

EQUALIZER



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SOCIETY OF AMERICAN LAW TEACHERS

OCTOBER 1989

SALT RECOMMENDS AMENDMENTS TO AALS PROPOSED BYLAW 6-2 AND ITS COMMENTARY

At the January 1990 meeting of the Association of American Law Schools, the AALS House of Delegates will consider a proposed amendment to bylaws addressing diversity in legal education. SALT has submitted to the AALS a recommendation to strengthen the terms of the proposed amendment. The SALT Board of Governors urges its members to support SALT's recommendation by bringing it to the attention of the AALS delegate from each member's school.

The AALS currently addresses equal opportunity and diversity in legal education in Bylaw 6-4, which requires:

equal opportunity in legal education for all persons, including faculty and employees . . . without discrimination or segregation on the ground of race, color, religion, national origin, or sex.

The AALS proposes to replace these requirements with AALS Proposed Bylaw 6-2:

A member school shall seek to have a faculty, staff, and student body sufficiently diverse to pursue effectively the shared aims stated in Bylaw Subsection 6-1a. In addition, a member school may pursue other affirmative action objectives. In its determination with respect to appointment and continuation of faculty, admission, continuation and graduation of students, hiring and retention of staff, and the use of its placement assistance and facilities, a member school

may not engage in or permit invidious discrimination.

SALT fears that the language of Proposed Bylaw 6-2 may be construed to weaken existing bylaw provisions on diversity. SALT favors standards that specifically include age, sexual orientation, and physical disability as protected classifications and that impose clearly defined affirmative action obligations. SALT thus urges the AALS to amend its Proposed Bylaw 6-2 to replace the Bylaw's provisions regarding "other affirmative action objectives" and "invidious discrimination" with more mandatory and specific language:

. . . a member school may not discriminate on the grounds of race, color, religion, national origin, sex, sexual orientation, age, or physical disability. Institutions with diversity inadequate to pursue effectively the shared aims stated in Bylaw Subsection 6-1a shall undertake affirmative steps to remedy such inadequacy.

SALT also recommends amendments to the Commentary that accompanies Proposed Bylaw 6-2, so that the Commentary will parallel the stronger Bylaw provisions urged by SALT. If so amended, the Commentary would read as follows:

Bylaw Section 6-2 is intended to strengthen the equal opportunity requirements of the prior Association provision, Bylaw Section 6-4, to ex-

pand its coverage of grounds, and to require affirmative action to meet the shared aims of member schools. The section contains its particular justification as a membership requirement: the educational value of diversity to the objectives of maintaining an intellectual community of students and faculty devoted to the study of law and its role in the American society and polity, and of educating students both to participate effectively in the American legal profession and to develop a sense of professional commitment. Those types of diversity that should be highly prized by any institution seeking serious academic inquiry into the nature and functions of American society and polity are specifically mentioned in order to insure their full participation in the American legal profession. The widespread recognition that institutional diversity plays a central role in developing a full understanding of American legal institutions requires that each member school affirmatively seek that level of diversity sufficient to pursue effectively the shared aims of the Association. Institutions with insufficient diversity will be required by the Association to adopt an affirmative action program. Such a program might include, among other things, the establishment of timetables and goals for hiring or other action, alteration in the makeup of recruiting, promotion, tenure or other relevant committees to increase the diversity of their membership, and the creation of oversight

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groups which include persons from other institutions who have well established credentials for effectively improving diversity in legal education.

The SALT Board offers the following comments, with footnotes omitted, in support of amending AALS Proposed Bylaw 6-2 and its Commentary:

Two primary concerns motivate the Society of American Law Teachers to make this submission. First, the language of Bylaw 6-2 as proposed by the McCarthy Commission and submitted to the House of Delegates in early 1989 may be read to establish virtually no obligations on member schools to diversify their institutions. Second, the serious and continuing problems in hiring and retention of women, minorities and other disfavored groups on the faculties of member schools makes the creation of effective diversity duties a necessity.

I. INADEQUACIES OF PROPOSED BYLAW SECTION 6-2

As the submission by the Section on Gay and Lesbian Legal Issues makes clear, the language and its ordering in proposed Section 6-2 significantly weakens the anti-discrimination standard under old Bylaw 6-4. The very general content of the first sentence of the proposal, followed by the permissive language of the affirmative action clause, suggests that schools are left with enormous discretion as to how best to measure their own needs for diversity and that they are under virtually no mandatory affirmative obligation to develop methods for meeting whatever level of diversity they find necessary. The only obligation imposed on member schools, contained in the third sentence of the proposed bylaw, is to avoid "invidious discrimination," a phrase long associated with the most direct, intentional, obvious and blatant form of discriminatory activity. There are no apparent obligations to take remedial steps to avoid discriminatory patterns and practices where evidence of "invidious discrimination" is lacking. The difficulties of obtaining such evidence in tenure cases, among other settings, makes reliance upon the "invidious

discrimination" standard particularly dangerous. The failure to designate protected classes of persons further exacerbates the problem. Since a school is apparently left free to develop its own measure of needed diversity, it is also left free to limit its anti-discriminatory efforts to prohibiting only "invidious" behavior harming legally or Constitutionally protected groups.

II. NEEDED IMPROVEMENTS IN THE STANDARD

The McCarthy Commission's basic theory in drafting the proposed Bylaws of the Association was to state general aspirational goals for member schools rather than to create detailed rules and regulations for each school to follow. As long as diversity among member institutions served the general interests of legal education, the Commission elected to preserve it. Much of the terminology is designed to serve this overall drafting theory. Stating diversity goals in terms of the shared aims of member schools serves such purposes quite well.

The Society of American Law Teachers fully supports the efforts of the McCarthy Commission to state general aspirational goals which effectively permit worthwhile diversity among American law schools. That goal, however, must not become so all encompassing that it seriously intrudes on the obligations of all member schools to treat the students, teachers, and employees in their communities with dignity and fairness. Nor may the Association's desire for diversity in the characteristics of its member institutions be used to ignore the deleterious impact lack of diversity within each Association member's community has on the education of students and the continuing education of faculty. The Association must not permit its desire for institutional diversity to become a talisman for ignoring intentional or de facto exclusions based on race, sex, sexual preference, or other suspect characterizations by any single institution. We therefore suggest that Bylaw 6-2 be clearly drafted to remind member schools of their continuing and affirmative duties to insure diversity in each of their communities.

The need for continuing and affirmative duties to insure diversity within member communities is clear. The recent publication of the second Society of American Law Teachers study on the hiring and retention of women and minorities on American law school faculties makes it quite clear that serious problems exist. Minority hiring continues at a snail's pace. About two-thirds of the schools in the study had one or no black teachers and about one-half had one or no minority person of any variety. Untenured women had significant problems obtaining tenure at schools with few tenured women. Although the low number of minority teachers made it impossible to analyze the tenure problem for black, hispanic, and other minority teachers, the study provides strong support for the hypothesis that individuals in disfavored groups who manage to get hired will often have difficulty obtaining tenure.

Such data emphasizes the need for the Association to strengthen its commitment to diversity within its members' communities. Adoption of Bylaw 6-2 in its present form will send the opposite message to Association members that further vigilance to root out discrimination is largely unnecessary.

SALT BOARD MEETS

On May 20, 1989 the SALT Board of Governors met at Stanford Law School. Among other things, the Board discussed nominations for its annual Teaching and Service Award, reaffirmed its commitment to hold a teaching conference on public interest law in Spring 1990, proposed panels on diversity in legal education and on racism on campus for the January 1990 A.A.L.S. conference, resolved to continue efforts to increase membership and expand member activities, and discussed nominations for upcoming vacancies on the SALT Board.

The upcoming vacancies, to be filled in January 1990, include several positions on the SALT Board of Governors and the Board positions of SALT President-Elect and SALT Editor. Nominations for election to

the general Board of Governors, including self-nominations, should be conveyed immediately to SALT Governor Elizabeth Spahn at New England School of Law: (617) 451-0010; 154 Stuart St., Boston, Massachusetts 02116. Anyone interested in helping with future editions of the SALT newsletter should contact current SALT Editor Charles Calleros at Arizona State University or current SALT President-Elect Howard Glickstein at Touro. Nominations for the January 1990 SALT Teaching and Service award should be conveyed to Dean Rifkin at Tennessee.

SALT CLEARINGHOUSE

National Association for Public Interest Law

NAPIL and the Student Public Interest Movement by Katherine Meerse

Do you know which student-run public interest organization:

- helped fund over 500 law students and recent graduates working at low or no paying public interest jobs,

- recently raised over \$125,000 from law firms to ensure that even more students and recent graduates will be able to pursue innovative public interest projects,

- serves as the clearinghouse and resource center for information on loan forgiveness/assistance programs,

- produces career planning resources to assist students searching for elusive public interest jobs, and

- has grown from 15 member programs in 1986 to 50 member programs on law school campuses in 1989?

The organization is NAPIL, the National Association for Public Interest Law. Founded by law students in 1986, NAPIL's purpose is to create opportunities and remove barriers for law students and lawyers interested in pursuing and promoting public interest concerns and careers. Three years later, NAPIL has more than tripled in size and serves as a dynamic resource center for law student organizations striv-

ing to make the legal system more responsive to the needs of under-represented segments of our society.

NAPIL helps these student organizations develop income sharing programs which raise money from law students and other sources to fund summer, semester, and full year public interest opportunities. This year NAPIL member groups disbursed over \$900,000 in grants to fund more than 500 public interest legal fellowships.

In October 1988, NAPIL launched the Public Service Challenge in an effort to increase the amount of funds available for public interest fellowships. Challenging law firms to build on the student fundraising effort, NAPIL asked them to contribute \$1,000 for every 5 summer associates hired, with a maximum annual contribution of \$10,000. To date, 26 law firms have contributed funds totalling over \$125,000 to the Challenge, enabling NAPIL member groups to fund an additional forty summer fellowships this year.

NAPIL also operates a national clearinghouse for information on loan repayment assistance plans (LRAP). Law student graduates who wish to pursue public interest employment are assisted in repaying their loans by these post-graduate financial aid programs. In the past four years, the number of LRAPs on law school campuses has grown from 4 to 22, and Maryland has become the first state to enact loan assistance legislation. To help students serve their communities, NAPIL publishes guides and manuals, sponsors regional and national conferences, and travels to over 70 law school campuses a year to provide resources, inspiration and encouragement. NAPIL publications include guides to fellowships and public interest summer and semester employment, as well as manuals on fundraising, loan assistance, and community service projects. NAPIL also publishes a newsletter, *The NAPIL Connection*, which updates members of the legal community on developments in the law student public interest movement.

Our annual conference provides law students, public interest practitioners, and law professors the op-

portunity to discuss the role of law schools and the student movement in addressing the inequitable allocation of legal services in our country. The 1989 National Conference will be held on October 27-29, 1989 in Washington, D.C. (The conference is highlighted below)

We are currently working to improve and formalize our faculty network. We strongly encourage faculty participation in our conference and would appreciate insights on methods of involving law school faculty in other aspects of our work. If you would like to keep abreast of our activities by subscribing to our newsletter or if you would like further information about NAPIL, our member groups, or our annual conference, please contact Sue Schechter at NAPIL, 1666 Connecticut Avenue, N.W., #424, Washington, D.C. 20009, (202) 462-0120.

National Student Public Interest Law Conference

The National Association for Public Interest Law will hold its Fifth Annual National Student Public Interest Law Conference October 27-29. The conference, "Students Making a Difference," celebrates the impressive advancements being made by the student public interest movement. Hundreds of law students, public interest practitioners and law school administrators will come together to share ideas, honor past achievements, and strategize for the future. The 1988 conference, and concurrent career fair, attracted over 600 students from 90 law schools.

The conference agenda consists of a series of speeches, workshops, and panel discussions. Featured speakers include Haywood Burns, Dean at CUNY Law School, John Curtin, the President-Elect of the American Bar Association, Jack Kramer, Dean at Tulane Law School, Ralph Nader, consumer advocate, William Robinson, Dean at the District of Columbia School of Law, Gerry Singen, professor at Harvard Law School, and Kim Taylor, The Public Defender for the District of Columbia.

The conference is held in conjunction with the National Public Interest Law Career Fair, which is co-sponsored by NAPIL and the National Association for Law Placement. The career fair, being held on October 27, is the only public interest career fair that is national in scope. Both the conference and career fair will take place at George Washington University. For information on the conference and travel and housing arrangements, contact NAPIL at the address in the previous article.

Dean Search

COLLEGE OF LAW

UNIVERSITY OF WYOMING

The University of Wyoming College of Law invites nominations and applications for the position of dean. The appointment will be effective on or about July 1, 1990, although an earlier appointment may be arranged if desirable. Review of applications will commence on October 16, 1989 and will continue until a new dean is chosen.

The College of Law is located on the campus of the University of Wyoming in Laramie, two and one-half hours north of Denver, Colorado by car. The University of Wyoming, an institution of approximately 13,000 students, ranks among the top 100 research institutions in the nation. It is the only four-year institution of higher education in the State. Laramie, with a population of approximately 25,000, is situated on high plains in a wide valley between two mountain ranges. Laramie's climate and location make it especially attractive to outdoor enthusiasts.

The current enrollment at the law school is 200 students. There are 14 full-time faculty members, exclusive of the dean, the Assistant dean, and three full-time library faculty. The size and location of the law school, the favorable student/faculty ratio, and the attractive physical facilities contribute to a congenial atmosphere for work and study.

Candidates for dean should have distinguished records of achievement and strong administrative skills. Applications should include a resume and letter expressing the basis for the candidate's interest in the position.

Nominations and applications should be addressed to:

Professor Mark Squillace
Chair, Dean Search Committee
P.O. Box 3035
University of Wyoming College of Law
Laramie, Wyoming 82071-3035

THE UNIVERSITY OF WYOMING COLLEGE OF LAW IS AN EQUAL OPPORTUNITY, AFFIRMATIVE ACTION INSTITUTION. WE ENCOURAGE APPLICATIONS FROM WOMEN AND MEMBERS OF MINORITY GROUPS.

The Nation Institute - Supreme Court Watch

"Ms. Feinberg. . . I have to tell you that [this is] the best statement I've seen submitted by anybody either in connection with Justice Rehnquist or Justice Scalia."

Of course Senator Metzenbaum was impressed. Audrey Feinberg, on behalf of The Nation Institute's Supreme Court Watch Project, gave what is considered the most thorough and succinct testimony ever delivered before the Judiciary Committee. Her profile of Antonin Scalia, over 50 pages of analysis of his record on such issues as civil rights, civil liberties, labor, sex discrimination, and abortion became the cornerstone of the hearings.

Ms. Feinberg continues to work with Supreme Court Watch, and Supreme Court Watch is looking for law students and law faculty who would like to do the same. This action can take many forms, with the underlying purpose being to research, analyze, and report on the record of potential and actual nominees to the Court.

First, Supreme Court Watch is looking for students, supervised by

faculty members, to work on the "mini" reports on potential nominees (scholastic credit is available). These are five to ten page documents which review the nominees stand on civil liberties and civil rights issues. Second, Supreme Court Watch needs both students and faculty to conduct the research and writing of the "major" reports--these consist of sharply detailed research and analysis of every legal position taken by the nominee (this is the document Ms. Feinberg used during the Scalia hearings). Third, Supreme Court Watch is looking for people to become involved in a number of miscellaneous projects, ranging from public speaking events, to civil liberties debates, to independent research on the direction of the Court (Professor Robert Sedler of Wayne State University Law School just completed such a project). Supreme Court Watch invites innovation--any project idea is welcome.

Given the political environment surrounding the Supreme Court at present, lawmakers and legal scholars concerned with the preservation of civil liberties and civil rights must take a stand. The current Court has been molded in swift fashion to interpret the law in its most conservative light. Three justices who have historically been most dedicated to civil rights are now in their eighties (William Brennan, Thurgood Marshall, Harry Blackmun)--if they choose to retire, it will be President Bush who will be responsible for their replacement.

Clearly, this is the moment to take action and voice concern over the direction of the Court and its impact upon the civil rights and civil liberties of our citizenry. While there are endless ways in which those involved in the legal profession can work to influence these choices, there are few opportunities to work in a concerted fashion on the civil rights records of potential nominees and play a critical role in the decision-making process once the nomination has been secured.

Supreme Court Watch provides this avenue for action. Founded in 1981, Supreme Court Watch is a project of The Nation Institute. The Institute undertakes and supports research, conferences, seminars, publishing ventures, and education-

al programs with an emphasis on civil liberties, social justice, and peace. It has a fundamental commitment to those rights protected by the speech, press and assembly clauses of the First Amendment.

Supreme Court Watch has been a vital participant in a national effort to carefully evaluate the civil rights and civil liberties records of potential and actual nominees to the Supreme Court under Reagan. The nominations of Antonin Scalia, William Rehnquist, Robert Bork, and Anthony Kennedy underwent careful review in terms of their respective records on civil rights and civil liberties. For instance, the reports of Justice Rehnquist harassing voters while working for the Republican party in Arizona in the early 1960s

were uncovered by Supreme Court Watch reporters. In the cases of Scalia, O'Connor and Kennedy, Supreme Court Watch gave direct testimony to the Senate. Also, reports were distributed to the Senate Judiciary Committee, the press, hundreds of national and local public interest groups, and the public at large. Staff and volunteers of Supreme Court Watch appeared on radio and television and were contacted for press statements regarding the specific nomination at hand.

The position that civil rights issues take in the broader spectrum of judicial review is contingent upon the exposure given and the time devoted by those closest to the discipline. It is vital that Supreme Court Watch work with legal

scholars and advisors from across the nation. The Supreme Court Watch Board, under the direction of such legal scholars as Haywood Burns, Dean, CUNY Law School at Queens College, and Stephen Gillers, Professor of Law, New York University, is eager for input and action. Should you wish to assist, contact Denis Berger, project director, Supreme Court Watch, at 72 Fifth Avenue, New York, NY 10011 or call (212) 463-9270.

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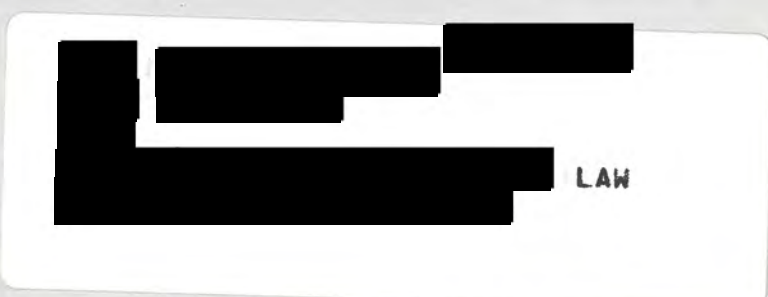
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