

# SALT EQUALIZER

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## SALT EQUALIZER

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## SALT Celebrates 30 Years with Gala Banquet

Welcomes new co-presidents; thanks founders and outgoing officers

SALT celebrated 30 years of work for equal justice with a gala banquet in New Orleans during the January AALS meeting. A large crowd gathered to honor SALT's founders, thank outgoing Co-Presidents Carol Chomsky and Margaret Montoya, and hear keynote speaker Congresswoman Barbara Lee call for the preservation of "our system of checks and balances, even during a national security crisis." Incoming Co-Presidents Paula C. Johnson and Michael Rooke-Ley organized the dinner.

Co-President Paula C. Johnson captured the spirit of the evening in her introduction to Rep. Barbara Lee:

As we have stated before, this evening is about profiles in courage. It is about celebrating the human quality—rare—that impels the person who sees disparity, injustice, pain,

*Gala continued on page 4*



SALT founders join incoming Co-Presidents Paula C. Johnson and Michael Rooke-Ley at SALT's 30th Anniversary Gala.

## Presidents' Column

Paula C. Johnson, Syracuse University Law School  
Michael Rooke-Ley, Eugene, Oregon

Greetings from opposite corners of the country! From Syracuse, N.Y., and Eugene, Ore., we send you our good wishes.

We are proud that SALT, several hundred members strong, is now the largest membership organization of law professors and administrators in the nation and continues to be the most consistent and effective voice in the academy on issues of access, diversity, and justice. Let us take this opportunity to share with you our excitement about all that SALT is doing.

This year got off to a very fast start with SALT's strong presence at the annual AALS meeting in New Orleans. Our inaugural (and very much appreciated) New Teachers



Paula C. Johnson, Carol Chomsky, Margaret Montoya, and Michael Rooke-Ley.

*Presidents' Column continued on page 5*



## An Update on *Grutter*, the Michigan Law School Affirmative Action Case

Margaret Montoya, University of New Mexico School of Law

On Feb. 15, 2002, the UCLA Chicano-Latino Law Review sponsored a conference on the *Grutter* case entitled "Affirmative Action in Higher Education in the New Millennium". The first purpose of the conference was to disseminate information about the status of the Michigan litigation—both the undergraduate and the law school cases that were argued before the Sixth Circuit Court of Appeals on Dec. 6, 2001. The second purpose was to explore alternatives to race-based admission procedures. The discussion at the conference was very elevated since the participants were all seasoned veterans of the recent struggles to preserve access to higher education.

The conference began with a keynote address by Kevin Johnson, associate dean for academic affairs at the University of California at Davis. Professor Johnson's speech reviewed the significance of the scholarship that has been published by the *Chicano-Latino Law Review*, including ground-breaking articles dealing with access to education. Professor Johnson urged the students to remain steadfast in their commitment to meaningful change in legal education. The creation and maintenance of specialized law reviews and other educational resources controlled by students of color have been of crucial importance in the development of new genres of scholarship and in generating new audiences for legal publications.

The first panel reunited many of SALT's friends and allies in our continuing struggle to maintain the constitutional viability of the *Bakke* case and with it the concept of affirmative action in

student admissions. Miranda Massie and Shanta Driver from the legal team representing the student defendant intervenors were there. Also on the panel were Walter Allen, Danny Solorzano and Grace Carroll, the UCLA social scientists who assembled the research data assessing the racial climate in Michigan Law School's feeder colleges. (Their studies analyzing racial micro-aggressions and what they term "Mundane Extreme Environmental Stress: or 'MEES' responses" can be found at [www.BAMN.com](http://www.BAMN.com).) Margaret Montoya, SALT's past co-president and the current chair of SALT's committee on *Grutter*, was

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*"The creation and maintenance of specialized law reviews... by students of color have been of crucial importance in the development of new genres of scholarship..."*

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also a speaker. Crystal James, the UCLA law student who testified at the *Grutter* trial about her experiences as one of two African Americans in the class of 2002, was in the audience.

The second panel included Laura Gomez, professor of law from UCLA, David Montejano, professor of history and sociology from the University of Texas, and Daria Roithmayr, professor of law from the University of Illinois, currently visiting at the University of Pretoria in South Africa. Professor Gomez described how the Critical Race Studies concentration at UCLA has allowed about 5 percent of the entering class to be admitted

directly into this program. This curricular track allowed some 20 students to be admitted (11 students of color and one white student accepted). This program, while small, ensures a cohort of students dedicated to this specialty and diversifies the student body, even while complying with the strictures of Proposition 209, the state law that prohibits the use of racial preferences in student admissions and other government activities.

Professor Montejano described the percentage plans that have been designed by himself and other academics working closely with legislators. These programs exploit the racial segregation of the K-12 school systems of Texas by automatically admitting the top 10 percent of the graduating classes to the Austin campus of the University of Texas. Many previously underrepresented school systems are now sending larger numbers of students to the flagship university of the U.T. system. A coalition among politicians of both parties has formed to support this program because white rural students as well as urban Chicana/o and African-American students have benefited. The promise of these programs, however, is limited to undergraduate admissions. Finally, Professor Roithmayr described a race-neutral admissions process written about in her article "Direct Measures: An Alternative Form of Affirmative Action," 7 Mich. J. Race & L. 1 (2001).

Many of the talks presented at this one-day meeting will be published in an upcoming volume of the *Chicano-Latino Law Review*. On a different note allow me to express my personal thanks to the law review editors who compromised their classroom studies in order to organize this conference. We must support the activism of students and encourage them as they learn important new skills and deepen their substantive knowledge with these co-curricular

*Grutter continued on page 5*



## New Teachers Workshop

### Report on the Inaugural SALT New Teachers Workshop January 2002

Nancy Cook, Cornell Law School

As part of SALT's continuing effort to reach out to new law teachers, this year, for the first time, a program to welcome newcomers was arranged to coincide with the AALS Annual Meeting. Held in New Orleans on the day before the AALS officially began, the program—"Progressive Approaches to Law Teaching: Orientation for New (and Not So New) Law Teachers"—provided an opportunity for those relatively new to the profession to hear survival stories and receive encouragement from more experienced colleagues.

The program began with reflections on teaching and activism offered by new co-president Paula Johnson (Syracuse). Charles Calleros (Arizona State) and Devon Carbado (UCLA) then addressed the question of how to anticipate and respond to challenges in the classroom that touch on issues of race, class, and gender bias. A second team of presenters, Bev Balos (Minnesota) and Marnie Mahoney (Miami), followed with accounts of their personal experiences in developing meaningful legal scholarship inside a conservative academy. The presentations sparked active discussion among panelists and audience members, and more than a few helpful strategies for approaching teaching and scholarship from a progressive stance were shared in the process.

Although the program officially broke up at 6 p.m., a group of 20 new and more experienced teachers gathered afterwards at the Pelican Club Restaurant where discussions continued for several more hours. The success of this first orientation program—in connecting newer law teachers with those who have negotiated the difficult early teaching years, introducing newcomers to SALT's progressive agenda, and generating ideas for surviving and influencing institutional politics—has provided the impetus for planning a second New Teachers Orientation program in 2003. For more information or to get involved, contact Devon Carbado (UCLA) or Nancy Cook (Cornell).



Devon Carbado (right) with workshop attendees.

### Finding Your Voice in Scholarship: Integrating Roles of Teacher, Community Activist, and Scholar

Bev Balos,  
University of Minnesota School of Law

The overarching theme as I think about keeping and finding your voice in scholarship seems to be that I'm always trying to find a way to integrate my roles of teacher, community activist, and scholar. Within the context of being a teacher, scholar, and activist, I try to mediate the demands of the academic marketplace. I think we would all acknowledge that as a general rule, there is no question that what is valued and rewarded in academia is scholarly production—not necessarily innovative teaching and certainly not community work. But I also think that scholarship can be complementary to community work and activism and can be utilized to advance the goal of justice. Certainly scholarship can reveal unquestioned assumptions, premises, judgments, and policies. Scholarship can suggest different policies and expand perspectives.

It is my experience that caring profoundly about the work you are doing is a great incentive to doing good and even your best work. For me there is a direct connection between what I do in my community work, what I teach and what I write. There is a synergy between the community work, which enhances my writing, and the writing I do, which enhances my community work. Scholarly creativity is really thinking about observation of how injustice and inequality operate in the courtroom and community.

It is useful to keep in mind that your position in academia can provide you with

### Addressing Pain and Politics in the Classroom

Charles Calleros, Arizona State University School of Law

In addressing pain and politics in the classroom, I will advance three propositions that suggest some tension between different goals and interests:

First: This is a pluralistic society in which people experience life differently on the basis of their identity and their personal characteristics, and those issues inevitably make their way into legal issues. So, the first way to alienate some members of a class is to ignore or avoid issues of diversity—issues relating to such things as race, class, gender, or sexual orientation—when a legal issue invites such a discussion. Doing so may avoid a potentially

*Pain and Politics continued on page 16*



## Gala:

▼ *continued from page 1*

exclusion, and violence, to act on what they see without blinking.

Such a person is our special guest speaker tonight. There must be something about being an African American woman named "Barbara" in the U.S. Congress! Some 30 years ago, during the Watergate



*SALT members became singers at the Gala.*

crisis, another Black woman named Barbara—Barbara Jordan—reminded us about the importance of the U.S. constitu-

tion and the ideals that must be upheld under it.

When we thought about honoring the SALT founders at this event and inviting a speaker who could bridge and transcend the issues of the eras, Rep. Lee stood out in our minds as someone who embodied the bravery that is called for in every generation. It was, as they say, a no-brainer.

Barbara Lee became a member of Congress by filling the seat of her mentor, Congressman Ronald V. Dellums, upon his retirement in 1998. She subsequently has been elected by the people of the Ninth District two times, and is now facing a primary election in March 2002.

Rep. Lee has stood for many social justice causes including health, education, economic justice, and domestic and international funding for HIV and AIDS. Most notably, Rep. Lee recently cast the

sole dissenting vote against a militaristic response to the horrific events of September 11. For that 420 to 1 vote, she has



*Michael Rooke-Ley, Barbara Lee, and Paula C. Johnson*

been castigated by lesser minds and forced to travel with body guards due to threats on her life. We think that people with clearer heads recognize the wisdom in her words when she says: "Military action is a one-dimensional reaction to a multi-dimensional problem. We have to be very deliberative and think through the

## Congresswoman Barbara Lee's Gives Keynote Address at SALT Gala

*The following is an excerpt from Congresswoman Lee's keynote address to the Society of American Law Teachers, Jan. 5, 2002, New Orleans.*

The genius of the American system does not really lie in the awesome power of this nation—there have been other immensely powerful countries and empires. The true genius lies in the *limitations* on American power and on the balance within our system. That's the essence of our democracy. And it is in times of war and adversity that this system is most endangered. But the Constitution and our system of checks and balances must be preserved, even during a national security crisis.

The firm belief in these principles helped lead to my decision on Sept. 14 to

vote against a very broad grant of power to the President to use force against unnamed persons, nations, and groups. I believed then, as I do now, that we were giving up Congress's constitutional responsibility to declare war by giving the President such a broad grant to engage in this open-ended use of force with no declaration of war.

As I said on the floor of Congress in opposing H. J. Res. 64, "September 11 changed the world. Our deepest fears now haunt us. However difficult this vote may be, some of us must urge the use of restraint. Our country is in a state of mourning. Some of us must say, let's step back for a moment and think through the implications of our action today so that it does not spiral out of control." I said we must be careful not to embark on an open-ended war with neither exit strategy nor a focused target. We cannot repeat past mistakes.

My belief in the need to stand up for our most fundamental democratic principles also led me to vote against a judiciary bid that dramatically expanded federal search and seizure powers and erased longstanding boundaries between law enforcement and intelligence agencies... By proclaiming this bill the Patriot Act, its authors sought to draw a line in the sand: Supporters were patriots; opponents or doubters were not.

Dissent and debate are, in fact, the lifeblood of democracy. Too often, though, they have been stifled in the name of security. I myself remember all too clearly the days of COINTELPRO, and we should all heed the lessons of the McCarthy era. Anti-communism became an all-powerful force that trampled basic expressions of liberty.

We cannot let anti-terrorism exert the same force, as much as we all want and intend to eliminate terrorism. We do not have to choose between security and

*Keynote continued on page 5*



## SALT Extends Condolences to Appalachian School of Law

*In January, an unthinkable tragedy visited our colleagues at Appalachian School of Law, in Virginia, when a disturbed student shot and killed Dean Anthony Sutin, Professor Thomas Blackwell, and student Angela Dales. SALT also has offered to conduct workshops on legal areas of interest to Dean Sutin and Professor Blackwell, to honor their memories and their contributions to the legal community. Co-president Paula Johnson wrote a condolence letter to her former colleague Associate Dean Paul Lund personally and on behalf of SALT.*

January 18, 2002

Dear Paul,

I am writing to express my tremendous sorrow at the losses you have experienced at your law school. While I did not personally know Dean Sutin or Professor Blackwell, it is clear that they were engaged in the highest ideals of the legal profession—ensuring access to legal education and legal representation in underserved communities. Surely the legacies of Dean Sutin, Professor Blackwell, and Ms. Dales will live on as Appalachian School of Law furthers these important missions.

Please also accept condolences from the Society of American Law Teachers. As co-presidents, Michael Rooke-Ley and I, and the members of SALT, are eager to assist you and your community in any way. Please do not hesitate to call on us.

With warmest regards,  
Professor Paula C. Johnson  
Co-President,  
Society of American Law Teachers

### Keynote:

▼ *continued from page 4*

liberty. It is not easy to safeguard both, but we must do it.

As progressives, we have an obligation to safeguard both. We have a duty to resist racial or religious profiling. We have a responsibility to search for peaceful solutions to conflicts. We have an obligation to stand up for civil liberties. And, while we must respond to terrorism, we cannot allow terrorists to define who we are or to set our national agenda.

### Grutter:

▼ *continued from page 2*

activities. Activist students must overcome many barriers to create these opportunities for professors and other law students. SALT applauds the UCLA students and their counterparts who labor in many different schools to expand the reach of social justice.

A note of interest: Miranda Massie reports that she has been very busy spreading the word about the student intervenors' successes and their hopes in the *Grutter* litigation. She has been making the rounds—speaking at the universities of Minnesota and Tennessee. She did a stint at Berkeley as a resident litigator/lecturer. All of this while litigating sexual harassment cases in Detroit. She and Shanta Driver demonstrate amazing energy and commitment. They send their greetings.

### Reminder: SALT Board Meeting

The SALT Board meeting will be Sunday, May 5, in Portland, Ore. Please watch your e-mail for details.

## Membership Brochures

Revised and updated membership brochures for 2002 are available if you need some for distribution. Contact Fran Ansley at [ansley@utk.edu](mailto:ansley@utk.edu).

## Presidents' Column:

▼ *continued from page 1*

Workshop was extremely successful, thanks to the hard work of Martha Chamallas and Nancy Cook. Several speakers, including Devon Carbado, Charles Calleros, Beverly Balos, Marnie Mahoney, and Elvia Arriola, provided sage advice for newer members of the profession. Based on the success of this event, we look forward to offering it again for years to come.

At the Robert Cover Study Group, Roberto Corrada, Joan Mahoney, and Natsu Saito organized a workshop that focused on affirmative action. Carol Chomsky, Margaret Montoya, Phoebe Haddon, and Eric Janus also helped with planning. At the workshop, Dennis Shields and Rick Lempert discussed the *Grutter* litigation from the University of Michigan Law School, and Phoebe Haddon discussed teach-ins as a vehicle to discuss affirmative action. (Phoebe has a packet of information for anyone who is interested in conducting a teach-in on affirmative action at their law schools.) Law school admissions and threats to affirmative action remain on SALT's front burner.

A "peace discussion" in the aftermath of September 11, organized by Mari Matsuda and Bill Quigley, offered a much needed opportunity for shared reflection

*Presidents' Column continued on page 18*



## Public Interest Retreats

### Reflections on the Grillo Retreat from a New Law Teacher

*Grace Hum, Visiting Assistant Professor of Law, Santa Clara University School of Law*

I have been a law teacher for almost two years now, and every day that I have the opportunity to positively influence a student's perspective on law school, I feel as though I am accomplishing my goal. The Trina Grillo Public Interest and Social Justice Law Retreat is the epitome of why we all do what we do and why I want to be a law professor.

So many law students are hungry for dialogues about public interest and social justice issues, dialogues that often do not find their way into their day-to-day classes. Those of us who are conscious of this gap and make efforts to have these dialogues in our classrooms empower these students, but our piecemeal efforts only leave them wanting more.

The retreat was a very special place to do this kind of work: to let students and practitioners know how professors in the

academy have been contributing to the fray of public interest and social justice work, be it in scholarly ways or practical ways; to let professors and practitioners know what students are needing to fulfill their educational mission so that they can become effective public interest and social justice lawyers; and to let professors and students know what practitioners have been doing in the trenches—not just fighting the good fights—but creating the fights to enlarge our vision of social justice.



*Bea Moulton, Manuel Abascal, and guest at the Grillo Retreat*

The retreat got off to a particularly wonderful and moving start with an address by Trina Grillo's daughter, Luisa Grillo-Chope. She so eloquently reminded us of Trina's important work on intersectionality and anti-essentialism, and how much work we still have to do to

"dismantle the master's house." She reminded us of Trina's advice to "choose our battles." As a young law teacher watching Luisa, I was struck by the realization of how younger generations are so much the stronger when they grow up with good parents who happen to be brave and brilliant law professors.

It was the combination of students, practitioners, and law professors that made this retreat so special. It was a weekend for us all to reflect on our successes and failures in understanding a

broader vision of basic human needs, in building coalitions, and in developing a strategy of progressive legal theory and practice. Our time together was inspiring and energizing, and I was reminded of why I went to law school in the first place.

In my short tenure in the academy, I have figured out that learning how to be a good law teacher is hard work to do

from day to day, but becoming a brave and brilliant law professor evolves through a lifetime of challenges. How less daunting it is to take on these challenges, surrounded by those who have faced this task and can provide guidance down the path of bravery and brilliance where they have already gone.

### The Fourth Annual Trina Grillo Public Interest and Social Justice Law Retreat

*Emily Fisher, 1L Santa Clara University School of Law*

The Fourth Annual Trina Grillo Public Interest and Social Justice Law Retreat was held at the scenic WestCoast Santa Cruz Hotel, Saturday, March 15, and Sunday, March 16, 2002. The Society of American



*Melanie Esquivel, Stephanie M. Wildman, and Dean Mack Player at the Grillo Retreat.*

Law Teachers, Santa Clara University School of Law, the University of San Francisco School of Law, the Boalt Hall

Center for Social Justice, and the Santa Clara University School of Law Center for Social Justice and Public Service co-sponsored this successful event. The Santa Clara University School of Law Center for Social Justice and Public Service, led by Stephanie M. Wildman and Melanie E. Esquivel, shouldered the organizing responsibilities, building on the work of Nancy Wright and Eric Wright.

*Grillo continued on page 18*



## From the Cover Retreat

*Jorge Baron, Student, Yale Law School*

A little over 15 years ago, Robert Cover had a vision: he wanted current and future lawyers interested in public interest law to come together, to energize, inspire,



*Ellen Chapnick, Danny Greenberg, Avi Soifer, and Felix Lopez at the Cover Retreat.*

and learn from each other in an informal environment. On the weekend of March 1–3, with the financial and institutional support of SALT, over 120 practitioners and law students from across the country participated in the 15th annual edition of the embodiment of Professor Cover's vision: the Robert Cover Public Interest Law Retreat.

This was my first time attending the retreat. I had heard about it through my roommate, and I had only a vague idea of what it entailed. Although it sounded like a great opportunity, I was hesitant at first: like many law students, I often feel that there are so many events, conferences, and speakers that if one were to attend all of them, little time would be left for class work. As I reflect on that weekend, however, I could not be happier that I decided to join the amazing group of people that gathered near Hancock, N.H.

For starters, the setting of the retreat is spectacular: the Sargent Center for Outdoor Education of Boston University. The center is located amidst the rolling hills of southern New Hampshire. Surrounded by tall woods and by a large pond, it serves as a veritable escape from

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## First Annual Norman Amaker Public Interest Law Retreat

*Sharon Fishlowitz, Executive Director, Minnesota Justice Foundation*

"I came away feeling revived (in energy for public interest law), inspired (by people who are doing great things in my field of interest), motivated (to make a difference in the world and work towards justice), reassured (that I am choosing the best path for my interests and abilities) and hopeful (that there is a great need for my work and that I could do something that positively helps others). It was also a great opportunity for students and professionals alike to share their concerns and special skills in a way

that "refills" the spirit. "—Jennifer Van Dulmen, Hamline 2004

Sixty students, twenty speakers, five panels, four video tapes, three cabins, two bonfires, one night hike and infinite bags



*Robert Lancaster, Paula C. Johnson, Robin Magee, Sharon Fishlowitz, and Zona Hostetter at the Amaker Retreat.*

of potato chips were components, but not nearly the sum total of the first annual Norman Amaker Midwest Public Interest Law Retreat, co-sponsored by SALT, Indiana University School of Law-

*Amaker continued on page 17*

## Norman Amaker: The Teacher

*Carla Labunski and Lark Cowart  
Former Students of Prof. Amaker*

The first few weeks of law school are terrifying, even to those with the strongest of egos. When we arrived in Professor Norman Amaker's Civil Procedure class during our first week, we were both awed by the work he had done for the civil rights movement and intimidated by his powerful classroom presence.

Professor Amaker could rattle the classroom roof with his oratory, and never hesitated to bellow at students who foolishly showed up unprepared. And rarely did a week go by without his assuring us that we would not, under any circumstances, leave his classroom without understanding how to jump over the hurdles of federal civil procedure.

But as the weeks went by, we began to see another Professor Amaker: one who always stayed after class to answer the fumbling questions of students who sometimes weren't even sure what they were asking. One who treated students with unfailing respect. One who shared his love and dedication for his work with his colleagues and his students.

The recent public interest retreat at Indiana University, named for Professor Amaker, was a lovely tribute to our favorite first-year teacher. While we're sure only a few of the people there knew anything about him, it was obvious that nearly everyone in the room shared his belief that the law belongs to the people, and that lawyers have a responsibility to serve all citizens, whatever their needs or economic resources. It's comforting to know that, even though we miss him, others are being encouraged and inspired to do the work he believed in so strongly.



## Salt Committee Reports

### SALT and First Monday

Jane Dolkart, Southern Methodist University School of Law

First Monday is a national organizing campaign started by the Alliance for Justice to mobilize students to promote education and action on important social issues. Each year on the first Monday of the Supreme Court's October term, the Alliance facilitates over 350 events on university campuses.

Over the past two years, First Monday has evolved into a major organizing effort by the Alliance and Physicians for Social Responsibility to reduce gun violence. In 2000 First Monday produced a documentary film entitled "America: Up in Arms" focusing on the public health costs of gun violence through the stories of three families who lost children to gun violence. In 2001, *Deadly Business* was shown at over 200 events. "Deadly Business" is an exposé of the gun industry, highlighting its role in the epidemic of gun violence in America.

SALT has been a co-sponsor of First Monday, encouraging our members to put together First Monday programs on gun control or other issues. We intend to continue our efforts to promote the spirit of First Monday in as many law schools as possible by choosing an important social issue as a theme for this coming year. SALT will put together program ideas and program materials that can be used in each of your law schools as a basis for education and action on the chosen issue. We welcome suggestions on topics. Anyone interested in working on SALT's First Monday committee should contact Jane Dolkart at [jdolkart@mail.smu.edu](mailto:jdolkart@mail.smu.edu).

### Judicial Selection Committee

Bob Dinnerstein, American University School of Law

The Judicial Selection Committee—Bob Dinnerstein and Robert Westley, co-chairs, Avi Soifer, Beto Juarez, Neil Gotanda, Dean Rivkin—is expecting to have an active year. Our first foray into the exciting world of judicial nominations was the nomination of Judge Charles Pickering for an opening on the U.S. Court of Appeals for the Fifth Circuit. Thanks to the good work of Beto Juarez and our co-presidents Paula Johnson and Michael Rooke-Ley, we were able to hammer out and issue a statement for SALT on the day of Judge Pickering's confirmation hearing opposing his nomination. As of this writing, the Senate Judiciary Committee has just voted to reject Pickering's nomination. The committee also resisted an attempt by the Republicans to have the nomination go to the floor of the Senate, where a few Democratic votes for Pickering might have been enough to confirm his nomination. Thus, the Pickering nomination is a dead letter, and the Bush Administration has suffered its first significant defeat in its effort to make the federal judiciary even more conservative and hostile to progressive causes than it already is.

The SALT opposition emphasized the historical and contemporary importance of the Fifth Circuit Court of Appeals; Judge Pickering's questionable record on enforcing the Voting Rights Act; his apparent unwillingness to delve into the circumstances of a death sentence imposed on a defendant with mental retardation; his early support (while a law student) for an amendment to Mississippi's anti-miscegenation law that arguably would have allowed it to pass constitutional muster at that time; and his lack of candor at his 1990 confirmation hearing (for his district court judgeship) when discussing his supposed lack of contact with the notorious Mississippi Sovereignty Commission. SALT's position on the Pickering nomination was consistent with that of a number of other national organizations, such as

*Judicial Selection continued on page 11*

### Membership Committee

Fran Ansley, University of Tennessee School of Law

SALT membership currently stands at an all-time high, at well over 700 members. SALT's best recruitment strategies are the work we do and the supportive community we continue to build among progressive law teachers. Nevertheless, the organization also believes that explicit attention to expanding membership is worthy of significant effort.

Especially now, when the political landscape has been altered so dramatically in favor of a right-tending agenda, and when voices of dissent on university campuses have been so ominously targeted for attack, a group like SALT is a precious resource and an important base for articulating an alternative vision of justice and of peace. The more members we have, the more powerful and effective we can be. Accordingly, the Membership Committee has pledged to continue and expand upon past efforts to enlarge our membership rolls.

Plans are underway to send targeted mailings to law professors who belong to certain AALS sections and other groups. We intend to have SALT recruiters and SALT materials in

*Membership continued on page 11*



## Bylaw Revisions in Progress

Joyce Saltalamachia, New York Law School

Although SALT as an organization is justifiably proud of its ability to be flexible in addressing a wide variety of situations in a speedy way, the structure of our society is actually a rather traditional one in that we are governed by a set of bylaws that were originally formulated by the founders in the seventies. While the current bylaws adhere closely to the original ones, the Boards of Governors have periodically examined each provision to refine and update our operation wherever necessary. The Bylaws Committee is currently undertaking this task and will present a report to the full Board at the next meeting in May.

Last amended Sept. 21, 1996, the bylaws stipulate SALT's governing structure, the duties of the officers, the length of terms of the officers and Board members, how votes are to be conducted and who is eligible to join SALT. There are provisions determining the fiscal year, as well as the mechanism for removal from the Board or office (written notice at least 20 days before a meeting, signed by at least two members of the Board). The most recent amendments added Article V, which sets forth the criteria to determine when and under what circumstances SALT will take a public position on an issue.

The current Bylaws Committee is conducting a thorough review of all the provisions to correct inconsistencies, clarify language and bring the bylaws into conformity with actual practice. For example, the current practice of having co-presidents began at least eight years ago, but the bylaws were never changed to allow for this. The committee is also looking to revise the provisions regarding elections, because they now have the exact date of Sept. 30 for nominations while the practice has been to present nominations at the fall Board meeting, whenever it may be held. In addition, the suggestion has been made that SALT moves to a system of uncontested elections. The Board actually began a discussion of this subject last year and invited membership participation for the decision. A final decision will be made this year.

## Solomon Committee

Marc Poirier, Seton Hall University School of Law

The SALT Solomon Committee will be focusing on fostering amelioration efforts and, in so doing, broadening the visibility of lesbian/gay/bisexual/transgender issues on law school campuses. It plans to carry on the work of prior Solomon Committees, which surveyed law schools on their efforts and then produced a fine brochure on Solomon and amelioration. We will collect and circulate narrative accounts of successful, interesting, novel, or extensive amelioration efforts, using the *Equalizer*, the SALT listserv, and/or the SALT web site. We hope to facilitate the development of region-specific lists of speakers that can be used by proponents of amelioration at individual schools. We will also consider how best to take advantage of gatherings of law professors and administrative staff to create a space for exchange of ideas about Solomon amelioration. These gatherings may include SALT conferences, AALS meetings, and other relevant conferences.

We hope that developing more information about how schools are achieving their amelioration obligation will lead to recognition of some minimum standards of practice.

*Solomon continued on page 11*

## Bar Exam Committee Plans 2003 Conference

Eileen Kaufman, Touro Law School

The SALT Committee on the Bar Exam has continued its work of examining the extent to which the bar exam serves as an unsupportable obstacle to entry into the profession. The committee has continued its critique of the bar exam, in terms of its failure to adequately test the range of competencies necessary to practice law, its effect on limiting access to the profession by members of minority groups, and the negative ways in which the bar exam is driving decisions in law schools regarding admissions, curriculum, pedagogy, and hiring. SALT's critique has found its way into discussions of the efficacy of the bar exam at a number of levels, including state supreme courts, state boards of law examiners, state and local bar associations, and, of course, academic institutions.

The committee has also continued to monitor the efforts of psychometrician Stephen Klein to convince states to raise their passing score for the bar exam. Due in large part to the critique of the Klein methodology contained in "Raising the Bar: A Social Science Critique of Recent Increases to Passing Scores on the Bar Exam," 69 U.Cinn. L. Rev. 929 (2001), by Deborah Merritt, Lowell Hargens & Barbara Reskin, the national movement to raise the passing score has been slowed. The recommendation to raise the passing score is pending in the Florida Supreme Court, after extensive briefing by SALT Board member Lisa Iglesias; the recommendation has been effectively stayed in Minnesota after testimony by SALT Board member Carol Chomsky

*Bar Exam continued on page 22*



## SALT'S 2002 Filler Fellowship Goes to NYLS

*Michael Rooke-Ley, SALT Co-President*

SALT's selection committee for the Stuart and Ellen Filler Fund is pleased to announce that this year's fellowship will be awarded to the Office for Public Interest and Community Service and the Justice Action Center of New York Law School, which are collaborating with legal services programs in New York to assist individuals, community groups, and small businesses harmed by the events of September 11th.

We were fortunate to have received seven excellent nominations this year. In addition to the NYLS proposal, the nominees were: the Access to Justice Institute at Seattle University, serving immigrant battered women; the Alliance for Justice in Washington D.C., a national association of civil rights groups with whom SALT has worked closely for many years; the Center for Social Justice and Public Service at Santa Clara University, which is researching a program for

teaching race in America at the high school level; the Center for Victims of Torture, a Minnesota organization working globally to combat torture; the Colorado Progressive Coalition, a statewide, multi-racial organization combating racism on numerous fronts; and the Koob & Magoolaghan Law Firm, a small, highly-praised civil rights firm in New York. We admire the work of each of these organizations and encourage their nominations again next year.

Those readers new to SALT should know that Stuart Filler served as our treasurer for twenty years. He was an institutional pillar—taking care of membership rolls and dues, preparing budgets, filing tax returns, overseeing the financial health of the organization, and, most importantly, providing a constant reservoir of warmth and good humor to everyone he touched. His wife, Ellen, was his friend and conspirator in all that he did.

Stuart's public interest role went far beyond the organizational talents which he brought to SALT. He was a tax teacher who loved the classroom and believed that his students should learn about how the

tax structure affects the distribution of wealth and poverty. He started the first major tax clinic in the nation, providing services to low-income taxpayers and encouraging students planning commercial careers to retain a sense of concern about the less fortunate. During his last year of teaching, his students honored him for his dedication to teaching and asked him to be their graduation speaker.

When Stuart announced his retirement in 1996, SALT decided to honor his work by creating the Stuart and Ellen Filler Fund to support the work of one or more law students doing public interest work each summer. Little did we know that both he and Ellen would die tragically just four years later.

Currently, the fund is able to award a modest \$2,200 summer stipend. With greater financial support, we would be able to provide a summer intern with a living wage. Please help by sending a check payable to the Society of American Law Teachers, designating the Filler Fund, to SALT's treasurer: Professor Norman Stein, University of Alabama School of Law, 101 Paul Bryant Drive East, Box 870382, Tuscaloosa, AL 35487.

## SALT on the Net

*Elvia Arriola, Northern Illinois University College of Law*

It's been a long time coming. Our new website, [www.saltlaw.org](http://www.saltlaw.org) is here! Former Board member Richard Chused (Georgetown) is the Webmaster for SALT's new website. The Board has had a number of discussions over the past few years about having a more accessible site—one where we could post notices, have access to the materials that represent our activist



history, announce conferences, recruit members, and especially make available all those wonderful documents that get produced at every powerful SALT Teaching Conference and too often get lost or go back into file drawers back at our home institutions.

Developed under the guidance of the Web and Technology Committee and with the cooperation of current and past presidents, [www.saltlaw.org](http://www.saltlaw.org) was launched just after the 2002 meeting and AALS convention. While we are still tinkering with color and looking for photos and

ways to translate important older documents, it is here and it is beautiful.

So, please check it out and send your comments, feedback, and contributions. We are particularly interested in getting copies of amicus briefs that have been submitted over the years on behalf of SALT. If you have any (or know of them), please let us know. Also, we are seeking pictures of the CARE march in San Francisco in January 1998.

Feedback and contributions may be sent to members of the Website Committee (look them up on the site under Directories) or to the co-chairs of this committee: Nancy Ota ([nota@mail.als.edu](mailto:nota@mail.als.edu)) or Elvia Arriola ([earriola@niu.edu](mailto:earriola@niu.edu)).



## SALT to Sponsor Peace Conference in October

On September 11, devastating acts of self-immolation and human destruction occurred in New York City, Pennsylvania, and Washington, D.C. The anger and sadness occasioned by these losses continue to reverberate in the United States and throughout the world. SALT shares the grief that many of our colleagues, family, and friends directly experienced from the attacks. In the aftermath of the events on September 11 and the subsequent military response, SALT remains committed to pursuing constructive means for peace and equality between nations and between neighbors.

In October 2002, SALT will host a conference in New York City, in conjunction with New York law schools, to explore ways to promote effective, nonviolent responses to international conflicts, including the acts of September 11; combat racial profiling and prevent further weakening of civil rights; and insist upon governmental accountability and transparency that are requisite to a properly functioning democracy. In addition, the conference will present strategies on how to incorporate diverse perspectives and use different pedagogical approaches in teaching about these issues.

We hope that you will join us. Details will be forthcoming on the SALT website ([www.saltlaw.org](http://www.saltlaw.org)) and the *Equalizer*.

### Membership:

▼ *continued from page 8*

evidence at various law teacher conferences and other relevant gatherings. We will be urging all board members and others in SALT to reach out to teachers at their own schools and elsewhere, directly and personally asking others to join the organization and contribute to its work. In fact, we urge each of you now, dear readers, to consider ways that you can help us build a strong and vibrant membership base.

Anyone interested in joining the organization can do so by contacting David Chavkin, Membership Coordinator, at American University, [dchavkin@wcl.american.edu](mailto:dchavkin@wcl.american.edu). Anyone with creative ideas about how we can build on our present success and boost SALT's membership rolls even further, should contact Fran Ansley, chair of the Membership Committee, [ansley2@utkux.utcc.utk.edu](mailto:ansley2@utkux.utcc.utk.edu), at the University of Tennessee.

### Judicial Selection:

▼ *continued from page 8*

the Alliance for Justice, People for the American Way, NARAL, and the NAACP.

There are a number of other judicial nominees in the pipeline who raise serious issues for SALT because of their well-documented views on issues of importance to us. The Judicial Selection Committee will be in contact with SALT members, especially those with relevant substantive expertise or who are from schools in geographic proximity to these nominees, to assist us in developing substantive positions on them that can be converted quickly into an organizational statement on their nominations. If we learned anything from the Pickering nomination, it is that these matters can move very quickly and the committee (and the organization as a whole) must be prepared to act fast if we are to play an effective role in the nomination process. If you are interested in being involved in our efforts, please contact Bob Dinerstein, at American, or Robert Westley, at Tulane.

### Solomon:

▼ *continued from page 9*

Here we expect to work closely with the AALS Section on Sexual Orientation and Gender Identity and sympathetic voices on the relevant AALS committees. We also are considering whether it is time yet to do another survey of law schools on amelioration efforts and LGBT visibility, and if so when the best time would be to go forward with this survey.

Two smaller projects are related to the overall theme. One committee member (Marc Poirier, Seton Hall) would like to see a better informal network developed at religiously-affiliated law schools. Please contact him directly if you can be part of a phone list of faculty at religiously-affiliated schools able to share information on gay and lesbian issues at your school.

At some law schools with loan forgiveness programs, students are accepting jobs within the military and qualifying for loan deferral or forgiveness. These practices are certainly contrary to the spirit if not the letter of school-specific and AALS-wide antidiscrimination policies. They do not seem to come within the scope of the Solomon amendment, as they are not about job placement. The committee will be developing a strategy sheet to facilitate members taking on their individual school's loan forgiveness policies and insisting that they not support jobs with employers who discriminate.

The committee welcomes suggestions, and especially welcomes anyone who has even a tiny amount of time to work on these projects. Also, we are hereby soliciting narratives about amelioration and LGBT visibility. On all committee matters, please contact the Committee Chair, Marc Poirier, at (973) 642-8478 or [poiriema@shu.edu](mailto:poiriema@shu.edu).





# Special Pub

## SALT Comm

### Access to the Profession: Bar Exams

**Charge:** The committee shall 1) prepare for Board consideration at our May 5 meeting a SALT Statement on Bar Exams; and 2) engage in whatever additional work seems appropriate to promote needed reform in the bar admission process.

**Eileen Kaufman, chair**

Touro College, Jacob D. Fuchsberg Law Center  
eileenk@tourolaw.edu

### Annual Awards Dinner

**Charge:** The committee shall 1) solicit from Board members and from the general membership nominations for honorees at our annual dinner in January 2003 in Washington D.C. and make recommendations to the Board at our meeting in October 2002; and 2) make all arrangements for the annual dinner and choreograph the evening.

**Bob Dinerstein, co-chair**

American University, Washington College of Law  
rdiners@wcl.american.edu

**Margalynne Armstrong, co-chair**

Santa Clara University School of Law  
marmstrong@scu.edu

### Budget and Fundraising

**Charge:** The committee shall, in conjunction with the co-presidents, 1) examine Article VII of our current bylaws and propose changes, if desired, to the Bylaws Committee; 2) study SALT's recent financial history, monitor current expenditures, and prepare a proposed budget for the year 2003, to be distributed at least three weeks in advance of our fall Board meeting; and 3) conduct fundraising and grant-seeking efforts.

**Beverly Moran, co-chair**

Vanderbilt University Law School  
beverly.moran@law.vanderbilt.edu

**Howard Glickstein, co-chair**

Touro College, Jacob D. Fuchsberg Law Center  
howardg@tourolaw.edu

### Bylaws

**Charge:** The committee is charged with examining our bylaws for needed revisions, consulting with the co-presidents, and presenting proposals to the Board by e-mail (for discussion purposes) well in advance of our next Board meeting on Sunday, May 5, 2002 in Portland.

**Joyce Saltalamachia, chair**

New York Law School  
jsaltalamachia@nyls.edu

### Diversity Survey and SALT's Alternative Guide to Law Schools

**Charge:** The committee shall 1) prepare and present to the Board well in advance of our May Board meeting a specific timetable for the coming year; and 2) make regular progress toward the completion of the survey and subsequent publication of an "alternative guide" for prospective law students.

**Vernellia Randall, co-chair**

University of Dayton School of Law  
randall@udayton.edu

**Roberto Corrada, co-chair**

University of Denver College of Law  
rcorrada@mail.law.du.edu

### Faculty Mentoring

**Charge:** The committee shall 1) devise means for providing ongoing support for pre-tenure professors with regard to their scholarship, their teaching, and law school politics; and 2) plan and implement the New Teachers Workshop in January 2003.

**Nancy Cook, co-chair**

Cornell Law School  
nancy-cook@postoffice.law.cornell.edu

**Devon Carbado, co-chair**

University of California at Los Angeles School of Law  
carbado@law.ucla.edu

### First Monday

**Charge:** Working in conjunction with the Alliance for Justice, the committee shall promote and organize nationwide campus events addressing issues of social justice on the occasion of the commencement of the Court's term each October.

**Jane Dolkart, chair**

Southern Methodist University School of Law  
jdolkart@mail.smu.edu

### The Grutter Case

**Charge:** The committee shall 1) continue monitoring the case and supporting the intervenors; 2) consider organizing teach-ins; and 3) prepare for the possibility of producing a SALT amicus brief.

**Margaret Montoya, co-chair**

University of New Mexico School of Law  
montoya@law.unm.edu

**Jack Chin, co-chair**

University of Cincinnati College of Law  
jack.chin@law.uc.edu

### Judicial Nominations

**Charge:** In conjunction with the Alliance for Justice, the committee shall engage the SALT membership in 1) researching nominees and reporting to the Senate Judiciary Committee; 2) offering commentaries to the press; and 3) hosting law school forums concerning nominees to the federal bench.

**Robert Westley, co-chair**

Tulane Law School  
rwestley@law.tulane.edu

**Bob Dinerstein, co-chair**

American University, Washington College of Law  
rdiners@wcl.american.edu

### Law School Admissions

**Charge:** The committee shall 1) prepare and present to the Board well in advance of our May Board meeting a SALT Statement on Law School Admissions and Use of the LSAT; 2) devise means to re-engage faculty members in admissions work at their home institutions; and 3) pursue whatever efforts seem appropriate to promote needed reform in the admission process.

**Peter Margulies, co-chair**

Roger Williams University, Ralph R. Papitto  
School of Law  
pmargulies@law.rwu.edu

**Jane Dolkart, co-chair**

Southern Methodist University School of Law  
jdolkart@mail.smu.edu

### Membership

**Charge:** The committee shall devise means to increase SALT membership and devise, in conjunction with appropriate committees, means to increase involvement of the general membership in SALT's work.

**Fran Ansley, chair**

University of Tennessee  
ansley@utk.edu





# Out Section

## tees 2002–03

### Nominations

**Charge:** Consistent with the elaborate timetable provided in Article IV of our current bylaws, the committee shall recommend, in consultation with the co-presidents, 1) candidates for election to the Board and 2) two co-presidents-elect, and shall conduct said elections in the fall of 2002.

**Holly Maguigan, chair**

New York University Law School  
holly.maguigan@nyu.edu

### Norman Amaker Public Interest Law Retreat

**Charge:** The committee shall 1) plan, promote, and organize this second annual Midwest conference in March 2003; 2) represent SALT at the conference itself; and 3) be responsible for post-retreat reports in the *Equalizer* and elsewhere.

**Tayyab Mahmud, co-chair**

Cleveland-Marshall College of Law, Cleveland State University  
tayyab.mahmud@law.csuohio.edu

**Sue Bryant, co-chair**

City University of New York School of Law at Queen's College  
bryant@mail.law.cuny.edu

### Peace/Post 9-11

**Charge:** The committee shall 1) plan and implement a conference in New York in October 2002 related to issues raised in the aftermath of September 11; 2) consider developing a SALT position statement for submission to the Board; 3) encourage immediate speaking engagements and editorial writing by SALT members; 4) consider organizing teach-ins (and the sharing of curricula) and brainstorming ways to integrate these issues into classroom teaching; 5) investigate reports of professors having their academic freedom compromised and, when appropriate, express solidarity with said professors; and 6) consider coordinating a post-conference law journal publication.

**Deborah Post, co-chair**

Touro College, Jacob D. Fuchsberg Law Center  
deborahp@tourolaw.edu

**Nancy Ehrenreich, co-chair**

University of Denver College of Law  
nehrenre@mail.law.du.edu

### Public Positions

**Charge:** Consistent with Article V of our bylaws, the committee shall 1) in consultation with the co-presidents, make recommendations to the Board regarding the appropriateness of SALT taking positions on particular matters; and 2) in consultation with other committees, increase SALT's public presence on relevant issues by encouraging the writing of op-ed pieces and editorials, speechmaking and granting media interviews.

**Joan Howarth, chair**

William S. Boyd School of Law, University of Nevada-Las Vegas  
jhowarth@unlv.edu

### Robert Cover Public Interest Law Retreat

**Charge:** The committee shall 1) work with the student organizers in promoting this annual event in New Hampshire, especially seeking attendance from a wider spectrum of law schools; 2) represent SALT at the conference itself; and 3) be responsible for post-retreat reports in the *Equalizer* and elsewhere.

**Steve Wizner, chair**

Yale Law School  
stephen.wizner@yale.edu

### Salary Survey

**Charge:** In consideration of the survey's mediocre (50 percent) response rate in recent years (the result, apparently, of the ABA no longer requiring this data), the committee shall 1) seek ways to increase the response rate; 2) consider the inclusion of additional data which may be of interest to our readership; and 3) make every effort to publish and distribute this very popular survey no later than February of each year in light of the many requests for the data which we receive annually from deans and professors preparing to negotiate salaries.

**Howard Glickstein, chair**

Touro College,  
Jacob D. Fuchsberg Law Center  
howardg@tourolaw.edu

### Solomon

**Charge:** The committee shall 1) monitor and promote ameliorative efforts at law schools; and 2) engage in whatever additional efforts are necessary to combat discrimination and promote opportunities for gays and lesbians in the academy.

**Marc Poirier, chair**

Seton Hall University School of Law  
poiriema@shu.edu

### Stuart and Ellen Filler Fellowship Fund Selection Committee

**Charge:** 1) Publicize the fund and solicit organizations/projects which promote social justice and the public interest as nominees for receipt of this annual grant for the purpose of hiring a law student as a summer intern; and 2) select an awardee from among said nominees.

**Fran Ansley, chair**

University of Tennessee  
ansley@utk.edu

### Technology and Communications

**Charge:** The committee shall develop and monitor appropriate use of our website, listservs, and the *Equalizer*, addressing issues of technology as well as matters of editorial policy.

**Elvia Arriola, co-chair**

Northern Illinois University College of Law  
earriola@niu.edu

**Nancy Ota, co-chair**

Albany Law School, Union University  
nota@mail.als.edu

### Trina Grillo Public Interest & Social Justice Law Retreat

**Charge:** The committee shall 1) plan, promote, and organize this annual event in northern California; 2) represent SALT at the conference itself; and 3) be responsible for post-retreat reports in the *Equalizer* and elsewhere.

**Stephanie Wildman, chair**

Center for Social Justice and Public Service,  
Santa Clara Univ. School of Law  
swildman@scu.edu



## Salt Committee Membership 2002–03

*Following is a listing of members for each SALT committee, excluding chairs and co-chairs. A listing for the chair or co-chairs for each committee is on pages 12 and 13.*

### Bylaws

Peter Margulies, Roger Williams University, Ralph R. Papitto School of Law  
Howard Glickstein, Touro College, Jacob D. Fuchsberg Law Center

### Nominations

Elvia Arriola, Northern Illinois University College of Law  
Lisa Iglesias, University of Miami School of Law  
Christine Zuni Cruz, University of New Mexico School of Law  
Neil Gotanda, Western State University College of Law

### Membership

Martha Chamallas, University of Pittsburgh School of Law  
Roberto Corrada, University of Denver College of Law  
Holly Maguigan, New York University Law School  
Alicia Alvarez, DePaul University College of Law  
Marc Poirier, Seton Hall University School of Law  
David Chavkin, American University, Washington College of Law

### Budget and Fundraising

Norm Stein, University of Alabama School of Law  
Avi Soifer, Boston College Law School  
Eileen Kaufman, Touro College, Jacob D. Fuchsberg Law Center  
Sylvia Law, New York University Law School

### Technology and Communications

Eric Janus, William Mitchell College of Law  
Carol Chomsky, University of Minnesota Law School  
Joyce Saltalamachia, New York Law School  
Deborah Post, Touro College, Jacob D. Fuchsberg Law Center  
Richard Chused, Georgetown University Law Center

### Public Positions

Vernellia Randall, University of Dayton School of Law  
Fran Ansley, University of Tennessee  
Steve Wizner, Yale Law School

### Salary Survey

Eric Janus, William Mitchell College of Law  
Beverly Moran, Vanderbilt University Law School

### Annual Awards Dinner

Marnie Mahoney, University of Miami Law School  
Steve Wizner, Yale Law School  
Norman Stein, University of Alabama School of Law  
Holly Maguigan, New York University Law School

### First Monday

Alicia Alvarez, DePaul University College of Law  
Tayyab Mahmud, Cleveland-Marshall College of Law, Cleveland State University  
Beto Juarez, University of Oregon School of Law (visiting spring 2002)/St. Mary's University of San Antonio School of Law

### Robert Cover Public Interest Law Retreat

Avi Soifer, Boston College Law School  
Deborah Post, Touro College, Jacob D. Fuchsberg Law Center  
Bob Seibel, Cornell Legal Aid (visiting spring 2002)/City University of New York School of Law at Queen's College

### Trina Grillo Public Interest & Social Justice Law Retreat

Maggie Chon, Seattle University School of Law  
Eric Wright, Santa Clara University School of Law  
Nancy Wright, Santa Clara University School of Law

### Norman Amaker Public Interest Law Retreat

Eric Janus, William Mitchell College of Law  
Marc Poirier, Seton Hall University School of Law  
Alicia Alvarez, DePaul University College of Law

### Peace/Post 9-11

Marnie Mahoney, University of Miami Law School  
Joyce Saltalamachia, New York Law School  
Devon Carbado, University of California at Los Angeles School of Law  
Sue Bryant, City University of New York School of Law at Queen's College  
Bob Seibel, Cornell Legal Aid (visiting Spring 2002)/City University of New York School of Law at Queen's College

Tayyab Mahmud, Cleveland-Marshall College of Law, Cleveland State University

Bill Quigley, Loyola University New Orleans School of Law

Mari Matsuda, Georgetown University Law Center  
Natsu Saito, Georgia State University College of Law

### Law School Admissions

Nancy Cook, Cornell Law School  
Jack Chin, University of Cincinnati College of Law  
Phoebe Haddon, Temple University, James E. Beasley School of Law  
Marge Shultz, University of California at Berkeley School of Law  
Bill Kidder

### Diversity Survey and SALT's Alternative Guide to Law Schools

Neil Gotanda, Western State University College of Law  
Christine Zuni Cruz, University of New Mexico School of Law  
Nancy Ehrenreich, University of Denver College of Law  
Robert Westley, Tulane Law School  
Maggie Chon, Seattle University School of Law

### The Grutter Case

Eileen Kaufman, Touro College, Jacob D. Fuchsberg Law Center  
Beto Juarez, University of Oregon School of Law (visiting Spring 2002)/St. Mary's University of San Antonio School of Law  
Phoebe Haddon, Temple University, James E. Beasley School of Law  
Stephanie Wildman, Center for Social Justice and Public Service, Santa Clara University School of Law

### Access to the Profession: Bar Exams

Joan Howarth, William S. Boyd School of Law, University of Nevada-Las Vegas  
Beverly Moran, Vanderbilt University Law School  
Carol Chomsky, University of Minnesota Law School  
Margalynne Armstrong, Santa Clara University School of Law  
Bob Dinerstein, American University, Washington College of Law  
Natsu Saito, Georgia State University College of Law  
Phoebe Haddon, Temple University, James E. Beasley School of Law  
Andi Cursio, Georgia State University College of Law

### Judicial Nominations

Avi Soifer, Boston College Law School  
Beto Juarez, University of Oregon School of Law (visiting Spring 2002)/St. Mary's University of San Antonio School of Law  
Dean Rivkin, University of Tennessee College of Law

### Solomon

Joan Howarth, William S. Boyd School of Law, University of Nevada-Las Vegas  
Frank Valdes, University of Miami School of Law  
Bob Seibel, Cornell Legal Aid (visiting Spring 2002)/City University of New York School of Law at Queen's College  
Jane Dolkart, Southern Methodist University School of Law  
Lisa Iglesias, University of Miami School of Law  
Sylvia Law, New York University Law School

### Faculty Mentoring

Martha Chamallas, University of Pittsburgh School of Law  
Elvia Arriola, Northern Illinois University College of Law

Marnie Mahoney, University of Miami Law School  
Lisa Iglesias, University of Miami School of Law

### Stuart and Ellen Filler Fellowship Fund Selection Committee

Michael Rooke-Ley  
Karen Czapskiy, University of Maryland School of Law



## Finding Your Voice:

▼ *continued from page 3*

opportunities. Community groups can use you, in the best sense of the word, because of your status. Having said that, it is troubling certainly that sometimes you find yourself participating in a process that reifies traditional hierarchical views that value a "professor" over others and in this case perhaps devalued the local advocacy community. This of course also provides an opportunity to educate that there are others in the community who have far more expertise than we do.

Having done quite a bit of legislative work with community groups, I realize that writing about statutory interpretation is more valued than writing the statute itself or participating in the legislative process and teaching that process to students. But having done that, I recognize that the actual experience brings deeper insight into the meaning of legislation which redounds to future scholarly work. Writing out of your professional and activist experiences keeps you grounded, and allows you to feel passionate and positive about your work.

In my clinical teaching, through my relationship with community groups, I have been able to bring into the clinic cases which, in conjunction with reflecting on issues and strategies with the clinical students, have led to a deepening of my thinking about the issues I care about. For example, we are currently litigating a case in the Eighth Circuit that is an equal protection challenge to state funding for battered women's programs. The plaintiffs are claiming that such programs discriminate on the basis of gender. In collaboration with a housing discrimination law project we have brought a number of cases dealing with sexual harassment in housing which included a civil cause of action for coercion into prostitution. Both sexual harassment in housing and civil remedies

for the harm caused by prostitution are new and emerging areas of the law.

These kinds of cases focus your thinking and make you think in a different way about issues of discrimination, equality and violence. This process then provides a base from which to embark on further analysis and thought in a different way for purposes of scholarship.

One technique in my scholarship that I have used is co-authoring. For me it arises naturally out of the collaborative nature of my community work and the collaborative nature of clinical teaching. Co-authoring articles can expand viewpoints and enhance the intellectual inquiry basic to scholarship. It can broaden the possibilities of your scholarly work. It also can be highly beneficial in interdisciplinary work where the intellectual premises and theories of other disciplines can complement the law.

Also, when you do embark on the kind of writing and scholarship I've been talking about and I have found this to be true in writing about violence against women and more specifically when writing on prostitution, you may be faced with the charge that your work is not intellectually rigorous; that you are just advancing a political agenda rather than being thoughtful about the meaning of citizenship and the rights of citizenship. My strategy to meet this charge, not always successful, is to try to develop expertise in the work of mainstream traditional scholars, to also understand the scholarly work of critical theorists which seems much more pertinent and crucial to my thinking, and to merge the two scholarly approaches in a manner that preempts charges of inadequate support by those who are searching for an excuse not to take my work seriously. I don't always succeed but that is certainly my goal. This is never easy and it is always a challenge but may be necessary

given the realities of academia and publishing.

Let me illustrate the points I've made with a brief story: the previous dean at my school had a practice of sending out memos to the faculty when a faculty member had accomplished something of significance, for example an appointment to a commission or some other accomplishment. He would send out a memo describing what had been done, its significance, and asking the rest of the faculty to join him in congratulating the faculty member. So when Mary Lou Fellows and I, in collaboration with our students and community activists, were successful in having the Minnesota legislature pass a law reform initiative regarding prostitution, we sent the dean a memo explaining it and its import. We waited to see if a congratulatory memo would be distributed. Well, the dean did send out a memo. The memo the dean sent to faculty essentially said Professors Balos and Fellows tell me that the Minnesota legislature passed a bill of some significance regarding prostitution. He did not invite the rest of the faculty to join him in congratulating us; in fact, he did not congratulate us. Fast forward to a few years later: different dean. We have now published an article in the NYU law review focusing on prostitution and violence against women. The dean is quite pleased and sends us a note congratulating us on the article. Of course the statutory work we had done previously was a major catalyst for thinking about the issue of prostitution, what was wrong with the statute we helped pass, and violence against women in a deeper way. The NYU article would not have been written without the legislative and community work. While it may be that neither dean understood that, what is important is that I understand it. So I end where I began: struggling to balance teaching, scholarship, and activism but also knowing that only in doing all three does any of it seem worthwhile.



## Pain and Politics:

▼ *continued from page 3*

hurtful discussion, but it also robs students of the opportunity to share diverse perspectives on issues about which they care.

Second: Conversely, by addressing provocative issues relating to difference, student sensibilities might be adversely affected by the assignment itself or by how the professor and class members address it.

Third: Faculty must maintain control of the classroom and can act to stop offensive comments, but we should take care not to over-react with an excessively heavy hand that relies too heavily on a classroom hierarchy that may subordinate all students.

To balance these factors, I suggest the following:

1. Despite the challenges that they raise, we should not shy away from issues relating to diversity in personal characteristics or deeply held beliefs. Ignoring them will also cause resentment, and grappling with them helps students to develop skills of critical analysis while fully engaged in issues about which they care, to challenge their own assumptions, to share diverse perspectives with one another, and to prepare them for practice in a diverse society. These issues may also provide opportunities for an otherwise culturally alienated student to temporarily enjoy the position of "insider" because he or she can analyze a problem with the benefit of perspectives arising out of unique experiences.

2. We can do things to minimize unproductive pain and distraction associated with an assignment or discussion. For example, whenever we give an assignment or start a discussion on a provocative topic, we should take some care to craft the assignment or discussion to ensure that the pedagogic benefits outweigh the risks of disruption to the classroom community.

We can also set explicit ground rules for class discussion, such as by announcing on the first day of class that all students should try to listen and learn from different voices in the classroom, and that any view is welcome so long as it is expressed in a professional manner that conveys utmost respect for others. In accordance with such announced rules, we can stop discussion if someone uses bigoted epithets, which is not part of the professional language of an advocate, and we can remind students that such language like that is out of bounds in the classroom and the court-room.

More subtly, we can use questions and comments to steer the discussion in a more constructive direction if students seem to be sliding into some unproductive digressions that may lead to more heat than light. Moreover, if students are beginning to square off against one another, we can remind them to direct their comments to us, rather than directly to a classmate, so that we can act as a buffer. We can also take steps to bring out the views of outsiders or marginalized students by creating a safe atmosphere in class for them or by trying to express diverse perspectives ourselves and inviting others to comment, giving the others a chance to carry the points further. In doing all these things, it pays to stay above the fray, to never lose our tempers or composure, providing the students with a steady, cool hand.

3. Finally, I believe that we should draw a distinction between uncivil comments and civilly stated views that cause hurt because of their viewpoints. We have to be particularly sensitive in the manner in which we react to the latter. If the comment is off topic or uncivil in its language, we can directly intervene to get discussion back on track. But if a student states a *relevant view in respectful language*, and others of us are offended by the *content* of his argument, then I advise against the professor intervening in

an overly partisan and heavy-handed manner. At one conference, a student reminded faculty conferees of the extent to which they can wield power that subordinates all students in the classroom. She sometimes felt intimidation when expressing a non-mainstream view in the classroom, and she was not anxious to see a professor wield the powers of classroom hierarchy against other students, even against students whose values she strongly opposes. Instead, she preferred a class atmosphere that would make her feel safe and empowered to express her own view in response to an offensive view.

So, when a student in civil language expresses a view on topic that is offensive to some in the class, we may benefit by viewing it as a vehicle for spurring counter-arguments. Even if some of us think that a view is misguided, insensitive, or otherwise offensive, the class will probably grow together intellectually more effectively if we can encourage and empower other students to respond, rather than just quash the idea from the front of the class.

Accordingly, our best response to a surprising and jarring view often is to simply ask more questions, designed either to get the speaker to critically evaluate his position or to get other students to express views that help us sort out all the possibilities. If appropriate, we can express our own view at the end of the discussion, making it clear that we will grade students on the basis of their ability to support and advance arguments rather than the extent to which they embrace our political views.

For more on these issues, see Charles R. Calleros, *Training a Diverse Student Body for a Multicultural Society*, 8 La Raza L.J. 140 (1995); Charles R. Calleros, *In the Spirit of Regina Austin's Contextual Analysis: Exploring Racial Context in Legal Method and Writing Assignments and Scholarship*, 34 J.M.L.R. 281 (2000).



## Amaker:

▼ *continued from page 7*

Indianapolis and the Minnesota Justice Foundation, held outside Indianapolis at the Bradford Woods Retreat Center March 22-24, 2002.

The subject of the retreat was "Ground Zero is Everywhere There is Poverty: Ensuring Rights, Liberties & Opportunities In the Current Anti-Terrorist Climate." Its goal was to forge a coalition of students, professors and practitioners who would support social justice-oriented law students pursuing careers in the public interest. Professors, practitioners and students from Oklahoma, Illinois, Ohio, Michigan, Minnesota, North Carolina, Washington, D.C., New York and Indiana discussed immigration, poverty and

energy, passion and fierce intellectual vigor. The community took shape as it examined these public interest and poverty law issues. Some refreshing perspectives were offered. There we were at



*Paul Finkelman at the Amaker Retreat.*

9:30 a.m. imagining a world where poverty and homelessness are not accepted as the status quo.

"I think this was a fabulous event.... Only criticism is that Saturday had too many great speakers! I felt worn out, but intellectually and spiritually revived."

Norman Amaker's son Arthur, a teacher and poet, shared moving memories of his father at the Friday evening ceremony. He infused this first retreat with a sense of the commitment and dedication of its namesake.

The night hike, brisk and beautiful, ended at the bonfire, where some made s'mores for the first time. A full day of panels and presentations Saturday didn't keep attendees from enjoying the full benefit of

the energy, conviction, dedication and commitment in the room. Paul Finkelman inspired and entertained us all at lunch, especially with his admonition to learn civil procedure, and then with his marvelous presentation detailing the power behind the subject area. Zona Hostetler kept us spellbound at dinner, giving us the rare opportunity to both marvel at her accomplishments, and see how each of us could contribute to the cause. The retreat gave us all a renewed permission to dedicate our lives to making the world a better place.

"The Amaker retreat was such a valuable way for students to get a perspective on practicing public interest law that is just not available from inside the classroom. The breadth of issues discussed allowed me to observe the broad impact that public lawyers can have on the world and on people who most need help."—Reynaldo Aligada, William Mitchell 2002

"It was very beneficial and motivating for me. I needed this! Thank you! I hope we have more like this!"

It was a motivating and rejuvenating weekend for all involved. Seasoned practitioners and professors spent the weekend inspiring and being inspired by the newest generation of public interest advocates. The center has already been reserved for the Second Annual Norman Amaker Public Interest Law Retreat, February 28–March 2, 2003. It promises to be a rejuvenating, energizing experience. We hope to see you there.



*Robin Magee and Paula C. Johnson presented at the Amaker Retreat*

homelessness, the death penalty, human and civil rights and the realities of practice. The retreat gave all participants the chance to share compelling information and ideas, charging the weekend with



### **SALT Welcomes the Littlest Members**

SALT is pleased to welcome three new members who have joined our ranks in 2002. Twins Quin (boy) and Maia (girl), born to former board member Sumi Cho and her husband Gil Gott, and Harrison Kai Shaw, born to former board member Marina Hsieh and her husband Henry Shaw. We are happy that everyone is doing well and look forward to seeing them at upcoming SALT events!



*Stephanie Wildman, Emily Rooke-Ley, Michael Rooke-Ley, Hon. Cruz Reynoso, Margalynne Armstrong, and Luisa Grill-Chope at the Grillo Retreat.*



## Grillo:

▼ *continued from page 6*

The retreat honors the memory of Trina Grillo, a former University of San Francisco law professor, for her dedication to social justice and her distinguished academic support work. Trina created a learning community where law students interested in issues of class, race, gender, sexual orientation, and physical and

cognitive learning disabilities could flourish. In addition, the retreat honored the work of Ralph Abascal, a dedicated

advocate for the rights of the poor and immigrant communities. Recognizing the paths which Trina and Ralph had paved, the retreat concentrated on making public interest and social justice integral to the everyday practice of law and networking and coalition building. Each speaker expressed the importance of coalition between advocates in different areas of public interest practice in order to strengthen the power of each individual group as well as empowering the cause for social justice as a whole. Panelists at the first plenary, moderated by Grace Hum (Santa Clara), included practitioners from various areas of public interest law who each share the common interest of ensuring the provision of basic human needs. These areas included housing discrimination (Danielle Jones, Fair Housing Council of San Gabriel Valley); welfare law (Karen Czapanskiy, Maryland); and international human rights (Connie de la Vega, San Francisco).

Luke Cole (CRLA Foundation) delivered the Ralph Abascal Memorial Lecture, addressing protection from environmental harm. Small groups met at lunch to discuss career strategies.

The second plenary, co-sponsored with the Equal Justice Society, examined strategies for practitioners, academics, and students to work together to bring about legal change. Margaret Russell (Santa Clara), Margalynne Armstrong (Santa Clara), Eva Paterson (Lawyers Committee for Civil Rights), and Alegria de la Cruz (Boalt La Raza) led the discussion.

Special guest and former California

Supreme Court Justice, the Honorable Cruz Reynoso, spoke after dinner, introduced by Michael



*Supriya Bhat, Nancy Wright, Eric Wright, Grace Hum, Sasha Morgan, and Stephanie Grogan at the Grillo Retreat.*

Rooke-Ley (SALT). Justice Reynoso addressed the importance of paying attention to what our eyes see and not ignoring the problems that we notice, even when they do not directly involve us. He explained the duty lawyers have to help the oppressed and disenfranchised because lawyers know of the relationship between the law and people. Justice Reynoso further expressed the importance of becoming politically involved and advocating for basic human rights, which is accomplished through the formation of coalitions.

On Sunday morning, Joan Howarth (Nevada) and Stephanie M. Wildman (Santa Clara) led a workshop using materials developed by Catharine Wells (Boston College) on obstacles to coalition building, examining words that wound, and how to make our communities more welcoming by better understanding our own exclusionary practices.

The final plenary, moderated by Mary Louise Frampton (Boalt) addressed coalition building across issues. Chris Daley (National Center for Lesbian Rights), Gary Blasi (UCLA), and Victor

Hwang (Asian Pacific American Legal Outreach) discussed the need for partnerships to strengthen the power of individual groups.

**SAVE THE DATE:** The Fifth Annual Trina Grillo Public Interest and Social Justice Law Retreat will convene Saturday, March 15, and Sunday, March, 2003.

## Presidents' Column:

▼ *continued from page 5*

and helped set in motion our plans for a conference in October in New York. (See description on page 11.)

Finally, the SALT dinner—this year a 30th Reunion Celebration—brought

*"We acknowledged the enormous contributions of our outgoing SALT co-presidents, Carol Chomsky and Margaret Montoya."*

together a huge crowd of fellow travelers, including seven of SALT's founding Board members: George Alexander, Frank Askin, Clinton Bamberger, Derrick Bell, Monroe Freedman, Sylvia Law, and Bob Sedler. With thunderous applause, we thanked them for their vision and dedication and promised them that we would do our very best to carry on the struggle for equality and justice. Our special guest speaker, Rep. Barbara Lee, spoke eloquently of the need to protect democracy and liberty in times of war and adversity. (For excerpts of her speech, see page 4.) The high emotions of the evening carried us to our conclusion, when we acknowledged the enormous contributions of our outgoing SALT co-presidents, Carol Chomsky and Margaret Montoya.



## Presidents' Column:

▼ *continued from page 18*

SALT's current agenda is inspiring and ambitious, addressing a wide range of vitally important issues during these politically difficult times. We remain in the forefront of the struggle to preserve affirmative action and diversify our profession, at both the entry level (law school admissions) and exit level (bar admissions). As law professors, we also are uniquely qualified and have special obligations to educate and inform the profession and the public concerning the qualifications of nominees to the federal judiciary. In early February, the Board approved and released a SALT statement opposing the nomination of Judge Charles Pickering for the Fifth Circuit Court of Appeals (see page 1).

In addition, we must speak out on threats to civil liberties and civil rights in the wake of the horrors of September 11; we must continue to support gay and lesbian students and colleagues, especially in the face of the Solomon Amendment; we must provide regular support and mentoring for our untenured colleagues; we must continue to develop our inspiring public interest law retreats for students, practitioners, and professors; and we must continue to offer and expand our enormously popular teaching conferences across the country.

There is so much to do . . . and never quite enough of us (and money, but more on that later!) to attain all the goals that are well within our reach but that often elude our grasp. Your Board of Governors is an incredibly hard-working group, but greater contributions of time and energy from our full membership are needed if we are to achieve our goals. Please read through the various committee descriptions on pages 12–14 and give of your time as you are able.

With warm wishes to each of you,  
Michael and Paula

## Cover:

▼ *continued from page 7*

the urban centers most of us came from. While most years the activities at the retreat include cross-country skiing and snowshoeing, the warm winter we have enjoyed in New England had left very little snow on the ground. Nonetheless, many of us were still able to walk on the frozen pond during our first day there (the ice would be almost gone by the time we left).

The main attraction of the weekend, however, was the group of individuals that came from far and wide to interact with each other. On the first night, we heard from Steve Wizner, one of my clinical professors at Yale, and Danny Greenberg, the director of the New York Legal Aid Society. Steve told the gathered group of Cover's vision: how Professor Cover had circulated a memo to his colleagues describing his dream for a gathering, and his passing shortly thereafter. Steve described how some of Professor Cover's friends, including himself and Danny, had decided to make that dream a reality, and thus the retreat had come about.

Danny had a more personal message for us. He described a situation familiar to many of us law students interested in doing public interest work. During our first semester, we are invited to hear a number of speakers through the career services office. At each of these presentations, a public interest lawyer describes the work he or she does, and emphasizes how that type of work is "the most important work" out there: there's the death penalty lawyer in the Deep South, the labor organizer in a big city, the children's rights advocate, the public defender in a large city, etc. Confounded, the law student is at a loss as to how to choose among so many important causes. Danny assured us that the retreat was not meant

to add to our confusion. Instead, it should be a chance to talk to interesting lawyers in a low-pressure environment and to find out what makes these practitioners tick. But, most importantly, Danny hoped the retreat would help us find out what type of work will make us feel good in a not-so-distant morning when we head off to work.

We spent the next day and a half following Danny's advice. As we talked to practitioners and other students, we found ourselves seeing our areas of interest from different perspectives. I found myself, for example, talking to a disability law attorney about a death penalty case I had worked on. I explained the details of the case—which involved a juvenile offender who suffers from mental retardation and organic brain damage. The attorney noted the possibility that the American with Disabilities Act might one day help people

like our client, whose mental impairments had gone untreated even as he made numerous journeys through the juvenile system and his family sought help

from state authorities. I imagine this is what Robert Cover would have wanted: for public interest lawyers, current and future, to realize how interrelated the work we all do (or will do) ultimately is.

As we closed down our weekend, our two other hosts, Milner Ball and Avi Soifer once again reminded us of Professor Cover's vision, and encouraged us to continue the discussions we had only begun during our time in Southern New Hampshire. Although we had only spent less than 48 hours at Sargent Center, I know that most of us felt as if a week had passed. And as I headed back home, I could not help but think how the retreat itself had been a reaffirmation of what sustains most public interest lawyers: the conviction that one person's vision can enrich people's lives long after their time has passed.



*Cover Retreat participants test the ice of southern New Hampshire.*



## SALT Opposes Pickering Nomination

### Letter Sent to Democrat Members of the Senate Judiciary Committee

*Note: The Senate voted down the Pickering nomination on March 14.*

February 7, 2002

Re: Statement of Society of American Law Teachers regarding the nomination of Judge Charles Pickering to the U.S. Court of Appeals for the Fifth Circuit

Dear Senator Leahy,

On behalf of the Board of Governors of the Society of American Law Teachers (SALT)—the largest membership organization of law professors in the nation—we write to express our grave concerns regarding the nomination of Charles Pickering to the U.S. Court of Appeals for the Fifth Circuit.

Since its founding 30 years ago, SALT has sought to make the legal profession more inclusive and responsive to underserved individuals and communities. These goals have particular meaning in the states of Texas, Louisiana, and Mississippi, which comprise the Fifth Circuit. The Fifth Circuit also is home to the largest percentage of racial and ethnic minorities in any of the 11 circuits.<sup>1</sup> For residents of these states who must turn to the courts to vindicate their rights, the Fifth Circuit is, as a practical matter, the court of last resort. In light of these concerns and after careful review of Judge Pickering's record, SALT urges the Senate Judiciary Committee to reject his nomination to the U.S. Court of Appeals for the Fifth Circuit.

The available public record raises troubling questions about Judge Pickering's ability to enforce federal law

guaranteeing civil and reproductive rights, as discussed below.

• In his opinion in *Fairley v. Forrest County, Miss.*, 814 F.Supp. 1327 (S.D. Miss. 1993), rejecting a challenge to a county supervisory districting plan under the "one-person, one-vote" principle of the Fourteenth Amendment, Judge Pickering repeatedly described the courts' role in such cases as "obtrusive."<sup>2</sup> Much of Judge Pickering's opinion was devoted to explaining his conclusion that—contrary to the U.S. Supreme Court's precedents—a total deviation of 16.4 percent among election districts "is really de minimis variation in actual voter influence."<sup>3</sup> He then complained of the costs of enforcing this constitutional right:

[I]t is submitted that no one can know or assimilate information as to the tremendous amount of taxpayer money that has been spent on apportioning and reapportioning political bodies to comply with court rulings or to comply with what lawmakers perceive to be judicial requirements. No one can calculate the number of hours devoted by public officials to resolving reapportionment issues, trying to live by court mandates. Oftentimes, other government problems are ignored because legislative bodies are trying to solve reapportionment according to what they think the courts will require . . . It is submitted that most voters care less about such mathematical precision when it changes their actual influence so little, than they desire to save tax dollars, avoid disruption and the breaking of so many political subdivision lines.<sup>4</sup>

Judge Pickering has made clear his preferred methodology for deciding civil rights and constitutional claims: if Judge Pickering believes the asserted right is of little value, and the cost of protecting such rights is too burdensome, the right should not be protected.

• Judge Pickering's opposition to enforcement of the Voting Rights Act also was evinced earlier during his term as a Mississippi state senator. In 1975, he co-sponsored a Mississippi Senate resolution calling on Congress to repeal the Voting Rights Act or apply it to all states, regardless of whether a state shared Mississippi's extensive history of blatant violations of voting rights of African Americans.<sup>5</sup>

• Judge Pickering's comments when denying the appeal of death row prisoner Howard Monteville Neal also raise questions about his willingness to carefully consider the claims of those before his court. Neal, a defendant with mental retardation with an IQ of between 54 and 60,<sup>6</sup> was sentenced to death for the rape and murder of his 13-year-old niece in 1982. Mr. Neal's petition for writ of habeas corpus was denied by Judge Pickering, who stated that ordering a review after nearly 18 years "undermines the finality, certainty and integrity of the judicial process. . . ."<sup>7</sup>

Mr. Neal's petition for a writ of habeas corpus is currently pending before the en banc Fifth Circuit.<sup>8</sup> A Fifth Circuit panel last year rejected Mr. Neal's petition, but only after exploring the nature of Mr. Neal's claims in a detailed 14-page opinion. The Fifth Circuit panel found that the additional evidence presented in the petition "does, indeed, make disturbing reading."<sup>9</sup> The Fifth Circuit panel also found that Mr. Neal's "trial counsel was deficient in failing to investigate, gather, and consider [available evidence] for purposes of presentation at Neal's sentencing hearing,"<sup>10</sup> and that "there is a reasonable probability that a jury would not have been able to agree unanimously to impose the death penalty if the additional evidence had been effectively presented and explained to the sentencing jury."<sup>11</sup>

*Pickering continued on page 21*



## Pickering:

▼ continued from page 20

Judge Pickering, on the other hand, had not found it necessary to examine Mr. Neal's petition in such detail. For Judge Pickering, finality is more important than the rights of a man with mental retardation who, the Fifth Circuit panel found, was not provided the fundamental constitutional right of effective assistance of counsel. Given the widespread use of the death penalty in the three states comprising the Fifth Circuit, that court demands judges who are sensitive to the legal claims raised by death row inmates and who will impose this ultimate sanction only after rigorous assurance that all fundamental rights have been provided to the accused. We believe that Judge Pickering is not such a judge.

- Judge Pickering's opposition to enforcement of basic civil rights was demonstrated early in his legal career, extending back to his work as a law student at the University of Mississippi Law School. Judge Pickering published a casenote on the Mississippi Supreme Court's decision in *Ratliff v. State*, 107 So.2d 738 (Miss. 1958), which reversed a criminal conviction for a violation of Mississippi's miscegenation statute. Judge Pickering's analysis conceded the correctness of the decision, but suggested an alternative interpretation that would have upheld the conviction. In addition, he then suggested a statutory amendment that would allow the Mississippi state courts to enforce the state's prohibition on interracial marriages.<sup>12</sup> The Mississippi state legislature enacted the amendment the following year.<sup>13</sup>

While this episode might be dismissed as a distant reflection of mainstream views in Mississippi in 1959, Mississippi law students of that period were hardly universal in their acceptance of racial

segregation.<sup>14</sup> Moreover, while Judge Pickering asserted at his 2001 confirmation hearing that "who one marries is a personal choice and that there should not be legislation on that,"<sup>15</sup> this indirect repudiation occurred on the eve of his confirmation. This only reinforces the conclusion that his unwillingness as a judge to enforce civil rights statutes is

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*"Judge Pickering's  
opposition to  
enforcement of basic  
civil rights was  
demonstrated early in  
his legal career..."*

---

deeply rooted.

- Finally, Judge Pickering has failed to meet the burden of demonstrating the candor required of all judges. At his 1990 confirmation hearing before this Committee, Judge Pickering testified that he "never had any contact" with the Mississippi Sovereignty Commission, a state-funded agency created to resist desegregation and used to spy on civil rights and labor organizations in Mississippi. However, the subsequent release of the Sovereignty Commission's records indicates that Judge Pickering did have contact with the Commission: he wrote a letter in 1972 to a Commission investigator asking to be "advised" about a group trying to organize pulpwood workers.<sup>16</sup>

Throughout his legal career, Judge Pickering has demonstrated a marked insensitivity regarding the need to protect those individuals in our society most in need of the federal courts' protection. Such protection is especially critical in the Fifth Circuit. SALT therefore urges the

Committee to deny recommendation of Judge Pickering's nomination.

Sincerely,  
Professor Paula C. Johnson  
Professor Michael Rooke-Ley  
Co-Presidents, SALT

## Footnotes

<sup>1</sup>U.S. Census Bureau, Table 1, Population by Race and Hispanic or Latino Origin, for the United States, Regions, Divisions, and States, and for Puerto Rico: 2000, available at <<http://www.census.gov/population/cen2000/phc-t6/tab01.pdf>>

<sup>2</sup>814 F. Supp. at 1330 ("obtrusive"); *id.* at 1336 ("obtrusion"); and *id.* at 1344 ("obtrusive").

<sup>3</sup>*Id.* at 1331.

<sup>4</sup>*Id.* at 1337-38.

<sup>5</sup>Journal of the Senate of the State of Mississippi (1975) at 124 (S.C.R. 549).

<sup>6</sup>Neal v. Puckett, 239 F.3d 683, 685, & 696 (5<sup>th</sup> Cir. 2001).

<sup>7</sup>*Judge rejects appeal of death row inmate convicted of killing family*, Associated Press Newswires (Jan. 12, 1999).

<sup>8</sup>Neal v. Puckett, 264 F.3d 1149 (5<sup>th</sup> Cir. en banc) (granting rehearing en banc).

<sup>9</sup>Neal, 239 F.3d at 689.

<sup>10</sup>*Id.* at 691.

<sup>11</sup>*Id.* at 694. Ultimately, however, the Fifth Circuit panel declined to order relief for Mr. Neal because it did not find the Mississippi Supreme Court's judgment involved an "unreasonable application of . . . clearly established Federal law," as required by the Antiterrorism and Effective Death Penalty Act. *Id.* at 696.

<sup>12</sup>*Id.* at 329, n.16.

<sup>13</sup>Laws of the State of Mississippi (1960), at 356-57, listing Mississippi S.B. No. 1509 (approved Feb. 24, 1960), amending Section 2000, Mississippi Code of 1942.

<sup>14</sup>See, e.g., Alfred E. Moreton, *Constitutional Law - Power of State Legislature to Exclude Negroes from Municipal Corporations*, 31 Miss. L. J. 176, 177 (1960) (describing the Fifth Circuit's decision in *Gomillion v. Lightfoot*, 270 F.2d 594 (5<sup>th</sup> Cir. 1959), and noting, "There appears to be great force in the argument of Judge Wisdom that the color of the parties is no valid distinction . . .").

<sup>15</sup>Transcript of Nominations Hearings, Senate Committee on the Judiciary, Oct. 18, 2001, at 64.

<sup>16</sup>Ana Radelat, *Pickering lied about contacts to anti-segregation commission, groups say*, Gannett News Service (Jan. 25, 2002), available at 2002 WL 5255700.



## Professors Protest Justice Thomas Visit; SALT Writes in Support

*The following letter was sent to the Durham Herald-Sun, in response to the editors' rebuke of five African American law professors who protested the visit of Supreme Court Justice Clarence Thomas to UNC Law School. Professors John Calmore, Adrienne Davis, Charles Daye, Kevin Haynes, and Marilyn Yarbrough prepared a thoughtful position paper detailing the reasons for their protest of Justice Thomas' appearance. They attached the late Judge Leon Higginbotham's Open Letter to Justice Thomas. They also conducted a teach-in, sponsored by BLSA, on the Supreme Court's analysis of racial discrimination for the law school community. For their efforts, the press criticized our colleagues as "petulant" and "intolerant." SALT responded with the following letter.*

March 8, 2002

Dear Editor:

We represent an organization of over 800 law professors, including board members who have signed below. We strongly reject your characterization of our African American colleagues at the University of North Carolina School of Law as petulant and unreasonable. Your cartoonist, John Coles, compounds this disparagement by injecting negative racial overtones in his caricature of them as childlike. To the contrary, Professors Calmore, Davis, Daye, Haynes, and Yarbrough are highly esteemed members of the legal profession and the law professoriate. Their objection to Justice Thomas' visit exemplified treasured democratic and academic values of independent thought, cogent analysis, and principled protest. Our colleagues' decision not to attend Justice Thomas'

speech also was informed by their knowledge and experience of racial discrimination in American society that Justice Thomas purports to upend through conservative judicial philosophy. To many, Justice Thomas' opinions on the Supreme Court are anathema to the ideals of racial equality, diversity, and inclusiveness in U.S. society. In providing an alternative understanding of Justice Thomas' positions on the issues that come before the Supreme Court, we believe that our colleagues should be commended, not derided, for educating the UNC law school community in the most meaningful manner on these critical matters. We applaud their courage in doing so.

Sincerely,

Paula C. Johnson, Syracuse University  
Michael Rooke-Ley, Eugene, Oregon  
Co-Presidents, Society of American Law Teachers

### Prof. John Calmore Responds:

Paula: I am quite speechless in an attempt to express my gratitude for the SALT letter. I really don't know what to say. Please pass this thank you on to the Board who signed.

The other day I was talking to my daughter, Canai (15 going on 30) about the Teach-In. I told her I wanted her to be proud of me and to be able to elaborate why. Your letter will help me make my case to her. At the Teach-In, I told the audience that Woody Allen said 80 percent of life was showing up. I said that in my view the other 20 percent was standing up to do the right thing. SALT, I know, is about the whole 100 percent.

Thank you.

### Bar Exam:

▼ *continued from page 9*

resulted in the hiring of an independent consultant who found fundamental flaws in the Klein methodology; the recommen-

dation to raise the score in New York has been put on hold after the City Bar, the State Bar and the deans of all the New York law schools brought the concerns raised by SALT to the attention of the Board of Law Examiners.

The focus of the committee's work this year will be to plan a conference for the fall of 2003. The first bar conference, entitled "Re-Examining the Bar Exam," held in San Francisco in September 1999 primarily concentrated on the critique of the bar exam. The conference being planned for 2003 will move from the critique of the bar exam to a focus on second generation issues, with an emphasis on more effective licensing approaches. The conference will feature experts regarding how to measure competence and will study how licensing is done in other professions and how lawyers are licensed in other countries (particularly Canada's use of a Professional Legal Training Course). Most importantly, the conference will present concrete proposals for substitutes for the bar exam that are being considered in different states. One such proposal is a public service alternative to the bar exam being developed in New York by Kris Glen, dean of CUNY Law School. Another proposal is an "AmeriCorps" alternative to the bar exam being considered in Arizona. The anticipated audience for this conference includes law school deans, the leadership of state and national bar associations, and members of state Boards of Law Examiners. The committee is actively recruiting SALT members to work on the planning committee of this conference. Anyone interested should contact Eileen Kaufman at [eileenk@tourolaw.edu](mailto:eileenk@tourolaw.edu).

Finally, the committee is working on drafting a SALT statement setting forth the basic components of our critique of the bar examination.



## Norman Dorsen Fellowship

Norman Dorsen, the founding president of SALT, has promised to give us \$55,000 over five years to create an endowed Norman Dorsen Fellowship Fund to enable SALT presidents to hire a law student to help them with the work of the organization. The gift is conditioned on a requirement that we raise matching funds. So, basically we need to raise \$11,000 a year for the next five years. After five years, SALT will have an endowment of \$110,000 that will enable each new president to hire an assistant, without the need for further fund raising.

We hope that you will help to make this new source of SALT strength possible.

### PLEDGE FORM

Yes! I want to support the Norman Dorsen Fellowship. Over the next five years I promise to make the tax deductible contributions at the following level: \_\_\_\_\_

\_\_\_\_\_ Distinguished Contributor (\$1,500 total, or \$300 a year)

\_\_\_\_\_ Honored Contributor (\$1,000 total, or \$200 a year)

\_\_\_\_\_ Sustaining Contributor (\$500 total or \$100 a year)

Name \_\_\_\_\_ School \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_ E-Mail \_\_\_\_\_

Or, just send any amount you can. Make your check out to: SALT, designated to the Dorsen Fund on the notation line, and mail to: Sylvia A. Law, NYU Law School, 40 Washington Sq. So., New York, N.Y. 10012.

**Norman Dorsen Fellowship Committee** : David Chambers, Howard Glickstein, Phoebe Haddon, Sylvia A. Law, Charles R. Lawrence, Avi Soifer, and Wendy Webster Williams.

## Society of American Law Teachers

### *Membership Application (or renewal)*

- ☐ Enroll/renew me as a Regular Member. I enclose \$50 (\$35 for those earning less than \$30,000 per year).
- ☐ Enroll/renew me as a Contributing Member. I enclose \$100.
- ☐ Enroll/renew me as a Sustaining Member. I enclose \$300.
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- ☐ Enroll me as a Lifetime Member. I enclose \$750.
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