worry I won't tell).

In a way the story was more insightful for me because I noticed that the author had cited *Goldberg v. Kelly*, which I was forced to read my first semester in Civil Procedure with Professor Kupfer (yeah, it's all coming around full circle--I guess law school really does teach you something). The decision gave me insight into the realm of Due Process, but what piqued my interests even more was a follow-up article that I also had to read by Jerry L. Mashaw entitled "The Supreme Court's Due Process Calculus for Administrative Adjudication in *Mathews v. Eldridge*: Three Factors in Search of a Theory of Value." Professor Mashaw deals with the problems that the members of the welfare process must face, and I think he hits on Professor White's theme when he says there is "a tension between the efficacy of the state and the individual's right to freedom from coercion or socially imposed disadvantages...a lack of personal participation causes alienation and a loss of that dignity and self-respect that society properly deems independently valuable."

So what does all this mean? I believe it all goes back to my central theme of *humanism*. How can an individual feel that they are worth anything if the society they live in treats them with absolutely no respect? It reminds me of a story that my classmate, Brett, told in *Lawyering Skills*. He was walking to school and spotted a homeless man lying in the street downtown in a puddle of blood. Everyone was walking past in the normal, everyday, I've-got-to-get-back-to-the-office style and practically stepping over this guy. Well, Brett ran up to offer some assistance and finally succeeded in getting the paramedics there. No one told him he had to do it--it was just the human thing to do.

So what's the lesson to all this babble? Basically, that there really is no excuse to be an asshole (I know this will probably get cut). Most homeless people don't bite, and if you offer a few kind words it comes back ten-fold. Golden Gate University helps the homeless out once a year in the annual Feed the Homeless Dinner, and I encourage everyone to volunteer. But, kindness isn't a bear that can hibernate when it's convenient. Practice a random act of kindness everyday and see if it doesn't make a difference. Remember, in the words of Paul Simon, "everyone needs a little tenderness beneath their honesty."

(Author's note: I'd like to give thanks where thanks is due, so here it goes. A big hand goes out to Brett for letting me use his name and Lawrence for giving me his honest opinion when I needed an editor. I'd also like to thank Prof. Kupfer for putting up with me in Civil Procedure and listening to what I had to say. Last, but not least, I'd like to thank Prof. Rutberg for her help in teaching me how to listen and not think so hard.)

T.G.I.F., continued from page 1.

have to go to the office to pick up a note." "I always get to color during math."

Their antics are what third grade is all about. I get a tremendous joy at explaining something to them and seeing a great big lightbulb come on over their heads. I like to think that my presence will somehow influence at least one child. In addition to helping the children, I am overwhelmed by the look of wide-eyed relief on the teacher's face every time she sees me come into the room. Mrs. Akiyama does a fantastic job, but she is grateful nonetheless to have someone help her with 27 tireless children.

I would encourage you to volunteer in a school. The need is there. As budgets get cut, services decrease. Our future lies with our children. Think back to your childhood. Was there someone who made a difference in your life? There is a great organization in our community called San Francisco School Volunteers. They place eager volunteers in a school. You may choose any level of education (K-12). You may choose any neighborhood, any subject, any time of day (most school days are about 8am - 3pm). Or you may leave any of those choices up to SFSV, and let them place you where the need is greatest. You do not have to have special training or education, or be an expert in any field (but SFSV offers short training seminars). All you need is 2 or 3 hours a week, and believe me, this is not time spent, but time gained. Children give so much just by being children. I have gained such a sense of clarity and perspective by working with them. I returned this year to the same school I was at last year. My former third graders are now in fourth grade. I can see a difference already. It is amazing to watch them grow.

For more information, consult the black Volunteer Notebook next to the SBA office, or call Nancy Shepard at 442-6697. To volunteer or get information from the source, call SFSV at 274-0250 (ask for Liz Petersen, and tell her you are from Golden Gate). Together, we can make this world a better place.

Leigh Steinberg
November 15th

International Forum

8

November '95

Wednesday

Golden Gate University
Second Floor,
Auditorium "B"
536 Mission Street

5:30 pm - Registration
and Hors D'oeuvres
Reception
6:00 - 8:00 pm -
Program

Members: \$7.00
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Back from Beijing: A Report On the Status of Women

Join us for an exciting roundtable discussion of the issues addressed at the Fourth World Conference on Women. The following distinguished panelists attended the conference and will share their experiences and opinions on the Platform of Action which was adopted: **Krishanti Dharmaraj**, Former Acting Deputy Director, Western Region Amnesty International; **San Juanita Munoz**, USA Youth Delegate to the UN conference; **Sharyle Patton**, Codirector, Commonwealth Sustainable Futures Project; **Mary Jane Sanchez**, UNA-USA Delegate; **Mary Wyman**, Program Director, US Department of Labor; Delegate of the Women International League for Peace and Freedom.

Reservation Form: International Forum: Wednesday, November 8, 1995 Back from Beijing

Yes, I/we would be delighted to attend. Please reserve:

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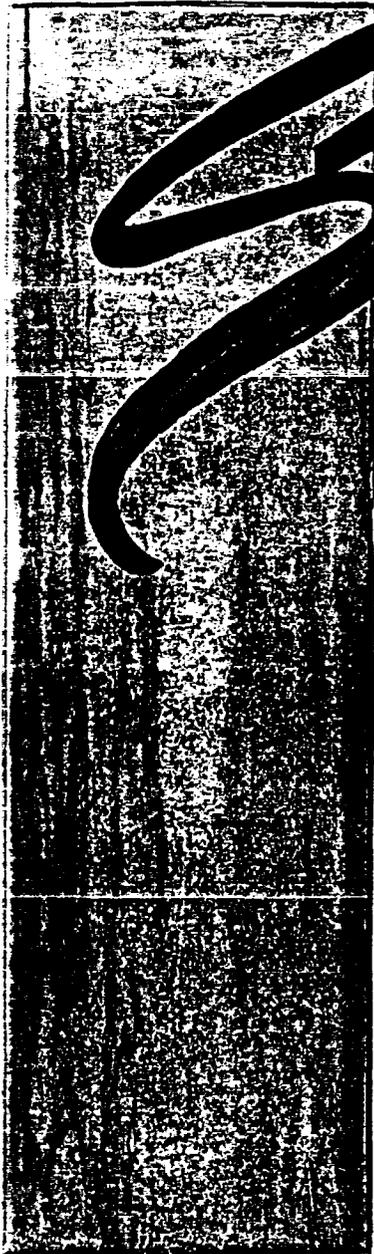
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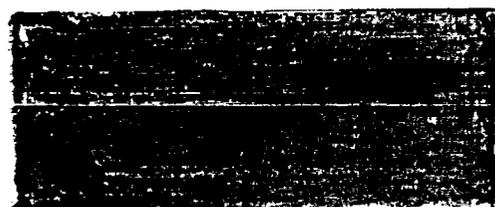
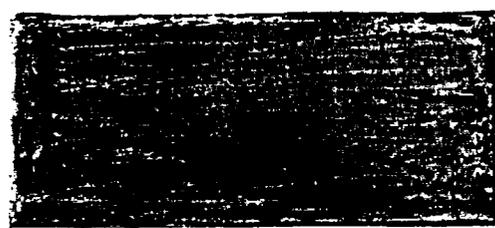
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International Speakers Forum

Attorney John I. Forry has offered to give a presentation to the International Law Society on Friday, November 10, 1995 from 12:00 to 1:00pm in Room 388 discussing

International Finance - Growing Relationships Among International Project, Structured, and Capital Market Finance.

Mr. Forry (Harvard '66) is a partner with the New York firm Rogers & Wells. Mr. Forry is currently heading the start up of Rogers & Wells Asia Division, and working out of Hong Kong and Los Angeles.

Mr. Forry is author of numerous articles and author and editor of the book *A Practical Guide to Foreign Investment in the United States*.

Mr. Forry is also an educator and was adjunct professor at the University of Southern California Law Center and Southwestern University School of Law.

Mr. Forry will be returning from Tokyo on November 10, and has re-routed his flight to include a stop in San Francisco specifically for this event.

ViewPoint, continued from page 2.

Secretaries Perry and Grachev work out Russian participation in the NATO mission. A resolution of the problems seems likely, given Moscow's interest in joining NATO. A smooth interaction with NATO forces on a joint operation would give the Russians a strong argument for NATO membership. Membership in NATO would give the Russians a power position in two of the world's most powerful security alliances: the United Nations Security Council and NATO. Russian membership in NATO would be mutually beneficial for both the East and West. Russia would gain power and prestige by acquiring NATO membership, while NATO and the U.N. would gain by being able to assert greater pressure on the Russians to resolve issues like the Chechan conflict.

It's been three-and-a-half years since the war in Bosnia began. The U.S. should take full advantage of the chance to demonstrate its interest in peace and international relations by sending troops to enforce the peace agreement that it helped broker. It is clear that U.S. leadership in sending peacekeeping troops to Bosnia has spurred Russian interest in joining the force. Sending troops will also give the Russian and American forces another opportunity to work closely together. Our nations' troops will get to know each other in peaceful times and develop friendships that can only benefit our respective nations. The combined strengths of NATO and Russia reduce the risk of our soldiers dying while enforcing peace. By so reducing the risks, it is easy to see that the benefits of U.S. participation in a NATO peacekeeping force outweigh the risks.

Editor's Column

The *Caveat* invites all students and faculty members to submit stories on any topic for publication. Submissions should be submitted on computer diskette along with a hard copy of the story, and dropped off either at the *Caveat* mailbox on the 14th floor, 49 Stevenson, or at the *Caveat* office, room 223-B in the student lounge. Also, students interested in other aspects of newspaper publication should contact the *Caveat* staff for more information.

VOLUNTEERS NEEDED!

Enjoy working with high school kids? Volunteers are needed to teach and prepare students for a Mock Trial Competition. Those interested should contact Doug Dexter at (415) 984-8787.

DON'T FORGET TO VOTE!

San Francisco mayoral election is November 7. Please remember to cast your votes. There's no excuse for apathy!

24 Hour Nautilus

The SBA has four-month passes on sale now for \$125. Contact your SBA Representative today for more information!