

SALT EQUALIZER

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Society of American Law Teachers

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SALT Recruitment Brochures Available

A brochure describing SALT's vision, mission, events, and current projects is available to help recruit new members. The brochure was designed by Michael Rooke-Ley. Multiple copies are available from Co-President Carol Chomsky (Minnesota, choms001@umn.edu).

Presidents' Column

Carol Chomsky, University of Minnesota
Margaret Montoya, University of New Mexico

We held our spring Board meeting on May 12 in Montreal, Quebec, timing it to coincide with the AALS Workshop on Clinical Legal Education, which many of our members were attending. At the meeting, we began consideration of an important bylaws change, approved the first Stuart and Ellen Filler internship (see article on page 7), made plans to continue our activism on affirmative action in education, voted to add a Midwest public interest retreat to our successful Cover and Grillo retreats held on the East and West coasts, voted support for the Pre-Law Summer Institute, and decided to explore the possibility of regularly hosting a half-day teaching workshop for new teachers in conjunction with the AALS annual

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The Rev. Jesse Jackson at a rally supporting University of Michigan affirmative action. More on pages 13-14.

Bush v. Gore: Implications for Teaching and Scholarship

Margaret E. Montoya, University of New Mexico
Excerpts from an op/ed piece originally published in the Albuquerque Tribune

On January 20, as George W. Bush was being inaugurated President of the United States, a mailing was arriving for each of the Justices of the Supreme Court informing them that 673 law professors from 137 law schools protested the intervention by the majority on the Court to stop the counting of votes in Florida. . . .

The two-paragraph statement (which appears on the website www.the-rule-of-law.com) made a succinct but blunt point: that, in stopping the votes from being counted, the majority had acted as political partisans rather than judges of a court of law and had, thereby, tarnished the legitimacy of the Supreme Court. Law professors were publicly rebuking the

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"...the right-wing majority on the Court has erected insurmountable barriers limiting the applicability of the equal protection clause of the Fourteenth Amendment."

2002 SALT Awards Dinner to Celebrate Thirty Years of Activism

The 2002 SALT Awards Dinner will be particularly special when we gather in New Orleans to commemorate SALT's 30th anniversary. This celebration will include a reunion of past SALT presidents, officers, board members, and previous SALT Achievement Award recipients. We will acknowledge their pivotal roles in establishing the organization, setting the foundation for our activist agenda, and embodying our ideals.

During the festivities, we also will debut a film with interviews of previous SALT presidents in which they chronicle the important challenges and achievements over the years. Joining with present officers and board members, we will highlight the organization's continuing commitment to diversity, access to all facets of the legal profession and to social justice ideals.

Further details about the location and ticket reservations are forthcoming. For now, save the date: Saturday, January 5, 2002, for the SALT 30th Anniversary Awards Dinner. Contact co-chairpersons Paula C. Johnson (pcjohnso@law.syr.edu) and Michael Rooke-Ley (mrookele@willamette.edu) with questions regarding the dinner.

SALT EQUALIZER

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Sylvia Law (NYU) (second from left), recipient of the 2001 SALT Teaching Award, and her son Benjamin were joined left to right by Doreena Wong, a former student now an attorney with the National Health Law Program, Jenny Pizer, a former student currently Counsel for West Coast Lambda Legal Defense Fund, and Holly Maguigan (NYU).

Instilling Purpose: Courses in Justice Need to be Part of Every Student's Legal Education

Stephanie M. Wildman, Professor of Law and Director of the Center for Social Justice and Public Service, Santa Clara University
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I recently sat in a room overflowing with law students as an attorney friend described a 15-year pro

bono project in which he represented a death row inmate who had not been afforded adequate representation. The captivated audience listened attentively while my friend reflected on the notion that legal professionalism should include public service and the quest for justice. The notion of a professional as being

someone dedicated to public service and to the provision of justice needs to receive more prominence in legal education.

For several decades, lawyers have bemoaned the fact that the profession has changed and become more like a business, concerned only with bottom lines and billable hours. The controversy surrounding this change coincides with reports of high attorney dissatisfaction with their jobs and roles as lawyers. In fact, Notre Dame law professor Patrick J. Schiltz recently wrote that lawyers are "among the most depressed people in America" with elevated levels of anxiety and hostility. He also catalogues surveys reporting on career dissatisfaction among lawyers.

Could this rise in attorney dissatisfaction be tied to the increased disconnection of the profession from its central obligation for public service and provision of justice? Certainly many lawyers work diligently through bar associations and other means to maintain that connection. But the emphasis on service and justice

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should not rest only in the province of the bar. As a profession we need to ask what legal educators are doing to instill this calling to justice in the next generation of lawyers. While the Association of American Law Schools (AALS), through several past presidents, has emphasized the role of law schools in access to justice

“Could this rise in attorney dissatisfaction be tied to the increased disconnection of the profession from its central obligation for public service and provision of justice?”

and public service, legal education has been resistant to change.

Many students choose to attend law school because they are animated by an interest in justice, yet they graduate and ask, “Where was the class about justice?” All agree that justice needs to be a part of every law students’ legal education, but how can we ensure that justice doesn’t get lost in a thicket of doctrine and technical knowledge?

Questions about justice and the legal system are not a new issue for the profession. In 1918, Reginald Heber Smith linked equality of justice with freedom as “twin fundamental conceptions of American jurisprudence.” Echoing Heber Smith, President Jimmy Carter also charged that legal resources are not appropriately distributed. He

complained that “90 percent of our lawyers serve 10 percent of our people.”

The present urgency of the need for judicial system access and an assertion of the importance of studying justice issues in law school occur at a time when attacks on affirmative action in Texas, Michigan, and California have drastically affected the numbers of students of color enrolling in these law schools. Before these attacks, these public schools had been successful channels for bringing students of color into the legal profession. Studies show that people of color are more likely to serve communities that are disadvantaged and underrepresented, heightening the need to ensure that legal education is available to diverse populations. A commitment to justice in legal education helps ensure an environment that is welcoming to all students.

Several California law schools have established academic centers to begin to address the issue of justice and to ensure

“The notion of a professional as being someone dedicated to public service and to the provision of justice needs to receive more prominence in legal education.”

that justice is an important part of law students’ education. The University of California, Berkeley, established The Center for Social Justice; the University of California, Los Angeles, began a curriculum program in public interest law and policy; the University of San Diego instituted a Center for Public Interest Law;

SALT Law School Diversity Report to be Published

Members’ Help Sought

Vernellia Randall, University of Dayton

In February 2002 SALT hopes to publish a Law School Diversity Report Card, and we need your help.

Law school rankings by magazines, newspapers and others have become almost commonplace. Though several of them make some attempt to factor in diversity, these systems are inadequate.

The various ranking use a limited number of factors. For instance, Thomas E. Brennan’s *Judging the Law Schools*, sets up a specific Top Ten Diversity List. But his ranking is based only on number and percent of women and minority students and the number and percent of women and minority full-time faculty. The *Internet Legal Index Guide* has a Diversity Index that ranks schools based on the number of nonwhite male students and teachers.

The most well known ranking is published by *U.S. News and World Report*. This ranking created a diversity index based on the total proportion of minority students — not including international students — and the mix of racial groups on campus. The data are drawn from each school’s 2000–2001 student body. The formula produced a diversity index that ranged from 0.0 to 1.0. The closer a school’s number is to 1.0, the more diverse is the student population. Schools that had a large proportion of one ethnic group, even if it is a minority group, don’t score high in this index.

An additional problem is that the existing systems rank schools rather than grade them. That is, rather than asking what the schools should be performing

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SALT presented University of Oregon Law Professor Ibrahim Gassama (third from left) its annual Human Rights Award for his exemplary contributions to human rights struggles in the United States and throughout the world. Pictured with Prof. Gassama are Prof. Derrick Bell (NYU), who served as Master of Ceremonies at the Awards Banquet, and SALT Co-Presidents Margaret Montoya and Carol Chomsky.

Robert M. Cover Public Interest Law Retreat Explores Progressive Collaboration

Corey Norton, Law Student, Boston College Law School

On March 2–4, 2001, in snowy Peterborough, New Hampshire, Boston College Law students convened the 14th Annual Robert M. Cover Public Interest Law Retreat. This retreat seeks specifically to support, encourage, and energize practitioners and students who choose to represent society's most vulnerable populations.

Boston College Law School students chose this year's theme, "Merging Missions: Exploring the Realities of Progressive Collaboration," to recognize that in the new millennium public interest law will need to recognize that to serve the communities we care about, we will need to integrate unexpected areas of the law into our team and learn to reach across legal areas to collaborate and share strategies, resources, and ideas.

This year's attendance and representation of law schools and legal areas was one of the greatest in several years. Over 100 students, practitioners, and law professors attended, representing 15 law schools, over 12 distinct areas of public interest law, and many different geographic regions — including a group of students from eastern European countries. Legal issues represented ranged from First Amendment in our schools to environmental justice, criminalization of kids in crisis to international trade and animal rights to gender and sexuality discrimination.

Each year public interest law students organize the Cover Retreat. This year's organizing team of Boston College Law School students included: Christy Bell, Josh Borger, Todd Dickson, Mari Foreman, Kim Greco, Joe Holden, Mary Holper, Seph McKenna, Corey Norton, Stacey Race, and Amy Vosburg.

Third Annual Trina Grillo Public Interest Retreat

Margalynne Armstrong, Santa Clara, and Amy Weinstein, Santa Clara law student

More than 100 law students, law professors, and social justice/public interest attorneys inspired, enlightened, and revitalized each other on a beautiful late March weekend in Santa Cruz, California at the third annual Trina Grillo Public Interest Retreat. The West Coast counterpart to the Robert Cover Retreat, the Grillo retreat presented a unique opportunity for law students to meet with and learn from attorneys and professors who have dedicated their careers to working for justice. In turn the practic-

Prof. Gary Blasi's UCLA program is addressing issues of homelessness, substandard housing, and the uninhabitable conditions in public schools...

ing attorneys and academics who attended the retreat were heartened and reinvigorated by the vitality and spirit of the law students who will carry the torch of practicing law for the good of the public. Co-sponsored by SALT, the Grillo Retreat's theme for 2001 was "Cutting the Edge of Public Interest Law." Students and faculty from Santa Clara University, U.C. Berkeley, U.C.L.A., Loyola University Law School, Seattle University, and University of San Francisco attended the retreat.

Prof. Gary Blasi began the retreat, inspiring the gathered forces with the details of his public interest clinical work. UCLA's program is addressing issues of

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homelessness, substandard housing, and the uninhabitable conditions in public schools attended by thousands of low income Californians.

Blasi's presentation was followed by a panel that looked at "The Cutting Edge of Criminal Justice." Presenters included An Ngyuen, a student who is working with other students and professors at Santa Clara to establish the Northern California Innocence Project; Prof. Ellen Kreitzberg, who annually organizes a Death Penalty College to instruct and support attorneys in death penalty appeals; and Samuel Paz, a practicing attorney who specializes in police brutality cases. International public interest and human rights issues were addressed by a panel that included U.S.F. professors Dolores Donovan and Connie de la Vega and Prof. Steve Diamond from Santa Clara. Prof. Donovan discussed globalization and the preservation of tribal governance structures; Prof. de la Vega and one of her students portrayed their human rights work at the U.N.; and Prof. Diamond presented a very creative and effective project that prevented the use of organized labor's vast pension investment resources to support an international initial public offering that would be environmentally and socially problematic. Other panels focused on environmental justice issues and the realities of public interest practice.

The Third Annual Grillo Public Interest Retreat introduced the many facets of public interest law to the "next generation" and provided a respite for some of the forces from the front lines of social justice practice. Named after the late Professor Trina Grillo, a model of compassion and socially conscious legal work, the conference carried on her tradition of guiding students to pursue a more just and caring legal profession.

SALT Board Approves Funds for Midwest Public Interest Retreat; Seeks Coordinator

The SALT Board approved funding to add a Midwestern version of the successful Cover and Grillo Public Interest Retreats. Like the East and West coast programs, the Midwestern program will provide an opportunity for public interest law students, faculty, and practitioners to forge an alliance by exchanging viewpoints, exploring career opportunities, and formulating strategies for social justice.

The Board is seeking one or two SALT members to coordinate the Midwestern conference. Steve Wizner (Yale, stephen.wizner@yale.edu) and Stephanie Wildman (Berkeley, swildman@law.berkeley.edu, until July 1; thereafter, Santa Clara), who have helped coordinate the East and West coast conferences, can provide further information, and are willing to assist the coordinator(s). If interested in volunteering, please contact SALT copresident Carol Chomsky (Minnesota, choms001@umn.edu) by August 15, 2001.

Alliance for Justice Organizes Around Judicial Nominations Process

Marcia Kuntz, Director, Judicial Selection, Alliance for Justice

Recent actions by the Bush Administration provide strong evidence that the President intends for his legacy to include a dramatic rightward shift in the federal judiciary. The White House Counsel's office is staffed by young conservatives, many of whom are purportedly Federalist Society members, who are apparently determined to avenge Robert Bork's failed Supreme Court nomination 15 years ago by seating like-

minded people. The Administration's decision to cut the ABA out of the pre-nomination process is further evidence that it is trying to clear the way for the appointment of right-wing ideologues. Causing further alarm among judiciary-watchers were indications that the White

House and Judiciary Committee Chair Orrin Hatch (pending the Democrats' assumption of majority status in the Senate) are resistant to continuing the practice during the Clinton years of consulting with Congress before nominations are actually submitted.

It is true that Senator Jeffords' departure from the Republican Party changes the nominations landscape considerably. With a Democrat chairing the committee, we believe that we are far more likely to see a thorough and deliberative process, including the scheduling of hearings on particular nominees only after the ABA has completed its review. Also, the White House

"The Administration's decision to cut the ABA out of the prenomination process is further evidence that it is trying to clear the way for the appointment of right-wing ideologues."

is likely to feel pressure to consult in a much more meaningful way with Democrats pre-nomination, and we are even hopeful (though not necessarily optimistic) that the Democrats' new

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Supreme Court Rules Against SALT Position Supporting Former Boy Scout James Dale

Joan Howarth, University of Nevada,
Las Vegas School of Law

In *Boy Scouts v. Dale*, a five-member majority of the U.S. Supreme Court accepted the Boy Scouts' claim of a First Amendment exemption from New Jersey's statutory prohibition of discrimination on the basis of sexual orientation, thus rejecting the arguments put forth by SALT in its amicus brief filed on behalf of James Dale. SALT's brief was authored by David Cole (Georgetown) and Nan Hunter (Brooklyn), and filed with the support of Milbank, Tweed, Hadley & McCloy through the special efforts of Milbank attorney Barry Berland.

The SALT brief and other amicus briefs filed on behalf of Dale, including briefs from the NAACP, the ABA, 11 states, and seven major cities, are posted on the website for the Lambda Legal Defense and Education Fund (www.lambdalegal.org), attorneys for Dale.

Since the Dale decision, many government and private entities have disassociated themselves from the Boy Scouts because of their discriminatory policies. The fight to change the Boy Scout policies continues.

Excerpts from SALT's Amicus Brief on Behalf of James Dale

"There is an inescapable tension between First Amendment rights of association and anti-discrimination laws. This Court, however, has consistently resolved that tension by drawing a clear

line: It zealously protects private groups' ability to discriminate on the basis of *expression* as a necessary corollary of the right to speak, but it has never protected private discrimination on the basis of *status*." [...]

"In rare cases where the organization's primary message is exclusion *per se*, the First Amendment right of association may protect status-based exclusionary policies. The Ku Klux Klan, for example, may well have a First Amendment right not to admit African



James Dale with his parents at his Eagle Scout Court of Honor in 1988.

American members. But any such exemption from an otherwise generally applicable neutral nondiscrimination law must be narrowly drawn if equality norms are to be preserved." [...]

"The Boy Scouts are not like the Ku Klux Klan. They are not an organization whose central self-definition requires exclusion of openly gay youth and men. Indeed, their contention that admitting

gay persons would undermine their expressive rights is fatally undermined by the fact that they do not even require members or leaders to subscribe to their views on homosexuality, and have not sought to expel heterosexual leaders who have publicly dissented from their policy. Instead, they have simply declared that gay youth and men, irrespective of their views, are ineligible for membership in the Boy Scouts. That is the essence of discrimination, not speech."

SALT's Statement of Interest in *Dale*

"The Society of American Law Teachers (SALT) is an association of more than 800 individual law faculty members at over 150 law schools, which was founded in 1974 by a group of leading law professors dedicated to improving the quality of legal education by making it more responsive to societal concerns. As a membership organization of law teachers, SALT is particularly sensitive to the historic role the courts have played in upholding both nondiscrimination and anti-censorship principles. SALT has filed amicus briefs in federal and state courts on behalf of historically under-represented groups to support their claims to equal access to education, employment, and health care, and to full

participation in civic life. SALT has also supported individuals and groups asserting First Amendment rights in courts and elsewhere. SALT is filing this brief because it supports the distinction this Court has drawn between viewpoint-based restrictions on membership, which the First Amendment protects, and status-based discrimination, which the First Amendment generally does not protect."

Stuart and Ellen Filler Fellowship Fund Makes First Award

Fran Ansley, Tennessee

At its January 2001 meeting the SALT board of directors voted to establish an annual law student fellowship in memory of longtime SALT member and fighter for social justice, Stuart Filler. Stuart and his wife Ellen, who passed away not long after Stuart's death, were both great friends of SALT and of the causes that SALT has championed over many years. Stuart will be especially remembered for his deep affection and respect for law students.

Friends and supporters have honored Stuart and Ellen by contributing toward a fund that SALT hopes will soon be sufficient to support an annual award. In the meantime, the SALT board has added sufficient funds to award a \$2,200 fellowship which will be given each year to a social justice organization for the purpose of enabling that group to hire a

"The LTC...runs a U.S. program that sends law students to work in poor, rural communities whose lack of access to legal services places their landownership at risk."

law student to participate actively in its work. In most cases it is expected that the fellowship will function as a summer stipend, but in appropriate circumstances arrangements might be otherwise.

Recipients are nominated by a SALT board member personally familiar with the organization's work, and the winner is

selected by a committee of three, subject to approval of the Board. The current selection committee consists of Fran Ansley, Karen Czapanskiy, and Michael Rooke-Ley.

This year's fellowship has been awarded to the Land Tenure Center at the University of Wisconsin. The LTC, which

"Friends and supporters have honored Stuart and Ellen by contributing toward a fund that SALT hopes will soon be sufficient to support an annual award."

has been engaged in a range of research and action programs in places all over the world, runs a U.S. program that sends law students to work in poor, rural communities whose lack of access to legal services places their landownership at risk.

The program began four summers ago when LTC sent one law student from the University of Wisconsin Law School to work in rural Alabama with an organization—started during the Civil Rights Movement—that works with black landowners. The Center now has placements in Appalachia working on problems of mineral severance; in New Mexico working with landowners who are members of the Navajo Indian Nation; in two sites working along the Texas-Mexico border with poor Mexican American clients who live in informal settlements called colonias; and at sites in North Carolina and Georgia with an organization that works with black landowners to prevent further black land loss in the Southeast.

The demand from law students and communities for placements has now outstripped the LTC's limited ability to

fund students. SALT is pleased to help the Land Tenure Center build on its four-year track record of success by enabling it to support more students at a more adequate level. We feel certain that Stuart and Ellen would be sending their best wishes and congratulations to the Center and to the student that this fellowship will support.

Other SALT members and friends should be thinking now about groups they would like to nominate for next year. And those who remember Stuart and want to honor his memory are welcome and encouraged to send donations earmarked for the Fund at any time to Norm Stein, SALT Treasurer, University of Alabama, 101 Paul Bryant Drive East, Box 870382, Tuscaloosa, Alabama, 35487, nstein@law.ua.edu.

Call for Nominations for Board and Nominating Committee

The SALT Board of Governors is seeking nominations (self-nominations are welcome) for two types of positions: membership on the Board and membership on the Board Nominating Committee. Take advantage of this opportunity to join an energetic and committed group of progressive law teachers doing exciting work. SALT is committed to a broadly diverse and active Board. Members of the Nominating Committee, who need not be members of the Board, select the slate for Board elections. If you are interested (or for more information), contact the co-chairs of the Nominating Committee, Sue Bryant (CUNY, 718-340-4313, bryant@mail.law.cuny.edu) and Holly Maguigan (NYU, 212-998-6433, holly.maguigan@nyu.edu). The Nominating Committee will do its work this fall. New Board members will take office in January.

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and Santa Clara University founded The Center for Social Justice and Public Service. While these academic centers have varying missions, they share a common goal of ensuring that public service and the quest for justice become institutionalized within our law schools.

These centers also illustrate an important trend in legal education. Law schools recognize that business as usual has not provided the training and inspiration for the next generation of lawyers who will work on social justice and public interest issues, nor has it fulfilled its promise to instill a hunger for justice as part of every law student's professional education. These centers mark an important departure from this history of business as usual in legal education.

This departure has the potential for positive impact on the entire educational experience.

As one Boalt student commented: "The Center for Social Justice made me a more active participant in my first-year classes. I came to law school to learn how

"Law schools recognize that business as usual has not provided the training and inspiration for the next generation of lawyers who will work on social justice and public interest issues."

law relates to society. I've encountered challenging academic insights during Center for Social Justice events. My enthusiasm for these social justice topics carries over into my classes."

Another reported that Center events "set the context for some honest talk

about practical things we students can do to confront race and gender issues in the classroom." These students, the lawyers of the future, face the immediacy of social justice issues as part of their legal training.

In our increasingly diverse society, social justice is part of the professional responsibility of all attorneys. Practicing lawyers can share their knowledge and foster student enthusiasm by becoming involved with these centers. Forging an alliance between legal educators, practitioners, students, and communities can ensure that improving the lives of disadvantaged and underrepresented members of society remains integral to the lawyer's calling.

Stephanie M. Wildman is a Professor of Law and Director of the Center for Social Justice and Public Service at Santa Clara University. She served as Founding Director of the Boalt Hall Center for Social Justice at the University of California at Berkeley School of Law, and she is a Past Co-President of SALT.

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leverage will result in the nomination of candidates who are more in the mainstream than some the President has nominated so far. Still, because of the Administration's clear interest in further tilting the judiciary rightward, we are likely to see major battles in the Senate, and we can't afford to be complacent.

The Alliance for Justice is working in coalition with other groups interested in preventing the appointment of people to the federal bench who will roll back progress made on civil rights, women's rights, individual liberties, and the

environment. Our efforts include a public education campaign to get the word out on the importance of the federal judiciary and what's at stake. We recently organized a letter to all Senators, signed by nearly 200 law professors, urging the Senate to scrutinize every nominee and suggesting standards by which nominees should be evaluated. While we have sent up the initial list of signatories, we are continuing to accept names of people who want to join the letter, so please email me at marciakuntz@afj.org if you would like to sign on or if you would like more information.

Our coalition is trying to elevate the discussion of judicial nominees and the

nominations process to one of standards, including those pertaining to judicial philosophy and temperament, which are discussed in the letter. The professors' letter emphasizes that the burden is on nominees to establish that they meet the highest standards, rather than on the Senate to determine that they don't. As the letter notes, the mere absence of disqualifying evidence in a nominee's record should not constitute sufficient grounds for confirmation.

As part of our education campaign, the Alliance is planning forums across the country to raise awareness about the judicial selection process. Speakers will include local and national activists on

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this issue, community leaders, and academics. We urge you to contact us if you are interested in participating.

In addition, our coalition has begun researching each of the nominees. Our research includes analysis of opinions, in the case of sitting judges, analysis of positions taken in major cases handled by practicing lawyers, and a review of published work by law professors. Our research consists also of reviewing news

"The professors' letter emphasizes that the burden is on nominees to establish that they meet the highest standards, rather than on the Senate to determine that they don't."

reports on nominees, if possible obtaining speeches they have given, and collecting anecdotal information from practitioners and law professors. In addition to appellate court nominees, we are gathering information on possible Supreme Court nominees. We would greatly appreciate any information you can provide about any nominee or prospective nominee, as well, of course, as offers to undertake more in-depth research on particular nominees. Please contact me if you would like to help.

Diversity:

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relative to diversity, they merely compare schools to each other without judging the adequacy of their performance. The ranking systems are similar to grading systems commonly used in law school systems. Many law schools use norm referenced grading (comparing students to each) rather than criterion referenced grading (comparing students' performance to a standard).

In a norm referenced grading system, there is always one person on top and one person on the bottom. Thus, in a norm-referenced ranking system, even when all the schools are doing poorly, there is a Top 10 list. An example of a diversity-ranking list using a norm-referenced system is *Judging the Law School*. In contrast, in a criterion-referenced system, it is potentially possible for many schools to be on the top. Thus, the *U.S. News and World Report* diversity index, as limited as it is, is a criterion reference system, since it is potentially possible for all the schools to get 1.0

It is because of these shortcomings that SALT has decided to develop, conduct, and publicize its own diversity grading system. Ultimately, SALT will evaluate law schools on both climate and demographics. Initially, the tool will assess law schools' performance only as to demographics related to gender and race for students, faculty, and administration. It will also ask some very limited questions relative to climate related to sexual orientation. The SALT Diversity Report Card will be criterion referenced rather than norm referenced; that is we will set criteria as to how the schools ought to be

performing and judge the schools against those criteria.

What help is needed?

Over the next six months, we will be collecting and evaluating data. While much of the information on students and full-time faculty can be obtained from public sources, we also need information on adjunct faculty and administration. Request for information will be sent to

Deans. We need at least one SALT member per law school to help facilitate obtaining information by encouraging the Deans to respond.

If you would like more information about the Law School Diversity

Report Card or would like to help us, please contact Vernellia Randall, randall@udayton.edu.

"An additional problem is that the existing systems rank schools rather than grade them."

SALT Seeks Web Editor

SALT is seeking a member to assume responsibility for the content of its website. The Board's goal is to make available on the website the resources SALT produces on progressive legal issues. The editor would compile documents, reports, etc. prepared in connection with the board's activities and then edit them so they are easily readable and accessible on the website. The Board expects to provide funding for technical assistance to the Editor. Interested persons should contact Co-Presidents Margaret Montoya (New Mexico, montoya@law.unm.edu) or Carol Chomsky (Minnesota, choms001@umn.edu) as soon as possible.

President:

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meetings. Following, we share more information on these initiatives.

Elections/Bylaws Change

The bylaws revision the Board is contemplating is a change to the election process that SALT has used in recent years. Because the change is significant and affects the way in which members of SALT may participate in the elections process, we are asking for your feedback on the proposal. After reading the discussion here, please call, email, or write us with any comments you wish to make so that

"We have proposed to the Board a return to the earlier practice of selecting the SALT Board through a process that would produce an uncontested slate for election by the Board."

we may take them into account when we consider the bylaws revision at the fall Board meeting.

Currently the bylaws provide that a slate of nominees will be selected by a Nominating Committee that consists of five people, at least two of whom are Board members (though in recent history all have been Board members). In order to provide members with a voice in choosing Board members, the slate itself is to have on it a number of nominees that is at least one-fourth more than the number of Board vacancies but not more than twice the number of vacancies. Each year at least 10 individuals are elected to

the Board, in addition to any selected to fill vacancies caused by resignations. The slate thus has approximately 13 to 20 names, resulting in a contested election for the available spots.

We have proposed to the Board a return to the earlier practice of selecting the SALT Board through a process that would produce an uncontested slate for election by the Board. We appreciate that contested elections were instituted as part of our efforts to ensure that SALT avoid being — or appearing to be — an "insider" organization. It is vitally important to us that SALT be inclusive of all our members, and that we reach out to create a truly diverse Board that brings multiple voices together in leadership of the organization. We have felt, however, that the contested elections have created the appearance, but not necessarily the reality, of effective democracy. Through the nominations process, we think SALT has done a good job of reaching out to a diverse group of people to run for Board positions, offering a slate that is diverse by race, gender, sexual orientation, geography, type of school, type of academic

appointment, etc. The election itself may skew the results, however, and result in a less diverse grouping. In addition, individuals who are eager to contribute to SALT but are less well-known often lose the election, and it has been difficult to maintain their activism in SALT afterwards.

"We have felt...that the contested elections have created the appearance, but not necessarily the reality, of effective democracy."

In addition, the election process itself has been unwieldy. We have had difficulties meeting the deadlines set in the bylaws — names on the slate given to the presidents by September 30, mailing of ballots to members by October 20, return of ballots by November 10, counting by

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SALT Co-Presidents Margaret Montoya (left) and Carol Chomsky (right) celebrated at the SALT Awards Dinner with Sylvia Law, recipient of the SALT Teaching Award.

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November 15, all in time for announcement in the January *Equalizer* and giving time for the Board to give advice on who might be nominees. We have also had difficulty ensuring that only current paid members can vote but that members late with their dues can still pay and have their votes count. We could perhaps solve these problems by modifying the process itself, including the possibility of adopting e-mail balloting, but not all concerns would be addressed in this fashion.

Perhaps most significantly, a surprisingly small number of members actually

"Tell us what kind of voice you want to have in the Board selection process."

have voted in recent elections, often fewer than 100 of more than 600 eligible. Almost half the votes cast in recent elections may have come from the more than 40 Board members. Few members thus have taken advantage of the opportunity to participate in the selection of Board members. We hope that is a measure of the confidence you place in the leadership as well as perhaps an uncertainty over which of the many very qualified and dedicated nominees you should select. Whatever the cause, we think it suggests that we might try to reach our goal — a consensus on a diverse and representative Board — without having an election by the members.

At the same time, we are mindful of the need to reach out to the members to give you a genuine opportunity to participate in the governance of the organization. To be sure we do that, if we

move to uncontested elections, we envision the following process, developed from discussions at the Board meeting:

- 1) The bylaws already contemplate a Nominating Committee that has non-Board members on it. We intend to publish a call for members to nominate themselves or others to serve on the Nominating Committee (see box on page 7) and hope to have at least one or two or even three members of the Nominating Committee be non-Board members.
- 2) We have asked a small group of Board members to draft for the Board's consideration at our fall meeting two documents to assist us in reaching our goal of an active and diverse Board. One will be a statement of commitment to diversity for the Board, outlining the kinds of diversity we as an organization believe important to see reflected in any slate for Board positions and why we view this value as important to organizational vitality. The second document will be a statement of responsibilities and expectations for Board members, which we can share with prospective Board members so they know what we mean when we say SALT has a working Board. Incumbent Board members whose terms are expiring can also use the statement to help them decide whether they are prepared to recommit to those expectations, and the Nominating Committee can use the statement as a guideline as it decides on the balance between incumbent and new Board members on the slate to be presented to the Board. We talked about term limits but decided the Nominating Committee is best situated to decide whether or not to resubmit a current board member.
- 3) We will publish a call for members to nominate themselves or others to be

on the slate for Board of Governors. The Nominating Committee will prepare a slate for presentation to the Board of Governors at the fall meeting, asking each candidate to provide a statement about his or her commitment to SALT's agenda. The slate and the statements will be presented to the Board, which will decide whether to ratify the slate or make changes to it. There would not be an election ballot sent to members, but the statements of each of the new Board members would be sent to members, either through the *Equalizer*, through the (soon-to-be-created) member e-mail notification list, or through a direct mailing. (We have also talked about the possibility of providing members an opportunity to nominate additional candidates by petition, which would then result in a contested election.)

We have discussed the proposed election changes both at the Board meeting and among all Board members via e-mail. Many Board members support the proposal; others are concerned about the possible retreat from democracy, openness, and member control. Now we need to hear from you, our members, with your questions, comments, and concerns about this proposal. E-mail us (choms001@umn.edu or montoya@law.unm.edu), write us, or call us (612-625-2885 or 505-277-3010) with your thoughts, or contact any Board member. Tell us what kind of voice you want to have in the Board selection process. We'll pass your comments on to the Board as well so we can be fully informed about member views when we consider this proposal and alternatives to it at the Board meeting in the fall. We think this is an important step towards more effective leadership, but want very much to know whether our vision of that

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Bush v. Gore:

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Supreme Court for violating of the Rule of Law. In other words, their decision to stop the counting of the votes and declare Bush the winner of the election had no basis in law and was a judicial *coup d'état*, and thus an illegitimate transfer of power. . . .

Two general arguments undergird law professors' widespread disapproval of the Supreme Court and its role in the outcome of the election: 1) the Court's majority acted in obvious self-interest in selecting Bush as president, flaunting its unchecked power to impose an anti-democratic result, and 2) the majority decided the election dispute by misusing the equal protection doctrine and other legal concepts. As a Chicana law professor, I believe that the Supreme Court's decision in *Bush v. Gore* had an espe-

"Thus, one of the Court's most important cases produced an opinion with no future applicability, no precedential value with respect to its central proposition."

cially problematic meaning for those of us whose scholarship and teaching is informed by the manner in which courts and judges use race to structure relationships and distribute power in this society.

The Doctrinal Flaws in the Majority's Decision in *Bush v. Gore*

Law professors have . . . severely criticized the Court's decision for its weak reasoning, particularly with respect to its use of the equal protection doctrine. Over

the past few years, the right-wing majority on the Court has erected insurmountable barriers limiting the applicability of the equal protection clause of the Fourteenth Amendment. It came as a surprise, therefore, when the Court reached for this constitutional provision to support a decision that was without precedent since the Court had never before even hinted that it would require uniformity in the standards applied to voting mechanisms. Once having decided that Florida should use uniform standards, the Court could and should have remanded the case to the Florida courts. Instead, it concluded there was no time for the Florida courts to act because of the December 12 deadline, the date by which the slate of delegates could not be challenged by Congress. Was this a real deadline? No, in fact, in this very election four other states—California, Iowa, Maryland and Pennsylvania—submitted their electoral slates after this date with no ill effects. Moreover, having applied the equal protection clause to this case, the majority then limited its decision to "the present circumstances" because of the complexity of applying equal protection to election processes. Thus, one of the Court's most important cases produced an opinion with no future applicability, no precedential value with respect to its central proposition.

For legal scholars, the Court's use of the equal protection doctrine was replete with subtextual meaning based on its historical and jurisprudential context. The Fourteenth Amendment, passed after the Civil War, has had special importance for African Americans and other communities of color. Fundamental civic rights, such as voting and jury service, were established by the Supreme Court's interpretation of the Fourteenth Amendment against the states. Jim Crow segregation in education and housing was dismantled by the federal courts using equal protection. One of the major achievements of the last century is this society's hard won expan-

sion of human and civil rights to women, racial and religious minorities, the disabled, the elderly, and the poor, largely through the use of the equal protection clause. Consequently, there was a sense of profound loss and a yielding to cynicism

"From a LatCrit perspective, Bush v. Gore is a vindication of the critique that courts are neither neutral nor objective in their decision-making..."

when the Court used equal protection as the rationale for its decision in the Florida case to stop the counting of votes, many of which were cast by racial and ethnic minorities using decrepit voting machines. As law professors, we are especially aware that our shared legal history has been diminished by the actions of the majority on the Supreme Court.

I share these criticisms of the decision, but, as a Chicana law professor who writes in the area of Latina/o Critical Legal Studies (also called "LatCrit"), I would add a different reason that is embedded in my dual roles as a scholar of color and a teacher. I am not an innocent about the law, and I don't idealize its expression through constitutions, judicial opinions or statutes. I struggle to teach my students that the law is simultaneously a force for liberation and equality and a force for oppression and discrimination. My research is focused on revealing and explicating how these opposing tendencies in the law structure the lives and experiences of Latinas/os and the communities with which we identify.

Bush v. Gore continued on page 13

Bush v. Gore:

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From a LatCrit perspective, *Bush v. Gore* is a vindication of the critique that courts are neither neutral nor objective in their decision-making nor even bound by their judicial ideologies as expressed in their notions of federalism and state's rights. The Supreme Court's remarkable lack of neutrality in *Bush v. Gore* provides us with what we in critical studies might call a counter-hegemonic moment when the motivations and mechanisms of power become evident. As their masks of neutrality drop, we see these judges as partisan propagandists, with little concern for the nation's long-term interests. Having right-wing judges abandon any

"My role as a LatCrit scholar rubs up against my role as a teacher as I realize that the Supreme Court's willingness to exercise this kind of raw and unbridled power compromises my ability to inculcate in students an understanding that the law can be just..."

pretense of impartiality and render an indefensible decision provides a moment of satisfaction.

For me, that sweet moment when our critiques are enacted doesn't last; the "gotcha" moment passes. My role as a LatCrit scholar rubs up against my role as a teacher as I realize that the Supreme Court's willingness to exercise this kind of

raw and unbridled power compromises my ability to inculcate in students an understanding that the law can be just: that the law is just when it supports and sustains democratic institutions and values; that the law is just when concepts such as institutional checks and balances and counting all the votes really do mean something.

Bush v. Gore is an excellent representation of the idea that judges are just people with preferences and prejudices who choose sides and then construct a decision to support the outcome. This position, when advocated by the Legal Realists of the 1920's, was countered by those who subscribed to a Rule of Law ideology that judges, by adhering to principle and precedent, can overcome their self-interest, biases, and narrow experiences. My research tends towards Legal Realism, while my teaching is more influenced by the Rule of Law ideal. I would not and could not be a law teacher if I didn't believe in the law's potential for justice even as I seek to reveal the individual stories and histories that demonstrate the law's inexhaustible capacity for injustice. I am acutely aware that law teachers prepare future lawyers, legislators, and judges to play pivotal roles in federal, state, and tribal legal systems. Our teaching is animated by a commitment to the possibility of justice. For that reason, it is important that we maintain a strong commitment to democratic values and the notion that a judge's convictions are not synonymous with his/her self-interest.

In acting out an undiluted "Law is only politics" ideology, the majority on the Supreme Court altered my relationship with students by raising serious doubts about the efficacy of our governmental institutions, most especially the courts. The abiding anger that I feel towards the right-wing majority on the Supreme Court is that they have weakened my commitment to the Rule of Law, an ideal that lends meaning and importance to my teaching.

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is shared. We recommend this step with the belief that the Board's past history of making corrections when necessary is a good predictor that the Board would act to reinstate contested elections if the Board saw the need to do so. We solicit your advice and counsel on this important issue.



University of Michigan students demonstrated in support of affirmative action.

Affirmative Action and the Michigan Litigation

As many of you know, the federal district court has completed its consideration of the two cases involving chal-

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lenges to the admissions process at the University of Michigan undergraduate program and law school. In the undergraduate case, Judge Patrick Duggan concluded that the admissions process was



The Rev. Jesse Jackson addressed affirmative action supporters at the University of Michigan.



Affirmative action rally at the University of Michigan

constitutional, while Judge Bernard Friedman concluded that the law school's admissions process was unconstitutional and a violation of Title VI of the 1964 Civil Rights Act. He held that neither diversity nor "the alternative grounds urged by the interveners — to 'level the playing field' between applicants of minority and non-minority races" — are compelling state interests and, even if they were, the process is not narrowly tailored in its use of race. The two rulings are in conflict, and both

cases have been appealed to the Sixth Circuit Court of Appeals.

SALT has supported the student-intervenors in both the presentation of their case in district court and in their impressively successful organizing efforts. SALT was one of the first and therefore most critical financial supporters,

contributing a total of \$10,000 to help pay for litigation expenses. Several of our Board members participated in the litigation as expert witnesses. SALT also distributed to law faculty around the country more than 75 copies of the video made by the student-intervenors showing the "in the streets" organizing they have done.

At the Board meeting, we committed to organizing an affirmative action conference and summit to coincide if possible with the 6th Circuit hearing in Cincinnati and with our fall Board meeting. We are in the process of contacting other organizations with an interest in legal education to co-sponsor this event. The conference we are planning will update participants on the developments that have occurred throughout the nation on affirmative action in admissions, and the "summit" will

gather a group of activists to coordinate activities responding to the anticipated appeal to the U.S. Supreme Court and its subsequent decision, regardless of its outcome. As we go to print, we understand that the 6th Circuit hearing will be scheduled sometime between October 25 and November 2. Please save these dates and plan to join us in Cincinnati. We'll provide more specific information as soon as possible.

A Mid-western Public Interest Retreat

SALT's annual retreats held in New Hampshire to honor the memory of Robert Cover (Yale) and in California to honor Trina Grillo (San Francisco) provide progressive law students, teachers, and practitioners the opportunity to talk intensively about public interest law and to develop contacts within the public interest legal community. SALT has decided to expand the reach of this program by creating a third retreat in the Midwest. Preliminary planning is now under way for a public interest retreat in Minnesota for spring 2002. If you are interested in working to develop this new program, please contact Carol Chomsky (Minnesota).

Pre-Law Summer Institute for Native and Indigenous Students

Some 30 years ago there were fewer than 25 lawyers with connections to the tribes that make up Indian Country; today there are more than 2,000. Almost all of these lawyers began their legal careers through the Pre-Law Summer Institute

"Some 30 years ago there were fewer than 25 lawyers with connections to the tribes that make up Indian Country; today there are more than 2,000."

(PLSI) that is held each year at the Law School at the University of New Mexico. This program was the model for the CLEO program, which provides prelaw training to minority law students. Unfortunately, although not surprisingly, the PLSI has

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lost its federal funding, and now the program's ability to attract low-income students is threatened because students must bear the costs of this preparation program.

After discussing SALT's need to have more outreach to native and indigenous populations, the SALT Board voted to support the PLSI with \$2,000. In order to broaden the impact of our support and strengthen SALT's commitment in this area, we will work with the students who are supported with SALT funds to identify students, teachers, and practitioners with an interest in tribal law or progressive approaches to federal Indian law to involve in all three public interest retreats.

Teaching Workshop for New Progressive Teachers

A proposal for an exciting new activity for SALT emerged from our discussions at the Board meeting — establishing an annual half-day workshop for new law teachers, timed to precede the AALS meeting each year. The workshop would provide new progressive teachers a place to learn a little bit about bringing their political commitments with them into the classroom, giving them a taste of the kind of dialogue that occurs at our periodic full teaching conferences. The workshop would also be a place for them to meet other progressive law faculty in a non-threatening environment and help them to feel more at home in the academy as they begin their teaching careers. If you are interested in helping with this important project, contact Martha

Chamallas, chamallas@law.pitt.edu, or Nancy Cook, cook@law.mail.cornell.edu.

New Membership Brochure

We've attached to this *Equalizer* a copy of SALT's new membership brochure, created to highlight SALT's many activities and assist in recruitment of new members to support those activities. Please contact either Margaret or Carol if you will be attending an event—any meeting, conference, or gathering of progressive law professors—at which the brochure can be distributed. Please use the attached brochure to recruit a new member for SALT.

This is an exciting and challenging time for SALT and all progressive law faculty. We invite each of you to join us in any of the many activities in which SALT is now engaged.

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.
- ☐ I enclose _____ (\$100, \$150, \$200, or \$250) to prepay my dues for _____ years (\$50 each year).
- ☐ Enroll me as a Lifetime Member. I enclose \$750.
- ☐ I am contributing \$_____ to the Stuart Filler Fund to support public interest internships.
- ☐ I am contributing \$_____ as an additional contribution to support SALT's promotion of affirmative action.

Name _____ School _____

Address _____ E-mail _____

ZIP Code _____

Make checks payable to: Society of American Law Teachers

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