

SALT EQUALIZER

Volume 2000, Issue 4

Society of American Law Teachers

December 2000

In This Issue

Bar Exam Task Force Report, page 2

Robert Cover Workshop, page 3

Norman Dorsen Honored, page 4

*Changes in Bar Passage Standards,
page 5*

Salary Survey, page 7

New SALT Board Members, page 7

*SALT Awards Dinner in San
Francisco, pages 8–9*

NYU Conference, pages 10–15

SALT at the AALS San Francisco Meeting

Cover Workshop (see page 3):
Wednesday, January 3, 7–9 p.m.
Plaza A (Lobby Level) in the Hilton

**Open Board Meeting/Briefing on
New Developments in Affirmative
Action:**
Thursday, January 4, 5–7 p.m.
Location TBA

Informal Gathering:
Friday, January 5, 6:30–7:30 p.m.
SALT Suite (room TBA)

Awards Dinner (see pages 8–9):
Saturday, January 6, starting at 7 p.m.
Yank Sing Restaurant, 101 Spear
Street (at Mission)

Board Meeting:
Sunday, January 7, 8 a.m.–noon
Union Square 15 & 16 (4th Floor), in
the Hilton

A Focus on Access to the Legal Profession

Eric S. Janus, Editor

For years, a central focus of SALT has been advocating diverse access to the legal profession. This issue of *The Equalizer* reflects that focus in a series of articles addressing the key points of access, law school and bar admissions.

Co-presidents Margaret Montoya and Carol Chomsky report on the important litigation challenging affirmative action in admissions at the University of Michigan. Theresa Glennon and Peter

Margulies propose steps SALT members can take now to make admissions practices more diverse.

Joan Howarth and Eileen Kaufman report on SALT's work regarding bar admissions, and Debbie Merritt summarizes her forthcoming article on the national movement to raise bar passage standards. Sue Bryant, Deborah Post and others summarize the NYU Teaching Conference, whose focus included high stakes testing.

This year's Cover Workshop (see page 3) will provide a forum at the AALS meeting for a more in-depth discussions of these important topics.

Presidents' Column

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

November 10, 2000

On June 25, 1997, Barbara Grutter received a letter from the University of Michigan Law School notifying her that her application had been rejected after first having been placed on a "wait list." Thus began the actions that have led to the lawsuit that is now known as *Grutter v. Bollinger*. A companion case has also been filed against the University's undergraduate College of Literature, Arts, and Sciences by Ms. Grutter's lawyers, the Center for Individual Rights, the legal organization that successfully challenged the affirmative action program at the University of Texas School of Law in the *Hopwood* case.

Some 25 years earlier Allan Paul Bakke had received a similar letter from the University of California at Davis Medical School. As we know so well, his lawsuit eventually reached the U.S. Supreme Court, which ruled that, while quota mechanisms like those used by UC-Davis were unconstitutional, admissions officers could continue to "take race into account" as

President continued on page 2



Past, present and future presidents

President:

▼ continued from page 1

one factor in the comparison of minority applicants with other applicants.

As noted at the time by **Charles Lawrence III** (SALT President, 1988–90) and Joel Dreyfuss, the UC Regents had no incentive to defend the University's affirmative action programs by acknowledging its historic and continuing

"The student intervenors...argued in their Motion to Intervene that, as direct beneficiaries of affirmative action, their interests are distinct from and broader, deeper, and more urgent than the interests of the school administration."

patterns of discrimination against minority students, even though naming that history would have strengthened the University's justification for affirmative action. (See *THE BAKKE CASE: THE POLITICS OF INEQUALITY*.) Determined to avoid a similar result in the current litigation involving the Michigan Law School, a group of 41 students and three inter-racial organizations have joined the lawsuit against Michigan as intervenors. The student intervenors — prospective law school applicants from Michigan, Texas and California, high school students, current law school students, and affirmative action coalitions — argued in their Motion to Intervene that, as direct beneficiaries of affirmative action, their interests are distinct from and broader, deeper, and more urgent than the interests

Report from Bar Exam Task Force

Joan Howarth

Golden Gate University School of Law

Eileen Kaufman

Touro College, Jacob D. Fuchsberg Law Center

SALT has been quite successful in mobilizing interest and enthusiasm for re-examining how we license law graduates to practice law. Beginning with the September 1999 SALT conference in San Francisco entitled "Re-examining the Bar Exam," SALT has generated considerable concern about the extent to which the bar exam stands as an obstacle to entry into the profession by qualified minority law graduates, the extent to which the bar exam is inappropriately driving decisions within law schools concerning admissions, curriculum, hiring and pedagogy, and the extent to which the bar exam fails to test the range of competencies necessary to practice law.

For the past several months, SALT has played an active role in opposing the move of many states who have followed the recommendations of psychometrician Stephen Klein to raise their bar exam passing score. Among the states that have raised the score or are considering raising the score are Ohio, Utah, Nevada, Florida, Minnesota and New York. In Florida, **Lisa Iglesias** was responsible for drafting a brief and supporting documents which were submitted to the Supreme Court of Florida, where the matter is still pending. Among the documents submitted to the Court was a draft article written by **Deborah Merritt**, Lowell Hargens, and Barbara Reskin critiquing Klein's methodology. (See page 5.)

In Minnesota, the Board of Law Examiners proposed an increase in the passing score to the Supreme Court but the Court directed the Board to take testimony. **Carol Chomsky** testified in opposition to the proposed increase, drawing on the material SALT had submitted in Florida. The Minnesota Board of Law Examiners hired another expert to check on Klein's methodology. The report was submitted but has not yet been made public. Recently, the Dean of Utah Law School contacted SALT for information that would be helpful in evaluating the proposal to increase the passing rate in Utah.

Prospectively, SALT has identified a number of significant tasks that merit our attention. First, we need to continue to develop our critique of the bar examination. This critique

Bar Exam continued on page 16

of the school administration. They identified at least the following specific concerns they sought to protect in their effort to intervene as of right:

- An interest in an admissions system that treats all applicants fairly and thus includes affirmative action.
- An interest in access to first-rate legal education, possible only with a diverse student body.
- For individuals admitted without affirmative action, an interest in seeing first-rate legal education be made available to all regardless of race and gender.
- An interest in a non-segregated law school that includes a representative number of women students.
- An interest in a law school that does not have a hostile environment for minorities and women.
- An interest in preserving the affirmative action policies adopted as the result of their predecessors' actions as anti-racist and anti-sexist activists.
- An interest in true opportunity for students emerging from segregated and inferior school systems such as

President continued on page 18

Cover Conference Scheduled for March 2–4 in New Hampshire

This year's Robert Cover Memorial Public Interest Conference will be held March 2–4, 2001, at the Sargent Camp outside Peterborough, New Hampshire. This will be the fourteenth annual Cover Conference, a public interest retreat supported primarily by SALT and several law schools. The 2001 theme is "Merging Missions:

...to support, encourage, and energize practitioners and students who choose to represent society's most vulnerable populations.

Exploring the Realities of Progressive Collaboration." This conference seeks specifically to support, encourage, and energize practitioners and students who choose to represent society's most vulnerable populations.

The theme this year considers new advantages and difficulties that arise from the creativity of public interest law practitioners. Through small group and panel discussions on issues such as domestic violence, environmental justice, child poverty, and international human rights, participants will explore the benefits and the costs of traditional and unexpected collaboration/interaction between public interest law groups. The Conference planners hope such discussions will leave students with a sense of what issues a particular practice area addresses and what practical factors students might expect from future progressive collaboration.

The Robert Cover Workshop

Jane Dolkart, Southern Methodist University School of Law
Theresa Glennon, Temple University James E. Beasley School of Law
Peter Margulies, Roger Williams University School of Law

This year's Robert Cover Workshop is entitled, "Multiple Choices: Admissions, Testing, and Professional Identity in Legal Education." Every year SALT sponsors a workshop at the AALS Annual Meeting named after the late Robert Cover, Professor at Yale Law School, who in his life and work placed doing justice over merely preserving order. This year's workshop will be held on Wednesday, January 3, from 7–9 p.m., in Plaza A on the Lobby Level of the San Francisco Hilton.

SALT has assembled a roundtable of speakers with a wide range of experience and expertise to consider the challenges faced by law schools in the post-Hopwood era. Questions we will address include:

- How do we develop an inclusive conception of professional excellence and identity?
- How do we teach and evaluate applicants, students, and candidates for the bar in a manner that matches that conception?
- How do we build institutions, while resisting *U.S. News and World Report*?

Cover continued on page 16

Improving Law School Admissions Now

Theresa Glennon, Temple University James E. Beasley School of Law
Peter Margulies, Roger Williams University School of Law

There are some steps you can take now at your own school to improve admissions practices.

Step 1: *Learn about the admissions process at your school.* Ask your director of admissions how applications are reviewed, what weight is given to LSAT scores, and how much discretion application reviewers have to admit students. Reflect as a faculty on your criteria for admission: for example, do you value



Theresa Glennon



Peter Margulies

Admissions continued on page 7

Boston College Law School students once again have undertaken primary responsibility for organizing the Conference. SALT members are urged to attend and to inform students about this opportunity. Anyone wishing to help or seeking further information should contact Corey Norton, the head of the student organizing committee, at nortoncb@bc.edu, or Avi Soifer at soifera@bc.edu or at 617-552-0619.

SALT EQUALIZER

The *SALT Equalizer* is a publication of the Society of American Law Teachers and is published quarterly.

Eric S. Janus	Editor
Carol Chomsky	Co-President
Margaret Montoya	Co-President
Norm Stein	Treasurer
Joyce Saltalamachia	Historian

To contact the *SALT Equalizer*, write the editor at William Mitchell College of Law, 875 Summit Ave., St. Paul, MN 55105-3076; call 651-290-6345; or e-mail ejanus@wmitchell.edu. Visit the SALT web site at www.scu.edu/law/salt.

SALT Honors Founder and First President Norman Dorsen

Tribute by Sylvia A. Law

On Friday, Oct. 20, SALT honored our founder and first President, Norman Dorsen of NYU Law School, at a luncheon in conjunction with the teaching conference. Former President, Sylvia A. Law, offered the following tribute.

Norman has been my teacher, mentor, colleague, co-conspirator and friend since 1966.

In the 1960s, when I was his student, he was a real lawyer. He developed the theory and argued *Levy v. Louisiana* — the first Supreme Court case protecting the rights of children whose parents were not married. He won *Flast v. Cohen*, a vital Supreme Court case allowing tax

“He was a great lawyer who made a major impact on American law.”

payers to challenge establishments of religion. He developed the case and argued *Vuitch*, an important precursor to *Roe v. Wade*.

Working on these cases with Norman, I would spend days, entire weekends, writing first drafts of little pieces and give the Professor my work at 8 p.m. He would come in 12 hours later, having devastated my efforts. And made it much better, both in terms of grand concept and little detail. Norman is notorious in his meticulous attention to detail. He was a great lawyer who made a major impact

on American law.

Second, he is an awesome teacher and mentor. I took all his courses and know him as a mentor from my student

“Norman may be the best institution builder in American law in the 20th Century.”

years. But for almost 30 years Norman and I have been co-directors of the Arthur Garfield Hays Civil Liberties Program. Helen Hirshkoff has now joined us as a co-director, and **Holly Maguiguan** did the job when I was in Hawaii last year. It is a small program—six Fellows a year. We really get to know each other. The Fellows are a Who's Who of public interest law in the United States.

Both Norman and I have life-long mentoring relations with the Fellows. I am not a slouch at this. But Norman is a whole lot better. I am good because I have learned with the master. He is better because he is more imaginative. He is more connected. He is a better listener. I'm still learning from him.

Third, and perhaps most important, Norman may be the best institution builder in American law in the 20th Century. He created SALT. He led the ALCU from being a small, marginal group to being a major force in American law. He did the same for the Lawyer's Committee on International Rights. He has created the vibrant Global Law program at NYU Law. I could cite another dozen examples. But let me just

describe one. When Congress contemplated a constitutional amendment to prohibit flag burning, Norman said, “I can put together a group to stop this.” He assembled a coalition that included Charles Fried and Larry Tribe. They cranked up and were effective.

As an institution builder, Norman may be the most honestly small “d” democratic person I know. He runs a great meeting. He lets people reach conclusions that he himself would not reach. (Unless he thinks an issue is really vital to the organization and then he counts votes and makes sure that he has them.)

SALT today is not the SALT that Norman had in mind. But he created us to grow. We are in his debt.

Finally, Norman has been a great friend. His wife Harriet and three awesome daughters (none of whom are lawyers) are all wonderful people. We are

“Norman knows how to enjoy life — to rake his own leaves, follow sports, read trash novels, cook, eat and talk with friends.”

all too busy and do not spend enough time just kicking back. But Norman knows how to enjoy life — to rake his own leaves, follow sports, read trash novels, cook, eat and talk with friends. He is a great person to just be with. And always there when we need him.

Norman Dorsen's Acceptance

As I accept with deep gratitude the honor you do me, my thoughts turn to the founding years and, even more, to how SALT has evolved to what it is today. Michael Rooke-Ley's good work makes unnecessary a historical survey, but it may be of interest that SALT was conceived by Aryeh Neier, then executive director of the American Civil Liberties Union, and the



SALT Co-Presidents Carol Chomsky and Margaret Montoya presented a plaque to Norman Dorsen.

first meetings were held at ACLU headquarters. My key associates at the founding were my NYU colleague **Steve Gillers**, then in private practice (and the first and only SALT executive director), Tom Emerson of Yale, who worked with me on the first statement of purpose, and David Cavers of Harvard, who provided weighty support and suggested the name of the organization. The early presidents — **Howard Lesnick**, **David Chambers** and **George Alexander** — each played a vital role in setting SALT's direction.

These were all outstanding figures, but have you noticed that they are all white males? Ruth Bader Ginsburg was the only woman in the original group, though **Barbara Babcock** was not far behind and Wendy Williams became the first female president. Only three men of color — **Derrick Bell**, **Leroy Clark** and Cruz Reynoso — were among the 149

Raising the Bar: Questionable Changes in Bar Passage Standards

Deborah Jones Merritt
Ohio State University



Deborah Jones Merritt

More than one quarter of all states have toughened bar exam standards in recent years, with other states poised to follow suit. About one-third of exam takers from ABA-accredited schools now fail the bar exam on their first attempt. Many of those students would have passed the bar five years ago, before states started raising their passing scores.

These higher passing scores raise important policy issues about competition, diversity, and access to the legal profession. It is particularly troubling that law graduates must meet higher bar standards now, when graduating classes have become more diverse, than their predecessors had to meet 20 years ago.

Multistate Bar Exam scores are standardized over time; examining those scores confirms that today's graduates perform better—but must also meet higher standards—than did bar applicants throughout the 1980s.

The higher passing scores in several states derive from a flawed statistical process introduced by consultant Stephen Klein. In an article coauthored with sociologists Lowell Hargens (Ohio State University) and Barbara Reskin (Harvard University), we demonstrate why this process produces an arbitrary passing score that most likely excludes qualified applicants from the bar. The article also explores the policy issues surrounding the new bar passage standards, especially the impact on minority applicants to the profession. Decision makers in several states have taken steps to reexamine their passing scores after reading the article.

The full article will appear in volume 69, issue 2, of the *University of Cincinnati Law Review*. The article will also be available soon through www.ssrn.com. I am happy to e-mail a copy to anyone sending a request to merritt.52@osu.edu.

signatories of a mailing to all law teachers in early 1974.

This is in marked contrast to the rich and exciting diversity of SALT's current membership and leadership, including the important contributions of lesbians and gay men.

But if SALT's demographic profile has altered markedly, its six original objectives have not. These were to encourage socially responsive changes in legal education, to influence litigation and legislation, to weigh in on judicial and executive appointments, to combat violations of academic freedom against law teachers, to encourage fair recruitment of minorities

and women, and to monitor legal institutions.

The big difference between today's program and the early days is that there is so much more of it now. Teaching workshops, public statements, amicus briefs, and peaceful demonstrations have combined to put SALT firmly on the public interest map. This remarkable record is due to the creative energy of recent and current leaders of SALT who, without question, are fulfilling the high hopes of the founders, including my own.

I am enormously proud to have started SALT. Thank you again for the honor and keep up the good work.

Grillo Retreat Scheduled for March 24–25, 2001, in Santa Cruz

The Third Annual Trina Grillo Public Interest Retreat will be held on March 24 and March 25, 2001, at the WestCoast Santa Cruz Hotel, in Santa Cruz, California. All of the hotel rooms reserved for the Retreat overlook the Pacific Ocean, and the “Twelvewinds” Meeting Room features a panoramic view of beautiful Santa Cruz Beach.

Modeled after the Cover Retreat in New England, the Grillo Retreat provides a unique 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 Retreat is co-sponsored by the Society of American Law Teachers, Santa Clara University’s Center for Law and Public Service, the University of San Francisco, and Boalt Hall’s Center for Social Justice.

Tentatively titled, “Cutting the Edge of Public Interest Law,” this year’s Retreat will focus on the many ways students and lawyers can join together to pursue their commitment to work for social justice in the new millenium. Santa Clara Law Professors **Eric and Nancy Wright**, are planning a full schedule of panels and workshops dealing with the challenges and potential solutions to “hot” issues such as the following: Obtaining the release of wrongfully-convicted criminal defendants through modern technology by establishing an Innocence Project; dealing with police brutality through litigation like the Ramparts cases in Los Angeles; counteracting the diminution in private law firm’s pro bono activities by providing civil legal services to indigents through an Access to Justice Project; conserving our threatened environment both locally and globally through Environmental Justice Projects and international programs to protect the

In Memorium: Kellis Parker

Derrick Bell
NYU Law School

Kellis Parker and I began teaching in 1969. The few, mostly black lawyers who accepted teaching positions in the next decade were committed to starting something new. We might not survive those tough early years, but we hoped that what we were beginning would make it possible for others to carry on. Kellis and I talked of the pressures of our jobs, the risks to our health, the sacrifices of family. Although the hurdles of gaining acceptance in our classrooms and negotiating the tenuous path toward tenure were difficult for all of us, we saw ourselves as trailblazers, willing to brave and overcome the antipathy of those in the academy convinced that we did not belong.

Certainly, none of us felt that 25 years after our pioneering efforts, there would be the doubt that today exists about the future of minority teachers in legal education. The numbers of those who are to replace us, are much smaller than we had hoped. The resistance when a person of color is suggested for a faculty position remains strong as if there is an unstated consensus that the number of minorities presently on the faculty are quite enough. In recent years, the impetus for recruiting those who should be our colleagues, our

ecologies of countries throughout the world; and giving voice to the special concerns of groups, such as children, battered women, the elderly and gays and lesbians, by forming legal organizations focusing on their interests. The Retreat’s informal setting will also provide ample opportunities outside of the scheduled agenda for casual meetings and quiet walks along the beach with fellow students, law faculty or public interest practitioners.



Prof. Kellis Parker

successors, has been smothered under the general opposition to affirmative action and the renewed commitment to hiring “only the best.”

The challenge that Kellis Parker and the rest of us faced was to nurture and develop our skills in teaching and scholarship in an atmosphere where, so often, our achievements were deemed an undeserved fortuity. And now, he is gone—too soon, to do all that he would have done. There is no need here to speak of victory or defeat. Because of the tenor of the times, opportunities opened for us that had never before been available. Kellis, as much as any of us, strove to provide our students and our communities with the different perspective that was needed rather than the plain vanilla conformity that was all that so many really wanted from us.

The \$50 registration fee to attend the Retreat includes a picnic lunch on the sand and dinner at a restaurant on the Santa Cruz Wharf overlooking the ocean on Saturday, March 24, and a continental breakfast on Sunday, March 25. The special Grillo Retreat rate for a double room at the WestCoast Santa Cruz Hotel is only \$130 (\$65 per person). Rooms at the Hotel have been reserved for both Saturday night, March 24, and for Friday night,

Grillo continued on page 17

Admissions:

▼ *continued from page 3*

students with a demonstrated commitment to public interest work?

Step 2: *Advocate for strict limits on the use of LSAT results.* Ask your school to set strict limits, such as 25 percent, on the weight placed on LSAT scores in the admissions process.

Step 3: *Advocate to broaden the "discretionary admit" category.* Many schools review only a small percentage of applications for individual indicators for admissions. Urge your school to expand the discretionary admit category and obtain individualized review of a much higher percentage of law school applications. In addition, encourage reviewers to look at a broad range of characteristics that are important to lawyering.

Step 4: *Educate your admissions office and colleagues about the permissible use of diversity as a factor in admissions.* Diversity must be considered on an individualized basis, not based solely on racial or ethnic background. Law schools must gather and consider a range of information about each individual student in order to appropriately consider what diverse viewpoints or experiences he or she will bring to the law school environment. Ensure that applications ask questions that will elicit relevant information.

Step 5: *Increase law school efforts to reach out to currently underserved populations.* Schools can increase their applications from students of color by outreach to university and college organizations and student groups, involvement by alumni of color in recruiting, and outreach through educational programs in elementary and secondary schools that serve students of color or disadvantaged students.

SALT Salary Survey

Howard A. Glickstein
Touro Law School

Every year, law school deans are requested to provide salary data for the Annual SALT Salary Survey. The number of schools responding to our request has declined since the ABA stopped collecting salary data. Each school certainly continues to maintain such data.

There follows a list of 83 schools that either declined to provide us with data for our last survey or failed to respond at all to our request. We urge all SALT members to encourage your deans to respond to this year's survey, which was mailed recently. (Even if your school has participated in the past, it is useful to reinforce with your dean the importance of the survey and to urge continued participation.)

A special plea to those of you at one of the public law schools listed below. Your salary data should be readily available. If you have access to it, please send it to me or tell me how I can obtain it.

Alabama	Florida Coastal	New England	SUNY Buffalo
American University	Fordham	New York Law	Stetson
Arizona	George Mason	NYU	Temple
Baylor	George Washington	North Carolina Central	Texas Wesleyan
Boston College	Georgetown	Northern Kentucky	Thomas Jefferson
Boston University	Harvard	Northwestern	UC Berkeley
Brigham Young	Hawaii	Notre Dame	UCLA
Brooklyn	Hofstra	Pennsylvania	USC
Cal Western	Indiana (Bloomington)	Pepperdine	Utah
Case Western Reserve	JAG	Quinnipiac	Vanderbilt
Catholic (DC)	John Marshall	Richmond	Villanova
Chicago	Kansas	Roger Williams	Virginia
Chicago-Kent	Kentucky	Saint Louis	Wake Forest
Cincinnati	Loyola (Chicago)	St. Mary's	Washington and Lee
Columbia	Loyola (LA)	San Diego	Washington (St. Louis)
Cornell	Maine	San Francisco	Western State
Cumberland (Samford)	McGeorge	Santa Clara	Whittier
DePaul	Mercer	South Carolina	Widener
Detroit-Mercy	Miami	Southern Methodist	Wisconsin
Duke	Minnesota	Southwestern	Yale
Duquesne		Stanford	Yeshiva

SALT Elects Board Members

The following were elected (or re-elected) to the SALT Board of Governors in the Fall 2000 election:

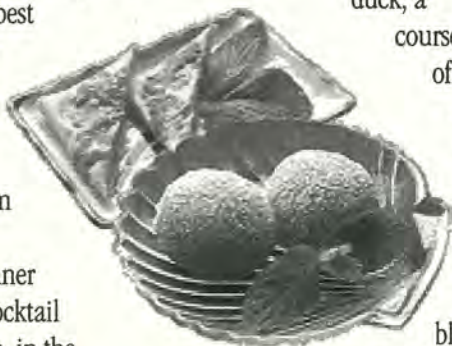
Devon Carbado, UCLA	Holly Maguigan, NYU
Nancy Cook, Cornell Law School	Martha Mahoney, University of Miami
Roberto Corrada, University of Denver	Deborah Waire Post, Touro Law School
Robert Dinerstein, American University	Vernellia Randall, University of Dayton
Neil Gotanda, Western State University	Robert Westley, Tulane Law School

SALT Awards Dinner at World Renowned Yank Sing Restaurant

The annual SALT Awards Dinner will be held on Saturday, January 6, 2001, at the newest venue of the world renowned Yank Sing Restaurant. Yank Sing is one of San Francisco's best known destination restaurants, and the most popular place in San Francisco for "deem sum" cuisine.

The Awards Dinner will begin with a cocktail hour from 7-8 p.m. in the Atrium of the historic and newly renovated Rincon Center, where Yank Sing has its newest venue. There will be a cash bar, with hor's d'oeuvres (spinach gow, chicken/mushrooms siu mye, and vegetarian spring rolls) hosted by Golden Gate University School of Law.

At 8 p.m. a six course banquet will be served in the restaurant adjoining the atrium. The menu begins with a cold vegetable platter, followed by a vegetarian soup, a selection of shrimp and snow pea leaves gow, a course of silver-wrapped chicken and Peking duck, a course



of fresh shrimp and scallops and vegetarian fried rice, and a fresh fruit dessert.

The Rincon center is located 12 blocks from the Hilton (AALS headquarters), and one block from the Embarcadero BART and MUNI station. There is limited validated parking on site.

Because the meal is served "family style," there is no vegetarian alternative available, but many of the dishes served will be vegetarian, and none will be red meat.

The cost of the dinner for those purchasing tickets by December 15 will be \$45 per person. Tickets purchased after December 15 will be \$50 per person. While there may be a limited number of tickets

Yank Sing

available for purchase at the AALS meeting, the dinner is expected to sell out.

Tickets may be ordered by mailing a check for \$45 per person payable to SALT postmarked by December 15, 2000, to:

Norman Stein
University of Alabama School of Law
101 Paul Bryant Drive East
PO Box 870382
Tuscaloosa, AL 35487
ATTN: SALT dinner

Questions about the dinner (but not tickets): David Oppenheimer, Golden Gate University School of Law, dbo@ggu.edu.



Ibrahim Gassama

Ibrahim Gassama to Receive SALT Human Rights Award

Eric Yamamoto, University of Hawaii

At its annual dinner in San Francisco in January, SALT will present its Human Rights Award to University of Oregon Law Prof. Ibrahim Gassama for his exemplary contributions to human rights struggles in the United States and throughout the world.

A native of Sierra Leone, Ibrahim attended Virginia Polytechnic and Harvard Law School, graduating in the early 1980s. At Harvard, Ibrahim worked closely with Professor **Charles Ogletree**. Ibrahim was one of the key founders of

the Third World Coalition and participated in struggles to bring in a professor of color to teach a race relations class, a struggle that contributed to the nascent Critical Race Theory movement.

After law school, Ibrahim's work for the TransAfrica Institute made him a highly regarded figure in the international human rights community. Ibrahim worked as TransAfrica's founder Randall Robinson's second-in-command during the pivotal lobbying and protest activities in Washington, D.C., in the late 1980s. Ibrahim's diplomatic and negotiation skills were crucial to a diverse coalition of groups and individuals seeking to end apartheid. Robinson, in his 1998 book, "Defending the Spirit: A Black Life in

Gassama continued on page 9

Society of American Law Teachers Annual Awards Dinner

Saturday, January 6, 2001, 7 p.m.
Yank Sing Restaurant,
101 Spear Street (at Mission)
San Francisco, California

Awardees:

SALT Teaching Award: Sylvia Law, NYU
SALT Human Rights Award: Ibrahim
Gassama, U. Oregon Law School

Master of ceremonies:

Derrick Bell, New York University

Speakers include Dean Kathleen

Sullivan, Stanford; Jenny Pizer,
Lambda Legal Defense Fund; Dean
Rennard Strickland, University of
Oregon; Keith Aoki, University of
Oregon; and Holly Maguigan, New
York University.

Sylvia Law to Receive SALT Teaching Award

Cynthia Grant Bowman
Northwestern University School of Law

The SALT Board of Governors has voted to award the 2001 SALT Teaching Award to Professor Sylvia A. Law of New York University School of Law. Sylvia's career has exemplified both excellence in teaching and a commitment to a progressive political agenda. She was also one of the founding members of SALT and has played a role in the organization for its nearly 30-year history. "Sylvia is a gifted teacher, not only to generations of students but also to her colleagues," commented **Stephanie M. Wildman**. "She has a keen instinct for how to move immovables toward social change, a good role model for us all."

After graduating from Antioch in 1964, Sylvia came to New York City to



Sylvia Law

become a civil rights organizer. Discovering that women were employed primarily as typists, even in civil rights organizations, she decided to seek a law degree. Sylvia graduated from NYU in 1968, having turned down law review in order to work with local youth and welfare rights groups on the Lower East Side, to found the first law school organization against the war in Vietnam, and to establish the

Law continued on page 17

Gossama:

▼ *continued from page 8*

America," acknowledges Ibrahim's substantial contributions to TransAfrica and the anti-apartheid movement.

Before leaving TransAfrica for academia, Ibrahim was the coordinator/stage-manager for Nelson Mandela's triumphant 1990 U.S. Tour.

In addition to his teaching and writing about human rights as a law professor since 1992, Ibrahim has been actively involved in human rights work.

In 1994, Ibrahim took leave from teaching to head a delegation of human rights NGOs to observe the first post-apartheid South African elections.

In 1995, Ibrahim (along with Professors Karen Engle of Utah and Nathaniel Berman of Northeastern) led a delegation of election observers during Haiti's contested elections.

In 1996-97, along with Professor Ogletree and Congressperson Maxine Waters, Ibrahim participated in a TransAfrica-sponsored delegation to study the effects of a proposed ban on European subsidies to the Caribbean banana industry (this ban was sought by the U.S. pursuant to the then-recently passed WTO). Ibrahim assembled the information gathered and drafted and polished the final widely-circulated and influential report.

In late 1999 and January 2000, Ibrahim also worked closely with Randall Robinson in producing an event in Washington, D.C., promoting the idea of Black Reparations as a matter of international human rights law. The event received page one coverage in the Washington Post and was hugely successful, pulling together such diverse figures as Congressman John Conyers, Professors **Mari Matsuda, Robert Westley, Eric**

Yamamoto and Vincenne Verdun and many prominent members of the Civil Rights and Human Rights communities.

Ibrahim has also been working closely with actor Danny Glover and Randall Robinson in organizing a TransAfrica-sponsored AfroCuban Jazz festival, promoting important cultural and other links between African Americans, African Cubans and Africans. Ibrahim's scholarship reflects a sophisticated blending of theory and practice. It draws from Critical Legal Studies, Critical Race Theory, New Approaches to International Law and Third World Approaches to International Law. One well-developed dimension of his scholarship addresses the social impacts of international law and 'private' multinational corporations in the new world economic order of the WTO and NAFTA. Ibrahim brings distinction and honor, energy and commitment, to SALT's Human Rights Award.

NYU Teaching Conference

SALT Teaching Conference Addresses Teaching, Testing and Politics of Legal Education

Deborah Post, Touro Law School
Susan Bryant, City University of New York
School of Law at Queen's College

The SALT Teaching Conference—Teaching, Testing and the Politics of Legal Education in the 21st Century—held October 20–21, 2000, at New York University School of Law, brought together law professors, journalists and experts in the fields of education and standardized testing. The SALT action campaigns on affirmative action and testing placed our discussion of pedagogy within the wider framework of the political economy.

The conference highlighted the objections that are being raised to the

monopoly power of testing companies, a national assessment movement and the impact these have on legal education and the legal profession; the effect of technology on learning, teaching and access to justice; the potential for the transformation of legal education with the adoption of theories like therapeutic jurisprudence, clinical programs that model a different kind of lawyering in the provision of services to communities, sensitivity to

multiple intelligences and the role these play in actual lawyering, and the role literacy and self-assessment play in a law student's learning process. Essays by many of the participants are included in this issue of *The*

Equalizer.

For our part, Sue Bryant and I would like to thank New York University and Dean John Sexton for providing a

wonderful space, good food and financial support for the conference. As **Carol Chomsky** pointed out in her opening remarks, New York University has hosted 7

out of 13 of the last teaching conferences, an unprecedented level of support. **Holly Maguigan** coordinated the event for NYU and SALT and her contribution to this process—everything from making the conference calls that brought us all together to discuss the conference to hosting the dinner

the night before the conference—merit special thanks. We would also like to acknowledge the contributions of all of the members of the organizing committee: **Amy Kastely, Elvia Arriola, Marina Hsieh, Robert Westley, Dennis Greene, and Holly Maguigan**. In addition, we had the assistance of staff, Damaris Marrero and two student research assistants at Touro Law School, Angie Baker and Maja Ilic-Buxo.

The conference program can be found at <http://www.law.nyu.edu/newsnyu/SALTconf.html>.



Plenary One—Neglected Pedagogies: Research, Theory and Practical Advice

The opening plenary focused on effective teaching methods that promote intellectual versatility, appreciate diverse perspectives, and ensure improved learning and performance for the whole class. The presenters, **Peggy Davis** (NYU), **Dorothy Evenson** (Penn State), **Paula Lustbader** (Seattle), and **Laurie Zimet** (Hastings), offered insights into the different kinds of thinking that lawyers do and the ways that

Plenary One continued on page 12

Plenary Two—New Directions in Lawyering

Plenary Two, entitled *New Directions In Lawyering*, introduced Conference participants to new theories about the lawyer's role that are influenced by technological developments, new assessments about what clients need, and new structures for practice. The panelists, **Conrad Johnson** (Columbia), **Bernida Reagan** (Boalt Hall), and **David Wexler** (Puerto Rico and Arizona), addressed the question of the role of the lawyer from very different perspectives—therapeutic jurisprudence, technological advances in the legal profession, and community-

based clinical education. Each of the speakers identified ways that the profession was changing and the implications of that change for the kinds of courses and experiences that should be part of a student's education. A common theme in each presentation was the importance of a continued focus on clients, thinking expansively about the clients' problems and creatively about the role that a lawyer might play by working with clients to anticipate and solve problems.

Conrad Johnson began his presentation with a tribute to Kellis Parker, a friend and colleague who died unexpect-

Plenary Two continued on page 13

NYU Teaching Conference

Plenary Three—High Stakes Testing in Law Schools and the Legal Profession

Plenary three was devoted to the broad topic of testing: the fairness and consequences of testing used in the distribution of resources like the right to attend law school (the LSAT) and the right to practice law (the bar exam), as well as “high stakes” testing in law school. Presenters, **Dean Kristin Booth Glen** (CUNY), Jay Rosner (Princeton Review Foundation), **Vernellia Randall** (Dayton), Peter Sacks (author), and Moderator **Joan Howarth** (Golden Gate), identified many of the problems with the tests currently used to distribute these resources. Presenters gave concrete suggestions for ways that law faculty could attack the use of the LSAT, more fairly evaluate student performance, and work towards an alternative to the bar exam.



Plenary Three continued on page 14

Panel Four—Teaching Critical Theory

Panel four of the Teaching Conference, entitled *Teaching Critical Theory*, was moderated by **Robert Westley** (Tulane Law School) and included as presenters **Frank Valdes** (Miami), **Margalynne Armstrong** (Santa Clara), and **Natsu Saito** (Georgia State). The panel was designed to explore ways that we can teach the critical theory that many SALT members and others are developing. The panel provided a range of teaching strategies that were designed to demystify theory, overcome student resistance and apply theory to practice.

Frank spoke about teaching critical theory at three levels: seminar settings, curricular expansion, and programmatic initiatives. In seminars, he said, teachers must at the outset demystify, redefine, and jurisprudentially situate “critical theory” so that students understand the relationship of theory to social activism. At the curricular level, he urged us to begin teaching seminars or practicums on “applied theory” in local community lawyering settings. And at the programmatic level, he called for us to use summer abroad law study programs as “incubators” of critical theory and theorists. He called this last strategy for incorporation of critical theory into law, teaching “critical globalism.”

Frank cautioned that student reactions to theory often include a fear of jargon and suggested that one way to conquer those fears is through applying the vocabulary of theory to the students’ own stories and experiences. He also announced that a whole new set of critical theory materials will be available soon, including the *Critical Race Theory Reader: Histories, Crossroads, Directions*, to be published by Temple University Press, with essays by Kimberle Crenshaw, **Mari Matsuda**, Katherine McKinnon, and others.

Margalynne began by reminding everyone of the need to consider that students sometimes avoid taking critical theory courses because the course title may be troublesome for purposes of obtaining corporate employment. She also remarked that course title may be troublesome for course approval in some places. Margalynne teaches a critical theory course under the title, Contemporary Legal Theory, in which she discusses issues relevant to sexuality, feminism, and Critical Race Theory. Margalynne’s presentation then focused on the im-

Plenary Four continued on page 15

Thoughts on the SALT Conference from a New Member

Sophie M. Sparrow
Franklin Pierce Law
Center

Wow! Not the usual law professor response, but this fall’s SALT conference wasn’t the usual law professor conference. This conference was simply fantastic; the people were inspiring, the presentations



and discussions energizing and stimulating. New to SALT and relatively new to the world of legal academia, I came to New York full of hope about how to make my own teaching more meaningful. I

returned to New Hampshire with that and more.

Most powerful at the conference were the people—people whose views, colors, gender, languages

and concerns are so often not the ones heard in conventional legal circles. These

unconventional voices, so often silent in traditional halls, were prominent and powerful. These leaders have found ways to include critical theory in their first year courses, adapt teaching methods to engage more students, use technology to provide greater access to justice, publish an e-journal for indigenous people, or challenge the legitimacy of the LSAT, the bar exam, and traditional law school admissions.

Being around so many people so committed to improving legal education and the legal profession was intoxicating.

Thoughts continued on page 16

NYU Teaching Conference: Plenary One

Plenary One:

▼ continued from page 10

one can design lawyering courses, academic support programs, and large classroom learning experiences to address all of these different kinds of thinking. Conference participants heard the results of recent research on strategies used by successful and unsuccessful first-year students, and on the effects of collaborative learning. The panel was moderated by **Deborah Post** (Touro).

Seven Principles of Good Teaching

Laurie Zimet
University of California
Hastings College of the Law

In the 1980's, The Johnson Foundation provided grants that enabled undergraduate professors, with different backgrounds



and specialties, to come together and discuss teaching methods. Specifically, these teachers sought to identify core principles for good teaching that were applicable to all disciplines. Their collaboration resulted in an article, "Seven Principles for Good Practice in Undergraduate Education," and inspired subsequent terrific articles and at least one book.

In this interactive presentation, participants were told to imagine that they, too, had received a grant that enabled them to work with each other at the SALT conference. For this grant, their collaboration would focus on good

Seven continued on page 18

Representations of Law Students: A View from an Outsider

Dorie Evensen
Associate Professor of Education
Penn State University

My argument is that if we wish to understand more fully issues related to literacy and learning among law students, we must broach the topic of discourses. Law constitutes a discourse that is embedded in a community of practice with historical, social, and cultural roots. In my presentation, I outlined three studies I conducted over the past ten years. The results of, and interpretations made from these studies underscore that the strategies, skills, and perceptions of law students can vary greatly. Those who are responsible for the education of these students must attend to these differences by first assessing where they exist, and second by constructing curricula that can address such differences—in some cases affording remedies.

NYU's Lawyering Program

Peggy Cooper Davis
NYU School of Law

Diversity has brought needed change to the legal academy. In little more than 30 years, law schools have moved from a pattern of race, gender, and class exclusion to various post-exclusion patterns: simple quantitative inclusion; re-tooling the newcomers to fit old lawyering models; taking perspective on exclusion to expose its causes and effects; taking perspective on difference to gain understanding of the negative and positive characteristics of those who have been excluded and those who have been superordinate; qualitative diversity, in which the strengths of both groups are appreciated and used; and a new synthesis, in which persons associated with all groups are less constrained by cultural stereotypes and more versatile.

This change is reflected in NYU's Lawyering Program. The Program is built on the premise that students are better prepared for professional excellence and responsibility if serious attention is given to the full range of intelligences upon which lawyers must draw.

Drawing on Howard Gardner's work with respect to multiple intelligences, Carol

Resources:

- Deegan (Evensen), D. H. (1995). Exploring individual differences among novices reading in a specific domain: The case of law. *Reading Research Quarterly*, 30, 156-170.
- Evensen, D. H. (1998). Trying on a new discourse: Perceptions of law students enrolled in a trial admissions program. *Legal Writing: The Journal of the Legal Writing Institute*, 4, 23-55.
- Evensen, D. H., & Polachek, M. K. (2000, July). Exploring transitions into legal discourse: A tale of two writers. Paper presented at meeting of Legal Writing Institute, Seattle, WA.
- Gee, J. P. (1996). Discourses and literacies. In *Social linguistics and literacies: Ideology in discourses*, pp. 122-148, Bristol, PA: Taylor & Francis.

NYU Teaching Conference: Plenary Two

Plenary Two:

▼ *continued from page 10*

edly this fall. Conrad's tribute to Kellis involved a questioning of himself and the audience about the meaning of our work. In looking at his own work, Conrad explored whether there was a connection between the way lawyers use technology (Conrad's current passion) and lawyering that addresses problems of the poor and social justice lawyering (Conrad's other passion). The presentation identified the many ways that clients and lawyers could use technology to contribute to social justice lawyering. Using a projector of internet sites, Conrad demonstrated some of the benefits of technology including giving access to information like administrative decisions that were hidden in file drawers accessible only to those who came to the administrative offices; providing back-up support through e-mail thereby enabling people to provide information when it was convenient; and organizing legal and non-legal information in one spot so that clients and lawyers could engage in more creative problem solving.

Teaching Law Students to Practice Therapeutic Jurisprudence

David B. Wexler
University of Arizona and University of
Puerto Rico

In recent years, the interdisciplinary perspective of therapeutic jurisprudence—which focuses on the law's impact on emotional life and psychological well-being—has increasingly moved from the academic world into the world of judging and law practice.

The psychological sensitivity and insights provided by the 'lens' of therapeutic jurisprudence have mixed with the pragmatic procedures of related perspectives—such as preventive law, collaborative law, restorative justice, mediation and alternative dispute resolution—to allow interested lawyers to truly 'practice' therapeutic jurisprudence.



The therapeutic jurisprudence approach is one of the responses to the feminist critique of the 'argument culture' or 'culture of critique.' It seeks to realize law's potential as a helping profession, and proposes ways that lawyers can systematically practice—in civil and criminal contexts and in courtrooms and law office settings—with an ethic of care and a heightened sensitivity to the psychological fallout that often accompanies legal actions and legal measures.

Resources:

<http://www.law.arizona.edu/upr-intj>.

Second International Conference on Therapeutic Jurisprudence. May 3-5, 2001.

www.law.uc.edu/tj2001.

Dennis P. Stolle, David B. Wexler, & Bruce J. Winick, *Practicing Therapeutic Jurisprudence: Law as a Helping Profession* (Durham, NC: Carolina Academic Press 2000).

www.caplax.com.

"Therapeutic Jurisprudence and Preventive Law: Transforming Legal Practice and Education," in *5 Psychology, Public Policy, and Law* 795-1203 (1999).

A Clinical Approach to Community Based Lawyering

Bernida Reagan, Executive Director of the
East Bay Community Law Center

East Bay Community Law Center (EBCLC), a legal services/clinical program affiliated with Boalt Hall School of Law at U.C. Berkeley, was founded by law students at Boalt Hall School of Law, U. C. Berkeley, with a two-fold purpose: (1) to provide desperately needed free legal services to underrepresented groups and (2) to provide hands-on learning experiences so that law students are aware of and

skilled in addressing the needs of indigent communities.

My presentation at the teaching conference included: (1) a definition of "community-based lawyering," considering governance, funding sources, who sets priorities, etc.; (2) EBCLC's guiding principles (community empowerment; respectful relationships with our constituencies; holistic and collaborative work); (3) some examples of EBCLC's work in its four substantive areas (housing, income support, HIV/AIDS, and community economic development); (4) EBCLC's teaching goals and methodologies (companion course, reflection opportunities, multi-disciplinary materials, trainers

and projects; 10 to 20 "live" cases per student; semester size projects and cases; and very close supervision); and (5) suggestions for greater integration of community lawyering with more traditional educational experiences.

For further information, please visit our website: www.ebclc.org. For further reading relating to EBCLC's work, see Jeff Selbin and Mark Del Monte, "A Waiting Room of Their Own: The Family Care Network as a Model for Providing Gender-Specific Legal Services to Women with HIV," 5 *Duke Journal of Gender Law and Policy*, 103 (Spring 1998).

NYU Teaching Conference: Plenary Three

Plenary Three:

▼ continued from page 11

High Stakes Testing

Peter Sachs

Author, *Standardized Minds: The High Price of America's Testing Culture and What We Can Do to Change It* (Perseus Books, 2000)

We've become a nation of mental testing junkies. By one careful estimate, Americans are taking as many as 600 million standardized tests each year for schools, colleges, law schools, and jobs. And the stakes have never been higher. At the recent SALT teaching conference, I was asked to put high-stakes testing in law schools and the legal profession into a broad cultural context. I tried to do that posing the following question: How does this cult of mental measurement sustain itself a democratic society? We can look to politics and ideology, the profit motive, and the American belief in the technological quick fix as prime culprits. These factors are particularly potent when we talk about the new "accountability" crusade overtaking American schools.

As for college and university admissions testing, there are some additional reasons. Surely, one of the main assets that colleges and universities have to market to their potential customers is prestige, and they compete with each other for prestige. Standardized test scores, those seemingly infallible indicators of academic excellence in the public's mind, are the coin of the realm in the competition for that prestige.

Would undergraduate colleges and

graduate schools continue to require the SAT, the LSAT, or the GRE if THEY and not test-takers had to pay for these tests? I doubt it, particularly because extensive research has shown the institutions do not get that much useful additional information from standardized tests. What else accounts for institutions continuing to rely on these tests of doubtful benefit? In addition to the competition for prestige, we can look to institutional lethargy. Even reformers within institutions must battle the entrenched mindset of colleagues that essentially says, "We use high-stakes

admissions tests, because we've always used high-stakes admissions tests, and so does everyone else."

At the conference, I suggested it was high-time to put to rest our phony

meritocracy for a new paradigm of merit in America, a real meritocracy based on evidence of actual accomplishment on endeavors that matter, not one's ability to fill in bubbles on a standardized test.

Suggested reading:

Standardized Minds: The High Price of America's Testing Culture and What We Can Do to Change It (Cambridge: Perseus Publishing, 2000) by Peter Sachs. "Portia Denied: Unmasking Gender Bias on the LSAT and its Relationship to Racial Diversity in Legal Education," by William C. Kidder, *Yale Journal of Law and Feminism*, vol. 12, no. 1, 2000. "Do Grades and Tests Predict Adult Accomplishment?" *Research in Higher Education* 23, no. 1, Leonard L. Baird.



Are "White Preferences" designed into the SAT/LSAT?

Jay Rosner

The Princeton Review Foundation
email: JayR@review.com

Educational Testing Service (ETS), manufacturer of the SAT, "pretests" questions, and measures the racial breakdown of the correct and incorrect answers for each tested question. Some questions "favor" blacks (let's call them "black preference" questions) and some "favor" whites ("white preference" questions). From four different SATs taken by all the New York State test-takers in 1988–89, I was able to compare the correct answering percentages of whites vs. blacks for every single SAT question. This is the most recent data available to me. The total number of questions on the four tests is 580. Of these, 575 were "white preference" questions and only one was "black preference." Four were answered correctly in equal percentages by both whites and blacks.

The "preference" status is known to the test-makers before they choose every question to appear on the SAT, through the process of pretesting. The choice of nearly all "white preference" questions has benefited millions of white students immeasurably. My experience tells me that LSAT question data would look the same, but no data is publicly available. Can you get some?

The irony in admissions is that admissions officers always want more data on their applicants. Will they want more data on their applicants' LSATs? Will they ask Law Services to provide the number of white preference questions and the number of black preference questions on the LSATs they use, so this very relevant information can be taken into consideration? We'll see ...

NYU Teaching Conference: Plenary Four

Plenary Four:

▼ *continued from page 11*

importance of history as a starting point for teaching critical theory. Studying the evolution of doctrine, the critique of doctrine, and the application of the critiques, she said, are facilitated by using history as a starting point.

Margalynne encouraged the audience to link critical theory to the students' original view of legal education—promoting and providing justice for all. This

“...teachers must at the outset demystify, redefine, and jurisprudentially situate ‘critical theory’ so that students understand the relationship of theory to social activism.”

can be done through taking students on a journey that starts with mastery of the scholarship, proceeds to application of critical insights to traditional texts, and ends in active engagement in a practical project. One exercise that Margalynne shared with us that she uses in her critical theory course was to require two students, one of color and one not, to watch a movie together that deals with some aspect of race relations. The students must then write separate reflection pieces that focus each other's reaction to the movie. This exercise, she said, is designed to allow the students to come to an understanding of racially-based differences in perspective and experience without simply being told that they exist.

Natsu outlined three goals in her teaching of critical theory: 1) to help students understand the importance of history

through examination of original or source documents, 2) to facilitate the critique of law as neutral principles, and 3) to get students to think and act critically. Natsu said that in teaching critical theory, she has encountered the problem that often law students know very little history and their personal experience tells them that certain things are true that are in fact not true.

Natsu emphasized that it is important to use source documents when teaching history. She said that in this way it is unnecessary for the teacher to draw conclusions for the students about racism or other forms of oppression because typically source documents use language that reveal their character.

Natsu also recommended film as an important medium for teaching the history of racism. She said that the effect of teaching history before discussing policies, such as affirmative action, is that the policy discussions are much more informed and productive. Finally, Natsu recommended that when teaching critical theory in a seminar setting, it is useful to ask students to write a journal of their classroom experiences.

Teaching Critical Theory Through Film

Margalynne Armstrong
Santa Clara University School of Law

My presentation addressed teaching critical theory in the context of an upper-division seminar. Because critical theory incorporates individual perspective and experience into the exploration of both familiar and new material, I found it effective to invite students to attend a workshop centered around the film “The Way Home” and write a 2 to 3 page reaction/reflection piece. Students who could not attend the workshop were asked to watch a movie in which racial themes

Teaching Critical Race Theory

Natsu Taylor Saito
Georgia State University College of Law

We teach critical race theory for a number of reasons. These include: (1) presenting our students with an alternative



theoretical framework; (2) giving them a broader context for the law they are learning; and (3) getting them to think critically. Of these, I think that the third is most important because it is the one that may get the students to make substantive changes in the legal system. One of the easiest ways I have found to get the

Critical continued on page 17

are central with a person of another race, discuss the movie's themes with that person, and write a 3 or 4 page reflection piece that focused on the different reactions of the viewers. Seminar papers are another opportunity to create writings that apply critical perspectives.

Suggested films/reading:

THE WAY HOME, a Shakti Butler Film, available through World Trust, 5920 San Pablo Avenue, Suite A, Oakland CA, 94608 (510) 595-3322.

RACE AND RACES, CASES AND RESOURCES FOR A MULTIRACIAL AMERICA by Richard Delgado, Angela A. Harris, Juan Perea and Stephanie Wildman.

Thoughts:

▼ *continued from page 11*

And these advocates for equality, who model ways to improve the academy and access to justice, who devote time and energy to helping nontraditional students succeed in law school, were also unbelievably helpful, open, and generous in sharing their ideas, materials and experience.

Since the conference, I feel a rush of new energy and excitement—aha! I am not crazy! I am not alone! I have a voice, and even better, there is an organization that has a voice for challenging the very things that I feel need to be questioned within legal education. Just knowing this brings me energy for my teaching and working within law school to make a difference.

Cover:

▼ *continued from page 3*

Invited roundtable participants, who will offer suggestions but no “final answer” to these questions, include:

- Prof. Michael Selmi, George Washington University Law School (an authority on testing in education and employment)
- Dean Kristin Booth Glen, CUNY Law School at Queens College (a longtime leader in the battle for broader access to courts and legal education)
- David White, Testing for the Public (an advocate of testing reform)
- Jane Cross, Nova Southeastern University, Shepard Broad Law Center (an expert on academic support and legal writing)
- A law student participating in the University of Michigan litigation on the future of affirmative action (discussing the current climate in the courts)

Bar Exam:

▼ *continued from page 2*

should be disseminated to law schools through written submissions as well as educational programs in the form of traveling road shows. SALT members who are interested in working on this should contact **Margalynne Armstrong** (marmstrong@scu.edu) or **Natsu Saito** (nsaito@gsu.edu).

Second, SALT needs to develop a proactive campaign to head off any further efforts to raise passing scores. This would include collecting the data (Lisa Iglesias' brief submitted to the Florida Supreme Court, Deborah Merritt's article, Carol Chomsky's testimony before the Minnesota Board of Law Examiners), making the data accessible (preferably by putting it on the SALT website) and distributing the data to deans, to Boards of Law Examiners, to the ABA, and to AALS. SALT members interested in working on this should contact Carol Chomsky (choms001@tc.umn.edu) or Lisa Iglesias (iglesias@law.miami.edu).

Third, we need to start planning a conference to focus on alternatives to the

- Philip D. Shelton, President and Executive Director of the Law School Admission Council (discussing LSAC initiatives on testing)
- Devon Carbado, UCLA School of Law (discussing how law schools can either challenge or reinforce conceptions of professional identity).

Each roundtable participant will suggest one shift in the “normal science” of admissions, testing, and teaching in legal education. We hope that audience members will respond with perspectives and proposals of their own. The result should be a program that challenges assumptions and spurs further inquiry and action on the future of legal education.

bar exam as it currently exists. In order to be ready for a Spring 2002 conference, studies and projects need to be undertaken now. Such projects might include: developing a public service alternative to the bar exam (an idea that **Dean Kris Glen**, kbg@mail.law.cuny.edu, discussed at the SALT teaching conference at NYU on October 21, 2000); researching how other disciplines license their graduates

“SALT has generated considerable concern about the extent to which the bar exam stands as an obstacle to entry into the profession by qualified minority law graduates”

and how other countries license lawyers (**Joan Howarth** is working on this, jhowarth@law.berkeley.edu); establishing state commissions whose task would be to determine lawyer competencies and how to screen for those competencies (**Andi Curcio** is working on this, acurcio@gsu.edu). SALT members interested in working on the Conference should contact **Eileen Kaufman** (eileenk@tourolaw.edu) or **Beverly Moran** (bimoran@facstaff.wisc.edu).

Other tasks include changing the way that schools report bar passage from first time success rate to combined first and second time pass rates. SALT members interested in developing this idea further should contact **David Oppenheimer** (dbo@ggu.edu).

If there are other projects related to the Bar Exam that interest you, please contact Joan Howarth (jhowarth@law.berkeley.edu).

Law:

▼ *continued from page 9*

first draft counseling course. After graduation, she joined the Center on Social Welfare Policy and Law at Columbia University, where she worked with the National Welfare Rights Organization. From 1970 to 1973, she helped the late Professor Ed Sparer found, and served as Staff Director of, the Health Law Project at the University of Pennsylvania School of Law, where she was involved in attempting to make health services accessible to poor people. Since 1973, Sylvia has taught at NYU and serves as Co-Director of the Arthur Garfield Hays Civil Liberties Program.

Sylvia's primary field of specialization has been health law, and she is the author or co-author of four books and numerous articles in this area. Her continuing interest in civil rights and civil liberties has led her both to teach and to write in this area also, as well as in the fields of family law and women's rights, particularly about reproductive rights. Her academic writing and political interests have been translated into numerous timely Op Ed articles and briefs in cases before the Supreme Court and lower courts in New York State. She represented the plaintiffs in the Supreme Court in the landmark due process case, *Goldberg v. Kelly*, and has filed amicus briefs in every major reproductive freedom case before the Supreme Court since 1977.

Sylvia's teaching, writing, advocacy and personal example have inspired countless students over her almost three decades of teaching, many of whom have gone on to become involved in public interest law themselves. She is known as a teacher who cares not only about her students' mastery of the subjects she teaches but also about them as people.

In recognition of her accomplishments, in 1984 Sylvia was awarded a MacArthur "genius" grant, becoming the

first law professor to receive that honor.

Finally, Sylvia has been a leader of SALT from its earliest days. She served on the Board of Governors from 1973 to 1976 and again from 1986 to 1998 and was SALT's President from 1992–1993. Among the many struggles in which she has participated, Sylvia helped mobilize SALT to oppose Hopwood, Prop 209, the Supreme Court nominations of Robert Bork and Clarence Thomas, and, currently, the Solomon Amendment. All of us who have been lucky enough to serve with her recognize her talent for effective and democratic leadership, her brilliant analytical mind, and her capacity to draw out of those who work with her their very best. In the words of Board member **Margalynne Armstrong**, "Sylvia puts a human face on genius. Her brilliance, effusiveness and generosity of spirit embrace those of us she teaches and befriends, lifting us to heights far loftier than those we would have reached on our own."

Since she has served as a model for us all, SALT has chosen to present Sylvia Law with its annual Teaching Award at the January 2001 meeting of the AALS in San Francisco.

Critical:

▼ *continued from page 15*

students to think critically, and to develop their own alternative perspectives is by teaching history. We don't have to convince them of our theories of the influence of race and racism in American law. We can show them how the slavery is built into the very foundation of the nation, how similar legal processes were used to take personhood and labor from people of African descent, land from indigenous peoples, land and labor from Mexicans, land and citizenship from Asians. Further, by using history—a narrative without boundaries, rather than an explanation determined to prove a particular point—we can broaden their understanding of what the law both is and could be.

Grillo:

▼ *continued from page 6*

March 23, should you wish to arrive early in Santa Cruz.

Additional information will be available in January. However, the Retreat Committee anticipates a heavy demand due to the exciting program and the exceptional location. If you would like to register early, please contact Retreat Coordinators Eric or Nancy Wright, the Co-Directors of Santa Clara Law School's Center for Law and Public Service or Santa Clara's Public Interest Law Fellow Grace Hum. You can contact the Coordinators by fax at (408) 554-5440 or by mail at the Center for Law and Public Service, Santa Clara University Law Clinic, 874 Lafayette Street, Santa Clara, CA 95053. You can also telephone the Coordinators at (408) 554-5233 (Nancy), (408) 554-4353 (Eric) or (408) 551-6037 (Grace) or email them at nwright@scu.edu, ewright@scu.edu or ghum@scu.edu. Hotel reservations can be made by calling the WestCoast Santa Cruz Hotel at (831) 426-4330 and requesting the group rate for the Trina Grillo Public Interest Law Retreat. You are advised to make the Hotel reservations as early as possible since space is limited and the special group rate will only be available until February 23, 2001.

NYU:

▼ *continued from page 12*

Gilligan's work on styles of problem-solving and moral reasoning, and Claude Steele's work on stereotype vulnerability—and working from the model of active, collaborative learning and self-critique developed by Anthony Amsterdam—the Program strives to cultivate intellectual versatility and to create an environment in which all students can draw on previously recognized and developed strengths as they build new strengths.

Seven:

▼ *continued from page 12*

teaching practices across the law school curriculum.

Alone and in small groups, participants identified key principles that enhance student learning in law school. Then, we compared their principles to "The Seven Principles For Good Practice in Legal Education," which was a symposium issue of the *Journal of Legal Education*. We focused on one of the principles, cooperation, and participants discussed teaching methods designed to encourage cooperation among their students.

Following the session, we presented a clip from our current film, "Principles of Good Teaching." In the clip, law students discussed effective teaching methods from their classes that promoted cooperation. Participants then compared the students' insights with their own perspectives discussed in our earlier presentation.

The film, which is not yet completed, includes students' insights about each of the seven principles for good practice in law school. The Institute for Law School Teaching has funded the project and Gerry Hess, the Director of the Institute, has been a co-collaborator.

The film is based on "The Seven Principles For Good Practice in Legal Education," *Journal of Legal Education* (volume 49 - number 3, September 1999). The original article was "The Seven Principles for Good Practice in Undergraduate Education," by Chickering and Gamson, in 39 *AAHE Bulletin* 3-7 (March 1987). These principles were further explored in *The Seven Principles in Action*, edited by Susan Rickey Hatfield, Anker Publishing Company, Inc., Bolton, MA, 1995.

President:

▼ *continued from page 2*

Detroit's, the most segregated system of the ten largest central city school districts, where 90 percent of black students attend schools that are 90–100 percent black with decrepit and outdated facilities, scant supplies, and shrinking availability of Advanced Placement courses, arts classes, and other electives.

- An interest in continuing to improve the quality and availability of legal representation for all minorities and women.

Finally, they argued that the generalized, national attack on affirmative action has had the effect of reducing the number of black applicants to professional schools nationwide and sought to counter the broad principle inherent in the plaintiff's case that public, publicly-funded, and publicly-regulated institutions such as courts and universities cannot act against inequality.

On August 10, 1999, the Sixth Circuit ruled that the students might intervene, overturning the lower court's denial of their motion. The Court agreed that "their interest in gaining admission to the University" meets the standard requiring direct and substantial interest in the litigation. The Court went on to note that "[t]here is little room for doubt that access to the University for African-American and Latino/a students will be impaired to some extent and that a substantial decline in the enrollment of these students may well result" without affirmative action in admissions. The critical importance of the intervenors may be seen by comparing the status of the suit against the undergraduate college, where the judge may decide not to hear testimony on the benefits of diversity, the thrust of U-M's defense.

In hearings held in mid-November, the judge suggested "he won't need a

lengthy trial to decide whether creating a diverse student body justifies U-M's admissions policy. But U.S. District Judge Patrick Duggan left open the option of hearing testimony on whether past discrimination can justify U-M's practice of giving minority applicants a boost. That could put U-M officials in an uneasy position of discussing the past campus environment for African-American, Hispanic and Native American students." (*Detroit News*, 11/17/00, "Quick trial expected in U-M affirmative action lawsuit.") It is the intervening students who can comfortably and necessarily present evidence about the benefits of diversity and establish that the history and continuation of discrimination within the University itself necessitate affirmative action in response.

The SALT Board of Governors has agreed to help support this critical intervention effort, pledging the legal talent and experience of its members and voting to give \$10,000 to support the students in their legal action to defend affirmative action. As was true 25 years ago when *Bakke* was litigated, the arguments of the student-intervenors are vital to a full and vigorous defense of affirmative action. They can and will represent the needs of students themselves for affirmative action to provide a truly quality legal education.

As important as their presence is, the intervenors have operated on a shoestring budget. The lawyers for the student-intervenors have represented them pro bono out of commitment for their cause. SALT's first contribution of \$5,000 was used to support preparation of a study of the racial climate on college campuses. In response, Donna Stern wrote on behalf of the student-intervenors, "I wish to thank you and the Society of American Law Teachers on behalf of United for Equality and Affirmative Action for the generous grant of \$5,000 given to the student

President continued on page 19

President:

▼ *continued from page 18*

intervention into *Grutter v. Bollinger*. Professor Walter Allen's campus racial climate study is in the final stages of completion, in anticipation of the August 31 discovery deadline and the bills are rolling in, so the arrival of SALT's contribution could not be more timely. Grants such as SALT's are critical to our success in providing a broad, deep and vigorous defense of affirmative action and we are very grateful for your help."

The other \$5,000 will help pay for deposition expenses in the final days of preparation. Again, Donna Stern wrote thanking SALT: "We are deeply appreciative of SALT's commitment to the defense of affirmative action, as well as its confidence in our legal strategy and organizing efforts . . . The grant will be used to cover deposition costs, which are our greatest expenses at the moment."

The case against the law school is scheduled to go to trial on January 16, 2001, and promises to be a critical phase in the efforts to defend and expand the use of affirmative action.

At our January meeting in San Francisco, SALT is planning a number of events that continue to address our concerns about affirmative action and other issues of access and participation in the profession. **A special Board meeting, open to all SALT members, tentatively scheduled for Thursday, January 4, 2001, from 5–7 p.m.,** will feature a briefing on the new developments in affirmative action. We will learn what is happening around the country to respond to attacks on affirmative action, including:

- Facts and issues emerging in the Michigan litigation;
- Developments in Florida and Texas, which have implemented "10% plans" admitting the top 10% of high school

classes to the state universities;

- Ongoing events in California, where the University of California Regents are being urged to rescind their resolutions banning the use of race and gender in University decision-making;
- The status of the reverse discrimination suit against the University of Washington Law School, where in mid-November the Ninth Circuit Court of Appeals heard arguments by the plaintiffs seeking to overturn the district court ruling that *Bakke* remains good law, authorizing the consideration of race in admissions decisions;
- Reports on actions by law schools around the country to modify their affirmative action policies;
- The impact of court rulings on applications and enrollments at law schools;
- The chilling effects of actions like CIR's "Guilty by Admission" newspaper ad campaign and the request by Linda Chavez and the Center for Equal Opportunity for comprehensive admission data at a number of law schools.

We will also learn how the Michigan students have organized so effectively; what the intervenors' experts have studied, documented and concluded; and what new, independent publications on affirmative action have reported. We all need to be educated about the issues, arguments, and developments in order to individually and collectively continue and expand our efforts to open the legal academy to all.

The Robert Cover Workshop, scheduled for Wednesday, January 3, 2001, from 7 to 9 p.m., will focus on the challenges faced by law schools in the post-*Hopwood* era and the opportunities for truly progressive admissions policies. A

panel of experts (see article page 3) will suggest new ways to think about law school admissions and lead us in a wide-ranging discussion of where we are and where we might go. We look forward to seeing you at one or both of these substantive and timely programs on issues that continue to be at the heart of SALT's mission — and at greeting you in the SALT suite when we gather informally to recharge our own batteries (**Friday, January 5, 6:30–7:30 p.m., look for the suite number to be posted on the SALT web site and on the notice board at the AALS meeting**). Until then, we wish you a productive end of semester and happy holidays.

Ninth Circuit Upholds Race-Conscious Admissions

In 1997, three white applicants who had been denied admission to the University of Washington Law School brought suit challenging the law school's policy which at the time used race as a criterion in its admissions decisions. On December 4, 2000, a three-judge panel of the Ninth Circuit unanimously upheld the constitutionality of the law school's race-based admissions policy, concluding that Justice Powell's opinion in *Regents of the University of California v. Bakke* remains the law. "[T]he Fourteenth Amendment permits University admissions programs which consider race for other than remedial purposes," the court said, "and educational diversity is a compelling governmental interest that meets the demands of strict scrutiny of race-conscious measures." The ruling is an important victory in the fight to retain affirmative action efforts in law school and university admissions programs.

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