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The Law School Comes of Age (1970-1992)

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Voyage *of* Discovery

The History of Golden Gate University
Volume III, 1970-1992

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with Nisa Donnelly

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Voyage of Discovery
The History of Golden Gate University
Volume III, 1970-1992

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THE LAW SCHOOL COMES OF AGE

To understand the law school that Otto Butz found upon his arrival in 1970 requires looking back to 1952, when Nagel Miner, Golden Gate's first president, initially approached the American Bar Association for approval of the school. Miner had traveled to Chicago that spring to see how the John Marshall School of Law had secured its ABA sanction. On that trip, he happened to meet the man who investigated law schools seeking ABA approval. John Hervey, the examiner for the American Bar Association's Council on Law Schools, offered to make an unofficial visit to Golden Gate the next time he was in the San Francisco area, and in 1953 he followed up on that promise. It was to be the first in a series of accreditation visits that Hervey would make to the school during the next fifteen years.

Golden Gate Law School graduates had been making an impressive showing on the bar exams from 1950 to 1953, and at the time of Hervey's first visit had the highest percentage pass rate in San Francisco and the third highest in northern California, after Stanford University and the University of California. Even so, the ABA representative said that to gain approval Golden Gate must increase its admission standards, limit the number of students admitted by exception, increase the salaries of full-time faculty, augment library holdings, and upgrade the physical plant. Like Hervey himself, the requirements—or, specifically, meeting the requirements—would become an enduring part of the Law School for more than a decade. But in 1956, spirits were high at Golden Gate when the ABA granted provisional approval, making it the first exclusively

part-time evening law school west of St. Paul, Minnesota, and the only law school in downtown San Francisco to be ABA approved.¹

In those days, the ABA relied on periodic visits by the examiner, who often arrived with little notice. Throughout the 1950s, Hervey dropped by Golden Gate on several occasions and, in 1959, determined that while the Law School had met some of the ABA requirements, still others were problematic, specifically the facilities and the size and salaries of the full-time faculty. The school entered the 1960s with provisional approval.

In 1962, though, the ABA Council adopted a policy requiring schools with provisional approval to qualify for full approval by 1967. Within five years, Golden Gate would have to shore up its ranks of full-time faculty, raise their salaries to a competitive level with other ABA-approved law schools, and find a way to increase the amount of space allocated to the Law School. At the time, the university was still housed in the YMCA building on Golden Gate Avenue. Russell Sharpe, Golden Gate's president at the time, and Law Dean John Gorfinkel developed a ten-year plan, which they submitted to the ABA. Hervey responded that the ABA Council "would be unlikely to recommend full approval until and unless the (physical) plant is improved and until the salary scale is competitive with the San Francisco Bay Area."²

The challenge from the ABA came on the heels of Golden Gate's 1962 long-range plan, which projected that in the near future the growing college would require twice the space it currently occupied in the YMCA. Golden Gate officials had been meeting with the YMCA's architect to discuss ways to increase space at the existing site, but it was apparent that the more workable solution would be to find an existing building in downtown San Francisco that could be modified for the college. After a nearly two-year search, the college finally found its home at 536 Mission Street, and the Law School was the first component to move in time for the start of the 1964 fall term. Hervey was impressed and wrote of the building plans to Gorfinkel, "It will be highly adequate and will afford a professionalism which the school has not realized to

date [...]; the new building should give the school a thrust upward comparable to other institutions in the Bay Area [...]. Personally, I would hope that the ABA Council would recommend full approval and that it would also acquiesce the desire to open a full-time division.”

Going Full-Time

Just a few weeks earlier, the trustees had endorsed Gorfinkel's idea to develop a three-year day program for full-time law students to replace the four-year part-time program. However, it was too late to approach the council for approval in 1964, and scheduling conflicts precluded its approval in 1965, so it was not until February 1966 that the full-time program made it onto the ABA Council meeting agenda.

At the January 1966 meeting of the Golden Gate Trustees, Samuel B. Stewart, who was then vice president and general counsel for Bank of America, observed that gaining ABA approval for the full-time program was “vitaly important” because, as an attorney, he saw “little future for a part-time law school but a bright one for a full-time institution.” He also offered a resolution authorizing Golden Gate administrators to assure the ABA Council that faculty salaries would be raised and more full-time faculty added to the Law School.³ The bid was partially successful. While Golden Gate gained approval to open a full-time day division, the ABA postponed full approval of the Law School for three more years in order to evaluate the full-time program and to make further visits to the school.

The trustees wasted no time. Just one week after the ABA Council meeting in Chicago, they voted to phase out the part-time, four-year day program beginning with the fall 1966 term, leaving the evening division as the part-time option. Until that point, all Golden Gate law students had attended part-time. At that historic meeting, they also increased tuition (from \$26 to \$28 per unit starting that fall), raised faculty salaries for the coming year (professors would annually earn \$13,000; associate professors, \$12,000; and assistant professors, \$8,000), and add to the faculty a full-time assistant professor, who would also serve

as the law librarian.⁴

As then-President Sharpe observed of the landmark decision to inaugurate a full-time day program, “The emphasis in the Law School began to shift away from its original base. In addition, the type of student changed, as young men and women, fresh out of college, enrolled in the day division. As Mr. Stewart had predicted, the Law School grew rapidly. It is doubtful it could have achieved such growth if it had remained a part-time school.”⁵

Both Sharpe and Gorfinkel believed that 1966 would be the start of an enrollment boom in the Law School and proposed adding two full-time assistant professors to the faculty in fall 1967. However, when the enrollment for the fall '67 semester was in, day-division enrollments had dropped by nineteen over the previous fall, with only five more students in the evening division. Enrollments in spring 1968 did not improve.

The nation's political climate at the time did not help. The United States was engaged in the War in Vietnam and in early summer 1967, the National Security Council announced it was considering abolishing draft deferments for most graduate students. The shock wave that ran through American higher education was nearly palpable. Nathan Marsh Pusey, then-president of Harvard, predicted in *Newsweek* that “graduate schools next year may consist of the lame, the halt, the blind, and the female.” Nationwide, law school entering classes were expected to shrink by 60 to 70 percent and second year classes by 30 percent. Within six months, the Selective Service had ended draft deferments for all graduate students except those studying medicine, dentistry, osteopathy, or veterinary science.

“We were not overly concerned about the impact of enrollments in the graduate business and public administration programs, or in the evening division of the Law School,” Sharpe recounted in his memoirs of his years at Golden Gate. “The students in the evening programs were attending part-time and were already vulnerable to the draft. They were, however, generally older than the full-time students and

many were over draft age. Also, many were married with dependents and so would qualify for exemption. Some were employed in vital industries. But we knew that the new policy would hit the Law School Day Division hard. We conducted a study which showed that about two-thirds of the day students and one-quarter of the evening students would be vulnerable to the draft in 1968-69. We began to consider how we could cut the full-time law faculty by two.”⁶ That decision created additional problems in gaining ABA approval. Already, the accreditors felt that the Golden Gate law faculty was too small, and cutting faculty numbers would compound the problem. Still the dean felt that the Law School could function with six full-time faculty. The decision was made. As Sharpe observed, “This action solved a multitude of problems and brought us back to square one.”⁷

Although the ABA had set a deadline for Golden Gate to meet full approval by fall 1967, its own actions of delay in order to evaluate the new full-time program pushed the deadline ahead. In 1968, Hervey again visited the school. The facilities were more than adequate, student admission and retention standards were solid, instruction was highly rated, and the library collection satisfactory. But he was troubled by the downward enrollment trends in the evening division. Part-time evening programs nationwide were seeing their numbers decline, but at Golden Gate the downturn was especially striking, from 269 students in 1964 to just 218 three years later. More troubling, though, were the numbers and salaries of full-time faculty. To meet ABA standards, the Golden Gate Law School needed at least eight full-time faculty—although Hervey agreed that of those, one could be dean, another assistant dean, and a third law librarian—and salaries must be adjusted to a median equal to or higher than those in all approved law schools across the nation, or \$15,150 in 1967.

Golden Gate was in a quandary. The push to renovate facilities to meet ABA standards had already stretched the budget, and the dip in enrollment had created further strain. “We could not raise Law School salaries, add new full-time faculty, and build the library collection as

rapidly as we would have wished until we had assured ourselves that we could pay for the new plant and its renovation, and so meet one of the ABA Council's major requirements for full approval," Sharpe recounted.⁸ If the school did not move to seek full approval, which would require an estimated outlay of \$50,000 a year by the college, the ABA could withdraw provisional approval, a sure death-knell for the fledgling day program, which was heavily competing with other law schools in the Bay Area.

Then in 1968, just before the start of the fall term, Golden Gate's fears were realized when the ABA Council on Legal Education voted unanimously: If the Law School did not apply for full approval during the '68-'69 academic year, it would be dropped from the list of approved law schools.⁹ Golden Gate had three options: close the Law School; operate the school without ABA approval; or once again apply for full approval, which meant that by January 1969, the Law School had to increase its full-time faculty numbers and raise salaries. The Law School hung in a very delicate balance. While the school had potential, it was also not growing as rapidly nor generating as much income as other parts of the college. One trustee called for a comparison between the cost of running a first-rate law school versus using the space it currently occupied for other expanding, and thus more profitable programs.

In November 1968, a new team of examiners arrived—the enduring Hervey had retired earlier that year—and another caveat was added: the library's collection needed further expansion. It proved to be one more seemingly insurmountable hurdle. It came as little surprise when the ABA Council again denied approval in January 1969, based on the size of the faculty, but also on the number of experienced full-time faculty (three faculty members were in their first year of teaching, which concerned the accreditors); the fact that nearly three-quarters of the evening division classes were being taught by adjunct faculty; the size of the library budget for new acquisitions, which they labeled "inadequate"; and based on the bar pass rates, which had dropped to just under 49 percent in recent years. The Law School, which had once

been among the Bay Area's top three in bar exam pass rates, was now last among comparable California schools for students passing after more than one try, and fifth for students passing on the first attempt.¹⁰

Gorfinkel, who had been dean of the law school since 1960, had accepted an offer from the state to direct a program that would assist California's non-accredited law schools in gaining accreditation and would be leaving Golden Gate at the end of June 1969. After several months of screening candidates, the college selected J. Lani Bader, who had joined the full-time faculty in fall 1968 and who before that had been one of the school's adjunct faculty, to be the new dean. He was just thirty-six years old, and the youngest law dean in the nation. It was to be a prophetic decision. During his term, which would last four years, the Law School would begin to realize its potential, grow at an unprecedented rate, and ultimately satisfy the ABA to finally gain full approval. But when he took office, the school was still struggling.

Twelve Months and Counting

“When I became dean, I was given a letter from the ABA that said, in effect, that the Law School had been on provisional approval since 1956, the longest period of provisional accreditation in the history of the American Bar Association,” Bader recalled. “We had twelve months to figure out what we were going to do and how we were going to do it—and then do it.”¹¹

The number of full-time faculty had dwindled to three or four, not counting the administrators who also taught classes and were considered part of the Law School's full-time faculty. “We had no librarian, but we tried to convince the ABA that we were running the library with a faculty committee, which did not go over well. My associate dean and I shared an office. Those were the good old days when we were sparse and lean, but we had a very good idea where resources ought to be directed.”

Bader would go on to build an impressive career both at Golden Gate and as a professional arbitrator and mediator who, by the time he

retired in 2006, would have arbitrated more than 400 cases with disputed amounts of up to \$700 million. The arbitrator's skills doubtless served him well his first year in office as he juggled the demands of the ABA, the realities of Golden Gate's budget, and the desires of the trustees.

"Lani Bader put the School of Law on the map,"¹² said Judy McKelvey, who had just recently joined the full-time faculty when Bader was appointed dean and who would go on to become his successor in that office.

Just six weeks after taking office, Bader met with the ABA to request full approval for his school. Again, the outcome was grim. Not only had the Council on Legal Education denied the petition, Golden Gate would have to come into full compliance by fall 1971 or lose its provisional approval altogether. The conditions had changed little over the years. The ABA was still concerned about the library's holdings, its lack of a full-time librarian, the size of the full-time law faculty, and the "undistinguished record of the school's graduates in the bar exams."¹³ Bader, though, was undeterred. He believed that the Law School could meet the ABA's standards within the year and that the money could be raised through a vigorous fund-raising campaign aimed at Law School alumni and local legal firms, and by a tuition increase. He assured the trustees that a stricter retention policy was already in place and that it would weed out the weaker students at the end of their first year, which should help improve the record on future bar exams.

Remaking the Law School

A special meeting of the Golden Gate College Board of Trustees was convened in December 1969 to endorse adding three more faculty positions, hiring a full-time law librarian, significantly upgrading the Law School Library, and raising salaries. Also admission standards were tightened, and retention policies strengthened. Tuition increases were expected to fund many of these improvements. Other funding would be raised by the dean who would work with the vice president for development to generate at least \$75,000 over the subsequent two

years. It was a costly undertaking, but if the school were to grow—indeed, if it were to survive—the improvements had to be made.

It was a program unlike any previously undertaken by the Law School, and the changes had to be implemented rapidly.¹⁴ ABA accreditors were to visit Golden Gate again in April 1970, and the school's petition for full approval was on the council's agenda for its August meeting.

Because the size and salaries of the full-time faculty had been a primary and consistent concern of the accreditors, Bader needed to show the ABA that Golden Gate was serious. Salaries were increased on July 1, 1970, just weeks before the council was to meet. "To be nationally competitive in attracting faculty, the salary scale has been increased to a point at which the median salary is above the national median for all approved law schools," the dean told the trustees. Full-time faculty salaries were set at a minimum of \$11,000 and a maximum of \$19,000—\$3,000 more than what Golden Gate was then paying a full professor. The ABA also wanted not less than 80 percent of all classroom hours taught by full-time faculty. Bader had already hired four new full-time faculty. One was Anthony J. Pagano, a member of the adjunct faculty, who would ultimately go on to become the Law School's dean in the late 1980s. Another was Michael DeVito, who became one of the school's most enduring constitutional law professors over the next thirty years.

The ABA's second major area of concern was the Law School Library. Golden Gate hired its first full-time law librarian and doubled the budget for library acquisitions, which would increase the collection by more than a third by adding 10,000 new volumes at an estimated cost of \$100,000. Another \$50,000 was earmarked for furnishings, shelving, and similar upgrades. Funding for the project was to come from gifts and grants.¹⁵

The Law School was at the beginning of an upward cycle. Enrollments were increasing—at the start of the fall 1969 term 325 students were enrolled, and 468 the following year. With the new tuition structure, administrators hoped that the Law School would finally be

less dependent on support from other components of the college.

The Law School was also beginning to adopt a somewhat autonomous personality. With the advent of the full-time day program, the composition of students had changed from working adults to the traditional-age students who saw law school as their primary focus and identity, instead of ancillary to work and family. They were in class when most Golden Gate students were not on campus, and so their experience was understandably quite different. Politically, they were more attuned with other traditional-age students than with the college's typical working-adult students. They saw themselves and their school as distinct from the college in many respects.

May 1970: The Cambodian Invasion, Kent State, and Golden Gate

May 1970 was unlike anything the country's colleges and universities had ever confronted. American college campuses were ablaze in the wake of the killings at Kent State University in Ohio. More than 100 American campuses were closed as a result of student protests and real and anticipated campus violence. It is now estimated that 80 percent of all campuses experienced some sort of student unrest and disruption. Golden Gate was one.

The day after the Kent State incident, Golden Gate canceled its day classes, but the evening classes went on as usual. By week's end, life was nearly back to normal for the business and public administration students. "Not so the School of Law," Sharpe recalled.¹⁶ Some law classes were conducted during that charged week, but attendance was poor. Law students were calling for classes—and exams—to be canceled, and that all students be graduated or promoted, despite canceling exams. A week after Kent State, the Golden Gate Law School faculty met again to discuss the situation. "Just before the meeting started, word was received that Hastings and Boalt Hall had decided to hold no further classes that year and to automatically graduate or promote all students without examination. Pressures on the dean and faculty mounted as law school after law school across the land canceled all examinations

and classes, and graduated and promoted students on the basis of their records at the time of the crisis,” Sharpe recalled.

A special meeting of the Board of Trustees Executive Committee was called to discuss the conundrum. Bader and McKelvey represented the Law School faculty. “Calling off the exams was clearly something we had to do,” Bader recalled.¹⁷ “The members of the Executive Committee turned to Russ (Sharpe) and asked for his thoughts. He said he didn’t think we should cancel exams. Fred Drexler said he didn’t think it was even within the jurisdiction of the Executive Committee, so that was the end of that. It was up to the administration to decide how to proceed. On our way back to the campus, Sharpe was really silent.” Russell Sharpe was sixty-four years old, and in the last months of his presidency. He had always seen Golden Gate and its students as different from traditional colleges. Now, he was no longer sure.

The president finally, and by his own account reluctantly agreed that those law students with a cumulative grade point average of B or better would be graduated if otherwise eligible or promoted without taking the final exams. Students with averages below B could either take the scheduled exams or defer them until the following September. When students returned in the fall there was considerable confusion regarding who still needed to take the exams. Worse, though, some seniors who otherwise might not have qualified for graduation had they taken the final exams, received degrees, and some marginal students were promoted. “As a result, Golden Gate’s showing on the bar examinations for the next few years was lower than it might have been,” Sharpe recounted.¹⁸ By then, though, he was no longer president. A younger man, one who had a reputation for brokering campus peace and being in tune with students, had taken the helm. Handling this new generation of students was now up to Otto Butz.

Law School Graduation

Historically, all Golden Gate students received their degrees at one ceremony, held the first week in June. In 1968, the Law School began

conferring Doctor of Jurisprudence degrees, abandoning the earlier designation of Bachelor of Laws. It was another step as the Law School struggled to find its own place in legal education and its own identity within the university as a whole. Then in January 1969, the Student Bar Association petitioned the president's office to hold a separate Law School commencement that spring.

The petition read, in part, "It is necessary that the graduate program in law maintain a certain degree of independence to allow it the freedom to progress on its own and fulfill its present declarations of 'coming of age' as a law school that can compete on equal grounds with other, more prestigious law schools."¹⁹ While some trustees sympathized with the law students' desires, others felt that the unity of the college was at stake. Finally, they reached an accord: all graduates from all programs would receive their degrees at Golden Gate's annual commencement but the Law School could hold its own separate ceremony either before or after the college-wide exercise. The next year, though, the dean brought another, more substantial argument to the board: in order to provide the number of weeks of instruction that the ABA required, Law School final examinations could not be completed before June 1, which made it impossible for faculty to read and grade the papers of third-year students (and thus qualify them for graduation) in time for the annual college-wide commencement. Accommodating a separate ceremony was the only practical solution. And so, in 1971, the Law School held its first commencement ceremony autonomous from the rest of the college.

The ABA Ultimatum

When the ABA again visited Golden Gate five months before Otto Butz was to take office, the examiner sensed a feeling on the part of students, faculty, and the dean that a new chapter was beginning for the Law School.

Heartened, Bader and Butz traveled to St. Louis to meet with the Council on Education in early August 1970 to once again ask for full ABA approval. Within two weeks, they had an answer: while impressed

with what had been done, the council wanted to see another year of continuing progress. In retrospect, Sharpe, who was in the last days of his presidency, saw the decision as logical. The Law School had a new dean and Golden Gate a new president. Still, the news was bitterly disappointing, and worse, the Law School had only one year left in which to qualify for full ABA approval. The funds to fully implement the changes that the ABA demanded had to be raised—or, once again, redistributed from other parts of the college—and quickly.²⁰

The Dawning of a New Era

And so it was when Otto Butz arrived. Two previous administrations had struggled to gain full approval from the American Bar Association and the deadline for compliance was looming.

Still, the Law School was, in many respects, booming. In one year, the number of full-time law students had jumped by 70 percent, with 9 percent more in the part-time program, finally reversing the downward trend. Of the 246 full-time law students enrolled in the day division in fall 1970, 176 were new—a dramatic increase over the seventy-six new students who had enrolled the previous fall, or the fifty-one the year before that. The increase was credited, at least in part, to a “new perception of the Law School as a dynamic, innovative institution which has a wider appeal for recent college graduates.”²¹ Many of the students were political activists who envisioned societal change and were choosing to study law in order to effect that change. But if the students were young, assertive, dynamic, and armed with vision as to what the future of law and education would look like, their professors were no less so.

Faculty numbers increased dramatically in the first few years of the 1970s, partly to keep up with the rapid rise in enrollments and partly to comply with the ABA standards. The faculty was composed of young attorneys who were eager to grow a law school to fit the times. Many would go on to build careers at Golden Gate and some, like Bader, McKelvey, Neil Levy, and Tony Pagano, who all arrived within a few

years of each other, would serve as its dean. In the process, they created a law school that was unique for the times.

“There was an enormous amount of energy among the faculty in those early days,” Bader recalled.²² “We were young—we probably had the youngest law school faculty in the country—and we were actively engaged in building a strong, viable, solid institution. In four years, we took the school from the threat of being closed down by the ABA to a first-rate, solid institution doing solid things.”

The American Bar Association ultimately agreed in July 1971. It had taken fifteen long years. In the interim, two law deans and two college presidents had retired, and hundreds of students had graduated, passed the bar exam, and established successful careers. The college had moved out of the San Francisco YMCA into its own building. Where there had once been only part-time students taught by mostly part-time faculty, there was now a full-time faculty, a full-time day program, and a new cadre of younger full-time students. The Golden Gate School of Law had, indeed, come a long way. But as the next two decades played out, 1971 would ultimately be seen as just the beginning.

The Bader Deanship: 1969-1973

Much of Golden Gate’s phenomenal expansion during the 1970s and on into the 1980s can be traced to the president’s entrepreneurialism. One of the country’s leading authorities on entrepreneurship is Leo Helzel, who is internationally recognized as an entrepreneur, financier, attorney, and one of the founders of the entrepreneurship program at the University of California, Berkeley, Haas School of Business, where he taught for more than twenty years. He is also a 1951 graduate of the Golden Gate Law School Evening Division. “Otto was an educational entrepreneur,” Helzel said. “He stretched the envelope as far as it could be stretched. I think he had a feel for the voids in our system and society. In his time he was an innovator.”²³

Butz believed the Law School was poised for growth. He shared the young faculty’s enthusiasm, and his creative drive to build a new kind

of institution of higher education was a match for their own. In many ways, it was a serendipitous beginning.

“We were entrepreneurial and risk takers, and willing to try anything that seemed to have merit,” recalled Bader. “In the old days, we used to talk a lot about ‘entrepreneurial deans,’ and that’s a phrase I haven’t heard in years, but entrepreneurialism is what drove the school’s development.”

“Otto didn’t always agree with everything (we proposed), but he always moved quickly,”²⁴ recalled Pagano. “In most institutions of higher education, change is stymied by the committee structure. Otto wasn’t bogged down by committees. He had a very simple way of operating: get a group of people from the law community together; kick the idea around; and if they thought it was a good idea, he would support it. I never felt like the faculty was excluded, or even the students. He would listen to everyone; then he would make up his mind. Not only was Otto one of the brightest people I’ve ever met, but he was also one of the most entrepreneurial. There is a mindset among some people in traditional academia that says if you have a committee and something goes wrong, then you have a group to blame. Otto wasn’t like that.”

“We ran the Law School like entrepreneurs,” Bader explained. “Because Otto, himself, was an entrepreneur, he was very receptive and encouraging to ideas and notions that might have seemed a little odd to people with less vision. But he understood that we knew what we were doing, so if we had an idea with at least some common sense to it, we could do it, and Otto supported us.”

Guaranteed Tuition: A Noble, Failed Experiment

Ideas in the early years ranged from the inevitably good to the unworkable, and the two occasionally converged with unforeseen results. One was the guaranteed-tuition program.

Although Law School tuition had increased by some 25 percent to \$46 a unit for the 1970-71 academic year and about 10 percent to \$48 a unit for 1971-72, Golden Gate was still the least expensive law school

in California. Then, in 1973, Bader proposed a radical idea: increase tuition to \$60 a unit for new students and freeze it until they graduated. Tuition for continuing students also would be frozen, and they would pay \$48 per unit so long as they were enrolled. The increase was expected to generate \$75,000 in additional revenues for the 1973-74 academic year, \$137,000 the following year, and some \$200,000 in 1975-76. Granted, students entering in the fall 1973 term would be faced with a whopping increase, but their tuition would hold steady throughout their Law School careers. Even at \$60 a unit, the tuition was still well within existing levels at other law schools in the state.

“Our greatest difficulty, should we raise tuition, is justifying the increased fee,” Bader told the trustees at their December 1972 meeting. “There is little question that we are deficient in terms of faculty, classrooms, and reading-room space, and that we offer the fewest services to law students. Although we have seriously discussed, and presumably are pursuing new quarters for the Law School, that project has become a long-term solution and realistically will not produce the kind of additional space that we need for (another) five years.”²⁵

Already, the Law Library and offices were housed in rented space two doors down from the college, and the trustees were actively exploring expanding the campus, but those plans were not yet even in the developmental stage. Bader was proposing that along with the tuition increase, the college commit to providing additional classrooms, five more faculty offices, a student lounge, and a reading room capable of seating seventy-five students. He projected that the new classrooms would result in a gross savings in instructional expenses since a larger classroom would enable more students to meet at one time rather than having their courses divided into sections, which required additional teachers. It also would enable more courses to be added to the evening division which was competing heavily for classroom space with the schools of business and public administration.

The board balked. A near 30 percent increase in tuition on top of the 25 percent increase two years earlier was troubling. True, enrollments

in the day program were increasing, although that was attributed primarily to the number of returning students having doubled in 1971, but evening-division enrollments were down by about 5 percent. True, also, that better qualified students were enrolling: LSAT scores in 1971 averaged 580, compared to the 550 average the year before, and were expected to continue to rise.²⁶ Even so, Golden Gate's showing on the 1971 bar exam had been disappointing, with only 40 percent of the school's graduates passing on their first attempt, compared to nearly 60 percent statewide. And, nationwide law school enrollments were growing at unprecedented rates, jumping from 64,416 students in 1969-70 to 91,225 in just two years. If Golden Gate could ride that wave, and there was no reason to believe that it could not, then the school's future would be bright. The trustees finally agreed. Tuition would be set at \$60 a unit, and students would be guaranteed no additional increases before graduation.

"I thought it was a really remarkable idea at the time," Bader recalled. "It turned out to be a terrible disaster."²⁷ In more stable economic times, it might have worked, but the 1970s were hardly stable. Inflation, which had held to a rate of 2-to-3 percent throughout most of the 1960s, soared to 13 percent in 1974 and hovered at levels of 7 percent to 12 percent through the decade's end. Administratively, it was a nightmare. Not only were some students paying \$48 a unit, while others paid \$60 for a class, the school's primary means of generating revenue was frozen until 1975, while expenses soared. In September 1974, the Law School was back before the board requesting authorization to hike tuition to \$75 per unit.

By then, Bader had stepped down as dean, and Judy McKelvey was leading the Law School. "Given the cost increases we have had to absorb since the last tuition increase, given the cost of the requested two additional full-time faculty positions, and given the salary increases for faculty and staff that will be necessary for 1975-76, the \$60 per unit tuition rate is simply no longer viable," she explained.²⁸ The proposed tuition increase was projected to generate an additional \$300,000 in

revenue, necessary if the Law School was to cover its costs and meet its obligations to the university's central overhead expenses. More than half of the new funding would be earmarked for two new full-time faculty positions and for salary increases for existing faculty. Even at \$75 per unit, Golden Gate's tuition would still be nearly the lowest of private, ABA-accredited law schools in the state. Not surprisingly, the law students did not favor a tuition increase, but ultimately accepted its inevitability. The trustees concurred, and in January 1975 voted to end the noble, if somewhat costly experiment they had endorsed three years before.

The Business School Bridge

In early 1972, the first bridge between the law and business schools was created with the joint JD/MBA Taxation degree.²⁹ "The new combined degree merely permits Law School students to take some of their elective units from among the tax seminars offered in the MBA program and opens some of the tax courses in the Law School to MBA students," Butz explained to the trustees.³⁰ "It will probably attract a few new students into our MBA curriculum from our own and other Bay Area law schools. Its main justification is to provide a service to those students who may want a combined degree. The objective of the program is to provide students with the opportunity of combining the tax and law disciplines in a concentrated course of study that will fit into their career plans." The new joint degree created an unprecedented opportunity for Golden Gate students and opened a new way for the two sides of the institution to work together.

If vision was driving the Law School's expansion, a new infusion of donations supplied the fuel. In 1971-72, gifts from private sources totaled \$283,485—the largest amount on record at the time—and four major contributions were earmarked for the Law School Library. One was a \$27,000 grant for new library acquisitions from the James Irvine Foundation. Mrs. Harry Corvin, the widow of a Law School alumnus, had made a \$25,000 gift to found a special Law School building

fund. Then in June 1971, a substantial gift from an unlikely source materialized.

Playboy Goes to the Law Library

Eldon Sellers was not all that different from the typical Golden Gate student in the late 1960s. A mature, successful businessman and entrepreneur, he was a Midwestern transplant in San Francisco who was looking for a career change and had chosen to study law. But unlike most students, Sellers was also a close friend of Hugh Hefner and a co-founder of *Playboy* magazine, which debuted in 1953 with a photo of Marilyn Monroe on the cover and no name yet on the masthead. In fact, it had been Sellers' mother who had suggested the name for the magazine her son and his friend were launching.

Hefner was the high-profile publisher and CEO who was fast-becoming a cultural icon, and Sellers was the executive vice president of the rapidly growing international enterprise. In the 1960s when Sellers first came to San Francisco from Chicago where the corporate offices were still based, *Playboy* International was in its heyday. The magazine alone sold an estimated 2 million copies a month in 1964 and more than twice that number just four years later; by the decade's end, a quarter of all American college men were buying the publication each month. However, successful as it was, the magazine was only part of the corporate mix, which included a book-publishing arm, a modeling agency, merchandising, and a television and motion picture company, as well as the nearly two dozen *Playboy* Clubs, resorts, casinos, and nearly 1 million members throughout the world. The corporation's phenomenal growth made *Playboy* International Enterprises stock a prized commodity in its initial public offering.

A few months before he was scheduled to graduate, Sellers approached Bader with a plan to give 3,000 shares of the stock, valued at approximately \$75,000, to complete the Law School Library collection of state reports and attorneys general opinions. The transfer was made to the college in September, presumably while Sellers was still studying

for the upcoming bar exam, and was sold a few days after the initial public offering for \$80,000—one of the largest single gifts to the Law School Library at the time.

Breaking Down the Gender Barrier

Nationwide, law school enrollments grew exponentially in the 1970s, and much of that expansion is credited to women. In the fall of 1963, fewer than 50,000 students were enrolled in the country's 135 ABA-accredited law schools and of those only 1,739 were women. By 1973, there were more than 106,000 students, 16,303 of them women, at the country's 151 law schools. Not surprisingly, Golden Gate was enjoying record enrollments, as well, with 717 students in fall 1973, a significant increase from the 652 students the previous year, and the number of women was steadily growing from a handful in 1970 to nearly half the student body by 1977.³¹

“We were one of the first law schools in the country that actively recruited women,” Pagano explained. “Most law schools had set aside 10 percent or at most 20 percent of the seats in their first-year classes for women, and that was the maximum number you would ever expect to see. We had more than 40 percent. That’s how we increased both the size of the school and the quality. We were taking women when others were not.”

Diana Richmond, who went on to become one of the Bay Area’s most highly regarded family-practice attorneys and who was elected to the Board of Trustees in 1991, was a student during those exciting times. She was a graduate of the University of Chicago—the alma mater of Bader and Roger Bernhardt. An acquaintance who knew of the work they were doing at the Law School recommended that Richmond consider Golden Gate, as well as Hastings and Boalt Hall, where she was also applying. After not being admitted to Boalt Hall, one of the nation’s most highly selective law schools, and after being wait-listed at Hastings, Richmond enrolled at Golden Gate in September 1970 and went on to become one of the school’s top students. “It was a wonderful

place to be a woman law student,” she recalled.³² “In the first year there were only ten of us women students, and we were as disparate a group as you can imagine. By the third year, it was close to half. The transition came that quickly.”

Legal historians credit the boon in law school enrollments in the 1970s to the baby boom, which brought unprecedented numbers of students to the nation’s colleges and universities; the growth of financial aid, especially the relatively new federally guaranteed student loans; and to feminism, as vast numbers of young, college-educated women began to break through gender barriers in professional education and in the workforce. Before that time, law school and the legal profession was still very much the bastion of white males. As one legal scholar observed, “Until the 1970s, women law students and faculty were noticeable for their absence.”³³ Women still comprised just over 9 percent of law school enrollments nationwide in 1971—a dramatic increase from the fewer than 4 percent enrolled in 1963—but by the decade’s end, nearly a third of the country’s 116,150 law students would be women. Although the ABA had banned quotas based on race and ethnicity in the mid 1960s, it was not until 1972 that the association called for law schools to remove admission quotas for women.³⁴ Ethics and cultural change likely drove the policy, but it also had a practical side since women were not subject to the draft.

Golden Gate had never used race- or gender-based admissions quotas, and for decades women had been admitted to and graduated from the Law School, albeit in small numbers.³⁵ In the early 1970s, though, Golden Gate was a forerunner in making legal education available to students and in hiring more women as faculty and, within a few years, as dean. When Judy McKelvey assumed leadership of the Law School in 1974, she was the first woman law school dean in California—it would be decades before Boalt Hall and Stanford had women deans—and she was one of the first three woman in the nation to head an ABA-accredited school of law.³⁶ “Selecting a woman dean may not seem a bold move today,” recalled Anthony Pagano, “but back

in 1973 it was groundbreaking.”³⁷

One of the first student activities Richmond became involved with at the Law School was to work on organizing the Women in the Law conferences that were being planned in California. “It was a time of social ferment, and of trying to find our place. There were a lot of exciting women leading the way. But for the most part, I didn’t feel as if I had role models, *per se*. I felt as if I had to make it up myself, which may have had as much to do with me as with the climate of the times.”³⁸ The feminist movement of the 1970s focused on issues of vital concern to women—domestic violence, equal opportunities for women students in athletics, child custody, violence against women, and harassment in the workplace—which ultimately found their way into legislation and the courts as never before. While women law students and faculty often discussed concerns with huge societal implications, Richmond also recalled discussing such seemingly superfluous legal topics as what women attorneys should wear to court. “Although it seems quite foolish in retrospect, it symbolized what newcomers we women were to the law arena.”

“The Law School grew opportunistically, and that has to be credited to Dr. Butz,” recalled longtime law professor Bernie Segal, who came to the Law School in 1972 as its twelfth full-time faculty member.³⁹ “At about the time I came, the faculty began to realize that there was this untapped pool of talented people who happened to be women. They were seeking legal education, but were not being admitted to the more traditional law schools simply because they were women.”

“It was so much fun in those years,” recalled McKelvey, who had attended law school when female students were still an anomaly. “We were opening up law school to people who had been excluded. We were actively recruiting women and gay students. Nobody at other schools was doing this.”

“The lack of women in law school was a reflection of the legal culture of the time,” Segal said. “It was part of the conventional attitude toward women.” Legal historians have well-documented the myriad of

prejudices that existed toward women lawyers. One observed, "For most of this nation's history, both formal policies and informal norms assumed that law was unfit for women and women unfit for law."⁴⁰ Rationale for excluding women from law school historically ranged from the peculiar (women's delicate constitutions made them unsuitable for the work) to the pragmatic (if no one would hire them anyway, admitting women was a "waste" of precious classroom space) to the flimsy (the lack of women's restrooms on campus).

Even at Golden Gate, which was decidedly on the cutting edge of opening up legal education, some of the male students were baffled by the increasing presence of women students. Recalling her first year, Richmond said, "Many of the male students were returning from Vietnam and didn't understand that women were in school to actually become lawyers. They seemed to think that we were there preparing for some ancillary role."⁴¹ Not too many years earlier that might well have been the case, as legal history is rife with anecdotal accounts of women law graduates in the mid twentieth century being offered secretarial positions provided they could pass the requisite typing test, of law firms candidly acknowledging that they did not hire women, or of being referred to as "ticking fertility bombs." Or as one Stanford law student was told, "You are highly qualified for the position, but what do you plan to do about being a woman?"⁴⁰

The baby boom feminists were driving the revolution that began in the late 1960s to break down the gender barriers that had effectively barred them from the professions and the trades. The message from society to its baby boom sons and daughters had been clear: the world was theirs; they could be or do anything they wanted. It was nearly inconceivable to the young women of this generation that they not only could hurdle barriers, but tear them down. Financial aid programs were making college affordable in unprecedented ways, and changes in draft deferments were causing professional schools to reconsider their quota systems. As the ranks of women professionals grew, there was increasing pressure to open educational opportunities for what was

referred to at the time as “women and minorities.” However, the traditional law schools were slow to change, unlike Golden Gate where recruiting women simply made sense.

“We began looking at ways to encourage more women to come here in 1972,” Segal recalled. In fall 1972 at Golden Gate, women comprised 15 percent of the Law School’s total enrollment compared to 12 percent nationwide. Five years later, the number had climbed to 43 percent at Golden Gate compared to 28 percent nationwide. “If we weren’t the first, we were certainly among the first five law schools in the country to make a substantial space for women, and we were probably the first law school in America that had so many women students. That happened here because Otto Butz encouraged it. He wanted the Law School to expand. That’s how he saw things: to see an opportunity and move forward.”⁴²

While the president was a pragmatist in terms of the number of students enrolled and the number of units taken, which all translated into sustainability and, ideally, growth, he was also a firm supporter of women’s rights. Although Princeton had been an all-male institution during his time there, since 1960 he had worked with women faculty and administrators and had taught hundreds of women students. He respected women’s contributions to society and had witnessed the discrimination professional women faced in the workplace. Most important, though, he saw people as individuals, each with his or her own distinct contributions to make to society, rather than as demographic clusters sorted by gender, race, or ethnicity. He firmly believed that discrimination against women was a worldwide problem and that offering more educational opportunities to women was vitally important to the betterment of society. “The greatest development of modern day is the breakthrough for women,” he wrote in 1983.⁴³ “We need to give a lot more thought to the many societal ramifications of the feminist movement and the changes it has brought about. Although sensibilities are still too acute to be able to talk about these questions searchingly, if we don’t confront them we will pay a greater price

later on.”

Throughout his presidency, Otto Butz supported a myriad of activities developed by and for the women in the Law School, and endorsed university-wide conferences that were designed to expose more women to the various programs available, including law. It is likely that the injustice and discrimination he had faced as a boy informed his deep sensitivity toward discrimination and the moral code that lasted throughout his life: people, regardless of gender, background, race, or ethnicity, needed to be given a chance to achieve and to succeed. “Happiness is the fulfillment of your capabilities,” he once observed.⁴⁴ “It’s the experiencing of yourself and of everything that is you. To the extent that you experience yourself and your faculties and find ways to express them, to use yourself and your faculties, you are happy. It seems to me that in order to be able to choose the kind of work you want, work that we hope will make you happy, you have to know what is out there, and you need a certain amount of education. Education is an expansion of your awareness of yourself and the world around you. It’s a process of equipping yourself to learn more than you now know about yourself and the world around you. As we try to be happy, as we work, as we become educated, we fulfill ourselves. Realizing that only to the extent that the larger society and its institutions work can we be what we are, and can the next generation be what we hope they are going to be.”

“In the space of just three decades, the academic landscape has been transformed,” a noted legal scholar and historian observed, recounting the response of the dean of the Harvard Law School in 1950 when anxious alumni questioned the admission of women, which the dean shrugged off as neither important nor significant: “I doubt that it will change the character of the school or even its atmosphere to any detectable extent.”⁴⁵ He was wrong. Women not only changed the face of legal education, they also changed the profession in enduring ways.

And Golden Gate was about to make law school history by appointing a woman dean, one of the first in the nation. “No one did

more to advance women, either in legal education or in the practice of law than Judy McKelvey,” stated Drucilla Ramey, executive director of the Bar Association of San Francisco. Among McKelvey’s trailblazing was being only the second woman to be elected president of BASF. She also was one of the founders and one of the first presidents of the California Women Lawyer’s Association. “Judy had a sophisticated political savvy and decisiveness about where we should be going that advanced all of us.”⁴⁶ As another former dean observed, “She broke through glass ceilings long before anyone ever used that term.”⁴⁷

The McKelvey Deanship: 1974-1981

A few weeks into the fall 1973 term, Lani Bader announced that he would be stepping down as dean and returning to the faculty by the following September. He went on to spend the next thirty-three years at the school before retiring at the end of the spring 2006 term and was lauded on the occasion of his retirement as one of the school’s “most beloved and influential professors and administrators.”⁴⁸

“As a result of Dean Bader’s creative leadership, working with our Board of Trustees, administrative staff, faculty, and students, the Golden Gate School of Law has established itself in the forefront of California law schools,” read the president’s official announcement of Bader’s decision.⁴⁹ Under Bader, the ABA had approved the Law School at last; the full-time faculty was at an all-time high of sixteen; scores on the bar exam were greatly improved; and the library had tripled its holdings. It was attracting an unprecedented number of applicants, with an average 4,000 students competing for the 250 openings in the first-year class. Also, the grade point averages and LSAT scores of incoming students had risen dramatically. And in response to the school’s aggressive recruiting campaign, 40 percent of the law students were women, and half of all the students came from schools outside California. “In all these achievements, Dean Bader’s dedication, initiative, and skill as an administrator have played a pivotal role.”

The president called Bader’s decision “a serious loss to our Law

School, to the central decision-making team of the university, and to me personally.” The two had worked closely on Law School issues since Butz’s arrival, and while the school was doubtless in a better position in 1973 than it had been three years earlier, there were still challenges ahead. The Law School would soon hire a consultant to determine the feasibility of applying to the AALS, which would likely mean another hefty investment of time and funds, but upon which the school’s very survival depended.

Late into the holiday season, résumés from law schools around the country arrived at 536 Mission Street. Thirty-one applications for the deanship were considered and eight applicants interviewed by the hiring committee of which Pagano was a member. “The committee was a disparate group composed of two law faculty members, an outspoken student, an alumna, two strong-willed trustees, and Otto,” Pagano remembered.⁵⁰ “Because of Otto’s leadership, our meetings were conducted in a spirit of mutual respect, and our differences seemed to fade away. After many interviews and countless meetings—several on Saturdays when Otto would run out to Foster’s Cafeteria and bring back a bag of tuna melts for lunch—we all came to the same conclusion: Professor Judy McKelvey would make a fine dean. In retrospect, I am sure Otto had decided on Judy before the committee, but he patiently guided us until each member reached the same conclusion. He always governed by consensus, but somehow the consensus almost always reflected his views.”

Dean McKelvey was confirmed by the trustees at their February 1974 meeting. She was just forty years old. The new dean had started teaching at Golden Gate in 1968 and had first met Otto Butz when he was on campus interviewing for the president’s job; she and Bader represented the Law School faculty. The dean and president mutually respected and admired each other’s commitment to take the university and its law school to the next level. For McKelvey that meant Association of American Law Schools (AALS) accreditation.

Within the month, the consultant reported that the Law School

appeared to meet the membership criteria and that a visit by the AALS accreditors would be scheduled for the coming year. However, the report cautioned, the university must first develop a costing system that would specify the contributions the Law School should make to the university; immediately commit to upgrading the Law Library; and develop a statement of intent regarding “an adequate physical plant for the Law School.”⁵¹ The Law Library was a significant hurdle: shelving was inadequate; the entire facility met neither the minimum space requirements for either the ABA or the AALS, and it was in rented space with a lease that would expire in 1978—a year before the new building that was being planned could be occupied. However, the new Law Library was being developed in conformance with ABA and AALS accreditation requirements, and accreditors often accepted projects that were under construction.

The student-faculty ratio was also in question. In fall 1974, the ratio of full-time faculty to students was one to forty-eight, or one to thirty-four if the part-time faculty was factored in. The ABA’s suggested maximum was one to thirty-five. Golden Gate was at the bottom limit, even with the adjuncts. The board approved two new faculty positions.

Early winter found the AALS accreditors visiting the school for three days. They cited two major weaknesses, both anticipated. There simply was not enough space, and there were not enough professors.

Scaling another Accreditation Hurdle

Membership in the Association of American Law Schools was essential. Without it, Golden Gate Law graduates would be unable to enroll in advanced law-degree programs, which were becoming increasingly important. “The LL.M. times were beginning, and without AALS accreditation our graduates could not go anywhere; they would not be accepted in almost any other ABA-approved law school in the United States. So even though we had ABA approval, we also had to become part of AALS because only then can you say ‘fully accredited.’”

It's critical for students who wanted to do graduate work," McKelvey recalled.⁵² Or, as Bader observed, "If you wanted to play with the big boys, you had to be a big boy."⁵³

The venerable AALS defines itself as "the principal representative of legal education to the federal government, other national higher education organizations, learned societies, and international law schools."⁵⁴ Membership is voluntary and highly selective. "Though I was well aware of Otto's striving for excellence, I had great trepidation when, during the first month of my deanship, I presented a proposal to seek the extremely difficult-to-get membership in AALS," McKelvey explained.⁵⁵ "The process would be costly and take years because the Law School would have to make significant changes to meet the AALS standards. I came to the meeting anticipating a 'no' or a difficult campaign. About twenty minutes into the presentation, he said, 'We'll do it. Golden Gate should have a truly great law school.'"

The Law School continued to grow and to refine itself, adding more faculty and library holdings. It was making plans for its facilities on the new campus which was well underway by 1978 when the AALS visiting committee declared that the school had "more than complied with previous (AALS) recommendations and exceeds the requirements for acceptance." Even so, AALS delayed approval pending completion of the new building. The examiners were scheduled to visit in September 1979 to determine if the new facilities met their requirements. They did, and at the association's meeting in January 1980, the Golden Gate Law School was finally admitted to AALS. When McKelvey made the announcement at the January meeting of the trustees, it was greeted with applause. It had taken seven years, but at last the Law School could add "fully accredited" to its credentials. Looking back, McKelvey believes that getting AALS accreditation was her most important contribution to the Law School.

The Trustees Take an Inside Look

Although the Board of Trustees had on its books a Law School

Council, the group had not met for several years. Not long before the start of the fall 1977 term, the president called for it to be reactivated, "in view of our continuing progress in strengthening the Law School and in view of the Law School's importance in the life of the university."⁵⁶ The group, renamed the Law School Committee, would meet three times a year to review the Law School's academic and financial operations, and provide assistance in "furthering the Law School's progress in the context of the university and the larger community." There was no shortage of lawyers among the trustees, and several were appointed to the new committee, along with the president, the law dean, and the university's vice president for finance and administration. There was no comparable committee for the specific business or public administration schools, although the board's Education Committee was quite active, and the various programs had advisory committees that sometimes also included trustees as members.

Initially, the Law School Committee weighed in on tuition increases and proposals, including endorsing an idea to establish a Law School Student Research service for lawyers in California, and also Nevada and Alaska, which at the time had no law school. While that program generated only modest returns, it provided students with research experience and was designed to be especially useful to small firms and individuals who practiced in remote, rural areas. The service was among the first half dozen programs of its kind in the country.

Then in 1979, the committee conducted an extensive evaluation of the Law School, much as a visiting committee of examiners would—meeting with students, administrators, and faculty. The Law School was doing well, the committee concluded. "The Law School is a good school. It is not fully recognized to be as good as it is, but recognition has grown, partly because of special programs which have attracted wide interest."⁵⁷ Doubtless one of those special programs was the new LL.M. in Taxation that had been recently approved.⁵⁸ "Improvement in the quality of the school during the last five or six years may be attributed to a better faculty, better students admitted, and better

facilities, including the library.”

Striving to meet accreditation standards had definitely enhanced the Law Library, which had grown from 30,000 volumes to nearly 100,000 during the decade. Library staff had increased as well from the one sole librarian employed at the start of the decade to nine by 1979. The Law Library also had been recently designated as a state depository and a federal depository. The committee called the collections on urban law and the collections in tax the library’s “principal strengths” and lauded the “splendid collection of British and American periodicals made possible by gifts in memory of Carol Holmquist Drexler and Barbara Carpenter Crossitt.”

Although the stampede to the nation’s law schools had slowed, Golden Gate still had a respectable number of applicants, but in 1979 one out of eight was being accepted, compared to the one out of sixteen a few years earlier. The quality of the entering students, based on grade point averages and LSAT scores, seemed to be about the same. New graduates had been doing consistently well on the bar examinations, with two-thirds to three-quarters of the students passing on their first attempt at the exam. Consistently, the scores were higher than the statewide average for the remainder of the decade: 72 percent in 1974, compared with 62 percent statewide; 78 percent in 1975, compared with nearly 61 percent statewide; nearly 78 percent again in 1976, compared with 59 percent statewide; 72 percent in 1977, compared with 53 percent statewide; 66 percent in 1978, compared with 51 percent statewide; and 56 percent in 1979, compared with 52 percent statewide.⁵⁹

While the committee acknowledged that the bar pass rate could likely be improved by tightening admissions policies to deny admission to the lower quintile of applicants, the committee concluded that such action would “adversely affect minorities and the disadvantaged.” Because nearly all the GGU Law graduates passed the bar examinations on the second effort, they finally decided against altering admission policies. Besides, some 80 percent of the GGU Law graduates who had passed the California bar exam were working as attorneys.

Tuition, though, was another challenge entirely. By 1979, students were paying \$121 a unit or roughly \$3,400 a year to attend the Law School. And while Golden Gate tuition was twice as high as at Hastings and Boalt Hall, which were both state-supported, it was still lower than what was being charged at most of California's other independent accredited law schools. A year later, a 25 percent hike in Law School tuition was proposed, compared to a 13 percent increase throughout the rest of the university. Most of the annual tuition hikes that began in 1974 had gone to fund the improvements demanded by first the ABA and then the AALS, especially increasing the size and salaries of the faculty, and enhancing the library. Now that the new portion of the campus was open, the Law School was using a larger share of the facilities, and overhead expenses had increased as well.

Understandably, the law students heartily objected to tuition increases, citing economic hardships in a climate of shrinking student aid funding. While the students' objections were initially resolved after a series of meetings with the dean, the president, and the vice president for finance, a myth began to perpetuate that the university was draining off surplus funds earned by the Law School for use in other parts of the university.⁶⁰ In truth, while the Law School had been economically self-sustaining for at least the previous eight years, and had contributed modest amounts annually to the university for its overhead costs, in 1978 it had depended on support from the university to a limited extent. Even so, a small group of law students sharpened their pencils and came to the erroneous conclusion that the Law School "with 20 percent of the university's student population is being asked to finance 32 percent of the total operating costs."⁶¹ In fact, the Law School student population actually amounted to more than 28 percent of the university's total enrollment, yet more than 34 percent of the chargeable space in the new facility was devoted to exclusive use by the Law School. But as with all myths that become self-perpetuating, economic facts did little to dissipate it. The controversies that periodically erupted about the Law School and university-wide finances would continue under various

guises for years, testament to the relative autonomy that the school, in many respects, enjoyed.

In an open letter to the president, published in the Law School student newspaper, two disgruntled law students complained to the president about the cost of the annual Faculty-Staff Dinner Dance held each November, which they called an “extravagant gift,” and demanded an accounting, asking, “Where did this money come from?”

The president responded to them in a personal letter dated the day after the student newspaper appeared: “Let me explain to you something about the economics of the university [...]; the business and public administration schools [...] account for more than four-fifths of the institution’s enrollments and revenue [...]; the Law School, which operates mostly with full-time faculty and which is our highest-cost division, is budgeted and managed so that revenues exactly cover expenditures. The business and public administration schools, by contrast, are much lower-cost, and annually generate substantial surpluses, which are used for [...] capital expenditures and other institutional improvements. The chief reason why the business and public administration schools have lower costs and are able to come up with annual surpluses is that some 80 percent of their faculty are adjunct professors who teach part-time (in addition to their full-time employment as business or government professionals) and who are paid at our part-time faculty rate [...], on the average between \$1,000 and \$1,200 per course.”⁶²

Not only did the Law School have the largest full-time faculty, salaries were on the same scale as other law schools in the nation, and outpaced the compensation of the average Golden Gate professor in business or public administration. There had been a sharp increase in the salaries of law professors in 1974-75 and again in 1979-80 in order to meet accreditation requirements. The Law School faculty numbered twenty-six, including the dean, six associate professors, four assistant professors, and two visiting professors. Sixteen faculty members were tenured, and ten were on the tenure track. The trustees studying the Law School were somewhat concerned that in another ten years the entire

faculty would be tenured, limiting turnover and, thus, the opportunities to bring in new teachers. Acknowledging that fewer than 50 percent of the members of the law faculty hired in the previous decade received tenure, and other professors had retired or left for another job, the committee concluded “an aged, complacent faculty is not likely to occur.” Although the Law School faculty had never been known for its complacency, the bulk of the law professors did build their careers at Golden Gate, and many who had been at the university during the faculty build-up of the early 1970s, remained long after Otto Butz retired. One was Bernie Segal:

A Question of Tenure and Bernie Segal

Over the years, Bernie Segal would become one of the most beloved members of the Law School faculty. He received Golden Gate’s Distinguished Service Award in 2004, the highest honor the university confers on a staff member. His mock-trial student teams frequently won gold, silver, and bronze medals in the National Mock Trial Competitions, effectively putting Golden Gate University School of Law on the map. As one former student, who is now a successful district attorney, observed, “Bernie Segal is with me every day that I walk into the courtroom. When I see how lawyers handle themselves with clients, judges, and colleagues, I realize how, as an alum of Bernie’s program, I learned how to be a real lawyer.”⁶³ But it almost wasn’t to be.

In 1970, Bernie Segal was in private practice and had just been named lead counsel for Jeffrey MacDonald, who was accused and nine years later convicted of brutally murdering his pregnant wife and their two young daughters at their home on the Army base at Fort Bragg, North Carolina. MacDonald, an Army surgeon and a Green Beret captain, always maintained his innocence. He was sentenced to three consecutive life sentences and remains imprisoned in Cumberland, Maryland. The case gained fame through the best-selling book, *Fatal Vision*, and the subsequent made-for-TV movie of the same name. It was the kind of case that captures media attention, and over the years

Segal has been frequently interviewed, appearing on several national television news commentary programs, including *The Larry King Show* and *48 Hours*. “I’ve been trying to free him of these unjust accusations for almost thirty-five years,” said Segal, who maintains his client of more than three decades is innocent.⁶⁴

Segal and Bader met in 1970, during Bader’s build-up of the Law School faculty. Segal was the kind of attorney Bader wanted on his faculty: experience as an adjunct law professor at his alma mater, the University of Pennsylvania School of Law, and a love of teaching and educating young lawyers. In 1972, Segal finally accepted Bader’s offer, becoming both a popular teacher and the architect of the school’s litigation program, which grew from one elective to a full-blown program with more than thirty-five courses.

Segal had known since his own law school days that he wanted to become a trial lawyer, but the educational climate was considerably different in the late 1950s. “I became a trial lawyer by the on-the-job training method,” he recalled.⁶⁵ “Lawyers are very congenial, and so older lawyers would advise me on how to improve my skills.” Even so, he felt there must be a better way to prepare students for the realities of the legal profession. Segal was intrigued by the idea of working with other young attorneys to create a law school for the times, one that focused on students.

“I don’t think that we really began with a cohesive vision,” Segal recalled. “We were a law school that was going from a night school into a full-time day school *and* a night law school. We had an enthusiastic group of people who wanted to learn, and an equally enthusiastic group of faculty who wanted to teach. Most of us had come from a law practice or government, so we knew by our own instincts what it took to become a working lawyer. The idea came, somewhat by accident and somewhat by intuition, that we could develop a law school that would graduate students who could hit the ground running. There was no vast plan. We just worked at it bit by bit and we slowly, individually and as a group, began to shape the idea of a law school that would

train lawyers rather than just law school graduates, a school where students have been given information on how to be a lawyer, not just the process of the law. As we got along into the '70s, we began offering pieces of the program that hadn't existed before." As a result, Golden Gate became known in the legal community for providing graduates who were extraordinarily prepared to become working attorneys. It was a philosophy that meshed with the university's unique history and mission, and with the president's vision.

"Otto Butz was very fond of the Law School and the people there," Segal recalled. "Not to say that he wasn't fond of the other parts of the university, but he had a warm spot for lawyers. His idea of a good lawyer was as a practical problem solver, because Otto was that, among his other qualities. He liked the idea that the Law School was trying to turn out practical problem solvers, that we were teaching people to do things, not to just talk about them."

When considering the place of the Golden Gate Law School in legal higher education in northern California, Segal sees each of the institutions as having a discrete role. "Stanford sees its role as a national law school," he explained. "It is training students for national leadership, to head the prestigious law firms in the country. Boalt Hall and Hastings have similar roles, but they have a greater emphasis on California leadership. Golden Gate, Santa Clara, and McGeorge have a lot of comparability; they are dedicated to producing working lawyers. Our lawyers are defined by where they go when they graduate, and most go to smaller law firms. We recognize that our students are driven by interests other than joining the mega law firms."

Former students recall Segal as an engaging, often entertaining instructor who captured their imaginations. Indeed, a standard in his mock trial class is the "case" of Little Red Riding Hood. On trial is one Leonard Woolf (aka: The Wolf) accused of murdering Ida J. Riding (aka: Grandma) and of violating the Interspecies Dalliance Act with Rhoda Riding Hood (aka: Red) in the woods. The exercise was designed to help students tell better stories in court, and Segal is, himself, a great

storyteller and frequently uses stories to illustrate points he is trying to make in class. His highly individualistic teaching style, though, very nearly ended his career at Golden Gate before it barely began.

In 1976, Bernie Segal's yearly contract was up for renewal. Like most associate professors, he was considered to be on a tenured track. According to university policy at the time, after three years an associate professor must either be reappointed with tenure, or given notice of termination and kept on the faculty for one final year. The Law School Faculty Evaluations Committee, composed almost exclusively of law faculty, made recommendations to the dean, who sent them on to the president and ultimately to the board of trustees for final approval. It was a relatively routine exercise, and if a faculty member's contract was not renewed, it was a controversy confined to the Law School. That changed when Segal challenged the committee's recommendation that he not be returned to the faculty that fall. The move had not come as a surprise; the year before the faculty committee had recommended that Segal receive a final contract that would end in June 1976. At issue was his teaching style.

"I was up for tenure, and it turned out to be more controversial than I ever thought it would be," he recalled. As a law student, Segal had experienced the Socratic method of instruction which was a staple of legal education. As a young law professor, he used the same system, questioning students and challenging them on points of law, a pedagogical philosophy designed to help students think on their feet. While legal educators have used the Socratic method for years, Segal started to question it as a personal teaching style.

"I began to think it wasn't me, and I wasn't sure it was helpful to the students," he recalled. In its place he began using the problem-method, which is similar to the case-study method popular in the Golden Gate management programs: students are presented with a scenario and a collection of facts to come up with a workable solution. While both methods of instruction have deep roots in American legal education, in the 1970s, the Socratic method was more in vogue. When

the faculty committee voted not to extend Segal's contract, the Law School erupted.

"There was a heated meeting of the faculty, and as it turned out I was one or two votes short of receiving tenure. Then the students became distraught. There were demonstrations and meetings, and some of the tenured faculty members convinced me that I ought to consider litigation."⁶⁶ The turmoil increased until the president finally intervened in an attempt to resolve the issue. Segal retained an attorney; so did the faculty committee.

"Otto Butz stepped in," Segal recalled. "He sent for me and said, 'I want you to be treated more fairly than I was at Princeton' and then asked if I had money for counsel. He told me that he wanted to work out a way to make this fair for both me and for the Law School. He paid for part of my legal proceedings through a budget line item." After several extended discussions with the attorneys representing Segal and the faculty committee, the president reached an agreement. A three-person panel would be appointed to hear evidence and render an opinion on the question: "Were the criteria and considerations used in determining whether or not to grant a renewal contract to Bernard Segal for the academic year 1976-1977 fairly and properly applied?" The panel was to include two full-time faculty members from the schools of business and public administration, and one adjunct instructor in the Law School. Segal asked that the hearing be an open forum. It was slated to begin in late April in the Golden Gate auditorium.⁶⁷

If the panel determined that Segal had received "fair consideration and due process," then the faculty committee's decision would stand. Otherwise, a panel of three faculty members from other law schools would be selected to make a recommendation to the president as to Segal's reappointment for the coming year. "If necessary, the same panel will evaluate him again at the end of that year," the president informed the trustees. Anthony Pagano, who was chair of the Law School faculty and, as such, an ex-officio member of the Board of Trustees, objected on three counts: the faculty was opposed to an open hearing; the faculty

felt that beginning the hearings in late April did not allow sufficient time for either side to prepare its case; and the faculty believed that any subsequent evaluation should be done by individuals within Golden Gate rather than by people outside the university. The trustees agreed to delay the hearings until late May.

The hearings lasted five days. The president assured the trustees that the hearings had “proceeded with exemplary decorum on all sides.” But they were nonetheless impassioned. After weeks of deliberation, the panel decided two-to-one in favor of Segal. Years later, Segal recalled how the president called him in to discuss a proposition. “Dr. Butz told me, ‘I’ll give you one year’s salary, if you want to walk away; or you can continue on the faculty for another two years until you get tenure.’ By then, the trustees had endorsed a change in the Law School faculty personnel policy, which had been proposed by the school’s dean and faculty, to require that before being offered tenure, associate professors must have at least five years of teaching experience, with three of those years at Golden Gate. The earlier policy had stipulated three years with the university.⁶⁸ “I told Otto, ‘I am here to be a teacher.’”

Years after the hearings, which he called “that dramatic and long-ago battle of yours with the Law School,” Butz assured Segal, “I know that everyone who was involved at that time has long since been very happy that the Law School lost.”⁶⁹

In May 1979, Segal was granted tenure. “Professor Segal has become the cornerstone of our litigation program,” stated the recommendation for tenure from the Law School Evaluation Committee.⁷⁰ “He is responsible for developing the Law School’s highly successful mock trial and client counseling programs and competitions. He also is the key figure in our criminal litigation program. He has written in the area of criminal law and has served as the consultant to the Alaska Judicial council on a number of criminal matters in the past two years. It is largely through his efforts that the Law School has developed an excellent judicial externship program with the various courts in Alaska, including that state’s Supreme Court.”

The law professor never forgot the president's support or the philosophical visits that often took place in Butz's office, which was across from the mock courtroom where Segal spent much of his time. "Otto had the great combination of an open door and an open mind," Segal recalled. "His open-door policy stands alone. How many law deans have such a policy, much less a university president? But I never ever saw the door to his office closed. I'd put my head in, and if he wasn't engaged, we'd talk about the Law School and the university, and the outside world—he was always interested in linking the university to the outside world. His openness to new ideas was an enormous value to the university and to the Law School. I always felt badly for the faculty who didn't understand that he was always there for them, and for everyone else. Even though he was doing things that were important, he didn't seem to think about how it reflected on him, he just did them because he thought it was the right thing to do at the time."

The End of a Decade and an Era

The 1970s were a decade of unprecedented change at the Law School. In just ten years, it had evolved from a part-time, marginally accredited night school with a small day program, to a fully accredited law school with a stable, professional faculty that was helping redefine legal education in the Bay Area. The transition had been sometimes painful, often joyful, and always challenging. A new generation of students had found their way to the Law School, leaving a swath of change in their stead, many of them going on to become recognized as the Bay Area's top attorneys.⁷¹

As the decade grew to a close, Law Dean McKelvey made the decision to return to teaching. She had already stayed in her position a year or two longer than she had planned but did not want to step down until full accreditation was ensured. In the winter of 1980, she told the president of her plans. "She feels that she has accomplished the objectives that she set when she became dean," he explained.⁷²

Like Bader, McKelvey would remain at the Law School for the rest

of her career, becoming a popular professor and an influential voice in both legal education and law circles.

Not long after her resignation was announced, a search committee was established to find a new Law School dean. Applications arrived at the school from across the nation, and the committee considered fifty, winnowing them down to a final eight candidates for interviews. However, the president told the trustees, "No promising candidate has yet emerged." The search committee went back to work. Finally, after seriously looking at another thirty applications, they interviewed ten prospects and recommended three. More interviews were held with the finalists, and the post was offered to each in turn. However, for various reasons, none accepted the appointment. It was already early summer, the fall 1981 term would soon begin, and the Law School was still without a dean. After discussing the situation at length with the Law School Committee, the president came to the unavoidable conclusion: "It will now be necessary to appoint an acting dean of the Law School and begin a new search." And so it was that Law Professor Neil Martin Levy became the acting dean.