

The **EQUALIZER** **SALT**

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CRUZ REYNOSO TO BE HONORED AT SALT DINNER IN SAN FRANCISCO



PROFESSOR CRUZ REYNOSO

On Friday, January 8, 1993, during the AALS Annual Meeting in San Francisco, SALT will present its Annual Teaching Award to Cruz Reynoso, Professor of Law at University of California at Los Angeles School of Law.

Cruz Reynoso's career, like Gaul, is divided into three parts. As lawyer, he has served in both public and private sectors, ranging from a private practice in El Centro, California to directing California Rural Legal Assistance (CRLA). He distinguished himself as a judge in California, both as Associate Justice on the Court of Appeals and as a member of the California Supreme Court. Appointed by Governor Jerry Brown in 1982, he was swept from office in the anti-Rose Bird tide of 1987. In 1991, he returned to his life-

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President's Column . . .

SALT AND THE CLINTON-GORE ADMINISTRATION

- Sylvia A. Law
New York University
School of Law

While SALT is a non-partisan organization, on many issues our concerns and priorities are closer to those of the new administration than the Reagan-Bush Executive that is about to leave office.

Whether the new administration fulfills its promise depends largely on the quality, diversity, energy and commitment of the people who design and implement its programs. As a group, SALT members possess extraordinary vision, talent and connection with other good people.

Nearly 100 seats currently are vacant in the federal judiciary -- 16 on the circuit courts of appeal, and 80 in the district courts. Judicial appointments of the Bush administration have been overwhelmingly white, male, rich and Republican. Over 75% of those appointed report a net worth of over half a million dollars, and over one-third are millionaires. Only 5.5% of the judges appointed by Bush are African-Americans. In fact, the appointment of African-Americans has failed to keep pace with their retirement from the bench, producing an absolute decrease in the number of African-Americans.

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long love of teaching, becoming a professor of law at UCLA; in earlier times, he had taught at Imperial Valley College in 1960-61 and University of New Mexico Law School from 1972-76.

Justice, now Professor Reynoso, has had to mark these trails alone, serving as the first Chicano or person of color in nearly every setting. His leadership and mentorship have left hundreds of proteges: persons who litigated with him at CRLA, clerked with him as their judge, or studied law with him at UNM or UCLA constitute a remarkable cast, including many SALT members. While he has been a trailblazer for people of color and the poor, his interests have been widespread and humanitarian. In this vein, he served on the Select Commission on Immigration and Refugee Policy, the California Postsecondary Education Commission, the Latino Issues Forum, and on many other important boards and commissions. In each capacity, he has advocated tirelessly for the poor and marginalized communities.

Cruz Reynoso's life has been an inspiration to all who have served with him, and SALT honors this master teacher, friend, and colleague. Please join us in San Francisco on January 8th at Hotel Nikko, 222 Mason Street, Ballroom II, third floor, 6:30 p.m. cocktails, 7:30 p.m. dinner. (See page 11 for reservations.) ■

LAW GRADS RISK BEING "OUTED"

— Michael M. Rooke-Ley
Nova University Law Center

An ugly incident involving a recent graduate of an AALS member school serves as a reminder that when our gay and lesbian graduates apply for jobs with the federal government, they must be prepared to give up their privacy rights. While we are hopeful that this problem will no longer present itself under the Clinton Administration, a word of caution seems appropriate, nonetheless.

The story unfolds as follows: A recent law school graduate interviewed for a position with an agency of the federal government. She was offered the job pending the results of a background check conducted by the FBI. During the investigation, a former, disenchanted colleague with whom the applicant had worked more than 12 years ago stated that he believed the applicant to be a lesbian (in response to the generic question,

"Is there anything in her background that could be used to blackmail her?"). Before returning to the applicant to confirm this information, the FBI investigator proceeded to question several other people, asking whether they were aware of her "alternative lifestyle," effectively "outing" her to several former colleagues. When the investigator eventually returned to the applicant and she confirmed her sexual orientation, he expressed the department's concern that, if she had been keeping this information relatively private and preferred to do so in the future, she might present a security risk. The applicant assured the investigator that her immediate family members and close acquaintances were aware of her sexual orientation. Undeterred, the investigator insisted on questioning her elderly father, her ex-husband and her current neighbors, all of whom were fully aware of her "alternative lifestyle."

In the end, the applicant "passed" the security check and is now permanently employed with the federal agency. But, in the process, the investigator drew attention to her sexual orientation in dozens of interviews and, in a few cases, actually "outed" her. As the sole support of two teenaged children, the applicant/employee simply cannot afford to risk her job, or future jobs, by drawing public attention to the nightmare she underwent. At a minimum, however, she would like other gay and lesbian law students to know that when they apply for a job with the federal government, they may eventually get the job but risk being outed in the process. ■

REMINDER:

Please, please pay your dues.

Why not now?

It costs us time & money to beg.

Thanks.

(Simply use the membership coupon on the inserted flyer.)

Chosen from the corporate sector and prosecutor's offices, the Bush appointees have meager pro bono records and include virtually no individuals with public interest, civil rights, legal services or environmental law backgrounds.

Give a moment's thought to whether you are interested in taking on a big job in the new administration. Think about whether you know colleagues or former students who have something special to contribute to the complex task of governing America.

SALT and the Alliance for Justice are embarking on a joint project to encourage the selection of people with a demonstrated commitment to equal justice and excellence in the law. If you have good ideas, fax them to me (212-995-3156) or to Nan Aron at the Alliance (202-332-3224), and we will do what we can to get them into the hopper.

Affirmative Action Attacked At Berkeley

In October, the Office of Civil Rights of the U.S. Department of Education found that the minority admissions program at UC Berkeley (Boalt Hall) violated the federal civil rights law. Dean Herma Hill Kay said the school is proud of its policy, admits no wrong doing, but decided to "enter into a voluntary conciliatory agreement."

This is the first time that the federal Office of Civil Rights (OCR) has investigated a law school admissions program. Michael L. Williams, head of the Bush Administration's OCR, urged all law schools to examine their admissions programs. He acknowledged that an "official finding of discrimination" justified a law school policy giving minorities "special consideration," but few, if any, law schools have ever been subject to an "official finding of discrimination." Williams also stated that, while law schools could encourage a broad pool of applicants, all affirmative diversity programs outside of these narrow parameters were, in his view, impermissible. (Readers may recall that Mr. Williams previously issued the 1990 OCR regulations that prohibited all scholarships targeted to help minority students. The regulations were quickly withdrawn in response to broad protest.)

The investigation of Boalt Hall began in 1989 in response to a request from Rep. Dana Rohrabacher (R-Calif.). Under Boalt Hall's challenged admissions process, qualified applicants

are identified and then grouped by ethnic background for subsequent review. Under the settlement with OCR, Boalt Hall agreed to report changes in its procedures by December, 1992. The School is considering abandoning the separation of files by ethnic background as part of its response. Dean Kay expressed confidence that the school "will not have to compromise our goals" of diversity in order to satisfy the government.

Quite remarkably, it appears that this challenge has unified the school. Dean Kay signed the consent agreement on September 25; the press reported it on September 29. Throughout the process, Dean Kay communicated with members of the law school and university community. On October 1, a large group of students – from across the political and racial spectrum – held a rally and press conference in support of the Dean. Masses of students rallying to support their dean; definitely a "woman bites cat" story!

The Boalt Hall story raises large, important questions. How can educational institutions defend diversity programs that respect tests and grades, while also recognizing that there is no scientific method of defining excellence? How do we preserve requirements of merit when we have no basis for correlating tests and grades with performance and contribution? Should we admit a large portion of the class solely on the basis of tests and grades and a small portion on the basis of our understanding that there are other – perhaps more important – measurements of qualification? Should our notions of merit encompass ideas about missions of the profession, diverse concepts of excellence or concepts of democracy? These questions are the product of a conversation with former SALT Board member Marjorie Schultz, a world class practitioner of the Socratic dialogue. Neither of us claims answers.

One likely consequence of the Boalt Hall settlement is more work for admissions people and faculty. In my twenty-year experience in American legal education, it has been quite common to ask people to pay particular attention to particular groups of people applying for membership in our community – as students or faculty. Is this wrong? Sometimes or always? For example, even though I am not a member of NYU's faculty appointments committee, I am asked to attend preliminary interviews with women and with people working in areas in which I have some expertise. I think this is a fairly common practice and that it makes sense.

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Does the charge against Boalt Hall imply that no faculty member can weigh-in unless we are willing to read all of the application files or interview all of the candidates for appointments?

Since *Bakke*, few individual plaintiffs have challenged professional school admissions or hiring practices. As with Boalt Hall, the serious challenges have come from the federal government. It is unlikely that the new federal administration will challenge our efforts to grapple with affirmative action. But lawsuits by prospective students and faculty members are always possible. They serve a valuable function in keeping us honest and attentive to conflicting values.

In the short term, Boalt Hall has given Professor Rachel Moran the challenging task of answering the questions posed by the settlement agreement. We wish her success. We also congratulate our friends and colleagues at Boalt Hall for reaching a settlement that appears to preserve the heart of its diversity program. This positive resolution is of great value to all of us in American legal education.

Pro-bono At Columbia Law School

Columbia University School of Law joined the growing list of law schools that require students to do pro bono work. The program was adopted in response to student mobilization, with assistance from the National Association of Public Interest Law.

The Columbia program will require a minimum of 40 hours of work over three years. The work cannot be paid or performed for credit, but the school accepts a broad definition of what qualifies as pro bono work. An administrator has been hired to implement the new program and to coordinate pro bono placements. ■

Watch for SALT's Annual
**FACULTY
SALARY SURVEY**
scheduled for mailing to all
SALT members on January 4,
1993 and for additional distribution at the AALS Annual Meeting in San Francisco.

COMBATTING "ISMS" AFTER R.A.V.

— Charles Calleros
Arizona State University
School of Law

I assume that few university instructors are so offensive or intimidating with selective epithets or insults that they maintain unequal educational environments in violation of statutory or constitutional mandates. Angela Harris's thoughtful article in the last issue of *The Equalizer* reminds us, however, that those in positions of social power need not resort to these grosser forms of "cross burning." We can draw from the "long, dark river" of "racism, sexism, and their siblings" in subtler ways "barely perceptible even to ourselves."

We must learn to recognize these subtler, more pervasive forms of cross-burning. Moreover, we should feel sufficiently secure in our freedom of speech and academic freedom that we do not test the limits of these freedoms with gratuitous challenges to our students' sensibilities.

But how should a state university react to students who remain relatively powerless and genuinely filled with hate? At a campus the size of Arizona State University, the student body of 40,000 is bound to include a few whose views are so unorthodox that they can scandalize the entire campus with a single expression of hate. Moreover, as the keepers of unorthodox views, they often feel insignificant and ignored, leading them occasionally to grab attention with expression intended to shock, expression likely protected from state regulation under *R.A.V. v. St. Paul*.

It's no answer to generally prohibit offensive speech or to selectively prohibit a special category of speech. Though we can critique *R.A.V. v. St. Paul* in the law journals, university administrators gain nothing by defying it in the trenches of campus life. By doing so, they only invite rebuke from federal courts and undeserved celebrity status for first amendment martyrs. Neither serves the goals of maintaining a nondiscriminatory educational environment on campus.

At A.S.U., an anti-harassment policy and accompanying first amendment guidelines affirmatively protect and encourage a free exchange of ideas; they prohibit only a few narrow categories of speech, such as threats of harm, without regard to the discriminatory nature of the threat. The centerpiece of the policies, however, is a section creating the Campus Environment Team (CET), a 9-member committee of students, faculty, staff and administrators. It works with other

persons and organizations on campus to encourage students and employees to work, study and exchange ideas in an atmosphere of civility, thus making discriminatory harassment less likely to occur. In partial fulfillment of its educational function, it sponsors or participates in workshops on topics ranging from date rape to free speech, and it regularly holds debates or open forums in which students and others can address the controversial issues of the day in civil, nonviolent settings.

The CET supplements dozens of other programs at A.S.U. designed to prepare students for life in a multicultural society. One of those programs is Leadership 2000, an annual workshop that, among other things, tries to empower students to confront racism in a responsible manner, rather than to ignore or compound it.

In 1991, four graduates of Leadership 2000, all African-American women, did just that when they spotted a shockingly degrading racist poster displayed by its author on the outside of his dormitory door. Because the dormitory allowed residents to post notices freely on the inside of their rooms and on the outside of their doors, an agent of the state university could not selectively take down the racist poster and leave up another resident's "Celebrate Diversity" poster, which I had helped design and distribute as founding Chair of the CET.

But that didn't stop the women. Without any assistance from the university, other than their training in Leadership 2000, they knocked on the offending door and persuaded a resident inside to recognize the injury visited on them by the poster and to voluntarily remove it. Moreover, they addressed the racism by sparking a flurry of counterspeech, organized by the African-American Coalition and supported by the CET, the Residence Hall Director, and a broad spectrum of student groups. This outpouring of speech included an open meeting at the dormitory, a press conference, a public rally, several workshops, and numerous letters to the editor of the student newspaper.

Although some letters to the editor sought to minimize the offensiveness of the poster, the general dismay on campus over the hostile stereotypes in the poster conveyed an important message: not only did the general campus community reject such stereotypes, but it supported multicultural education to address the cultural ignorance that allowed such stereotypes to persist. Less than one week after the discovery of the racist poster, the A.S.U. Faculty Senate overwhelmingly voted to add a course in domestic ethnic diversity to the A.S.U. undergraduate

breadth requirements. (Although that measure had been previously set for a vote, its chances for success were modest until the poster and the counterspeech exposed the great need for it.) In the meantime, the University avoided making a victim and first amendment martyr of the owner of the poster by refraining from invoking disciplinary proceedings against him.

R.A.V. precludes a state university from selectively prohibiting discriminatory hate speech, but it does not preclude strong responses. Universities can empower students to respond to hate speech and can affirmatively encourage students and employees to maintain nonhostile, nondiscriminatory learning environments. That approach requires constant nurturing rather than the quick fix of legislative prohibition, but the results can be more gratifying and lasting.

For copies of A.S.U.'s CET Policies and first amendment guidelines, call A.S.U.'s General Counsel's Office at (602) 965-4550 or its Affirmative Action Office at (602) 965-5057. For a fuller description of the CET's origin and activities, see Charles Calleros, *Reconciling Civil Rights and Civil Liberties after R.A.V. v. St. Paul: Free Speech, Anti-Harassment Policies, Multicultural Education, and Political Correctness at A.S.U.*, 1992 Univ. Utah L. Rev. No. 4 (forthcoming). ■

SETTING THE TONE: Raising Diversity Issues At Orientation

— Hazel Weiser
Touro College Law Center

The Jacob D. Fuchsberg Law Center of Touro College is a suburban New York law school with an aggressive affirmative action program. Two years ago someone published the admissions scores of the first-year class on the first day of spring semester exams. The LSAT scores and GPAs of students of color were highlighted. The reaction was anger, distrust, frustration, humiliation and disgust. Although the administration launched an investigation and the faculty posted a reward, the students responsible for the incident were never identified. A year later a cartoon characterizing African-American students as less qualified appeared on several walls. Once again, no culprits were identified. Racial intolerance and frustration were surfacing at Touro.

The Law Center community mobilized to discover the sources of these tensions and to de-

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wise methods to alleviate them. Dean Howard A. Glickstein appointed a Diversity Committee composed of faculty, administrators and students. The Committee was charged to address the manner in which diversity issues were identified and discussed at Touro. One result of the Committee's efforts was the Fall 1992 Orientation which presented to incoming students an academic program and a series of social events focused on multiculturalism, thereby setting the tone for the institution. The academic program featured three days of classes introducing students to primary law school skills using cases that raise diversity concerns. Orientation closed with an international buffet and a film festival, featuring motion pictures selected for their multicultural themes.

Academic Orientation

The academic portion of the Orientation program used case materials and a methodology that exposed students to issues of multiculturalism and allowed majority and minority students an opportunity to work together. This portion of Orientation ran for three days, and each day was divided into three fifty-minute segments: a traditional lecture, a small group workshop session, and a follow-up class. Students were introduced to the concepts of case analysis, briefing, the evolution of common law concepts, *stare decisis*, problem-solving and class recitation skills, all through cases involving intentional infliction of emotional distress. Inspired by Jean C. Love, *Discriminatory Speech and the Tort of Intentional Infliction of Emotional Distress*, 47 Wash. & Lee L.Rev. 123 (1990) and Okianer Christian Dark, *Racial Inults: "Keep Thy Tongue From Evil,"* 24 Suf. U. L.Rev. 559 (1990), the case materials followed the growth of this tort as it has been used to fight racial, gender, religious, sexual orientation and ethnic intolerance.

The Methodology

The methodology for presenting these materials proposed to stimulate thought and structure discussion of legal concepts that included diversity issues in both a traditional classroom setting and informally in small groups. The first-year class was divided into lecture sections composed of sixty to seventy students. Students were also assigned to small groups of six or seven students to work on specific problem-solving tasks each day. The small groups reflected the diversity of

Touro's first-year student population which is 30.5% minority and 43% women.

This small group format developed, in part, from the recommendations in the "Institute for the Study of Social Change, Diversity Project Final Report" (1991) which studied the demographic changes to the undergraduate student population at the University of California, Berkeley campus. The Report discusses the benefits of cooperative learning and the need to decrease alienation and hyper-competitiveness among students. As the percentage of students of color increases, majority students feel threatened because their entitlements and advantages (which often have never been questioned) appear to vanish. Majority students may deride or blame students of color for these scarcer resources. All students have a tendency to fall back on their primary identities and avoid contact with each other. This balkanization along ethnic and racial lines leads to "racialization, the heightened awareness of many aspects of life as having a racial element." Students of different backgrounds working together on common projects often discover each other because they listen to how each individual thinks and contributes to the process.

Cooperative learning also defuses some of the dysfunctional competitiveness straining students who are competing for scarce resources and facing a depressed job market. We know from first-year journals written by Touro law students in Legal Methods last year that most students initially experience a sense of anxiety caused by their perceived isolation. *Everyone else is getting it. I must be stupid.* That insecurity is relieved as students begin to make friends and share the commonality of the law school experience. Small group learning was chosen because it could reduce anxiety and hyper-competitiveness by facilitating friendship formation within groups that have been formed with diversity goals.

Experienced student teaching assistants monitored the small groups. Recruited from a diverse pool of high achieving students, the TAs provided students with visible role models while forwarding the progress of the small groups.

In the small group sessions, students revised their briefs for the two cases discussed on the first day, answered a series of multiple choice questions on the second day and, on the last day, constructed a legal argument to support and defend a cause of action based upon a hypothetical fact pattern. After the small group sessions, students returned to their lecture groups, and the class reviewed the work of the small groups under a professor's supervision. Each day a differ-

ent reporter was chosen to represent the views of each group at the follow-up session. This gave five students from each small group the opportunity to speak at the follow-up sessions, assuring that a vast majority of the first-year class recited during the three-day program. Model briefs and answers to the short-answer questions were distributed at the close of each session. On the final day, students were asked to draft an answer to the assigned hypothetical.

Intentional Infliction of Emotional Distress

The first reading assignment introduced the tort as it was announced by the California Supreme Court in *State Rubbish Collectors Assoc. v. Siliznoff*, 38 Cal.2d 330, 240 P.2d 282 (1952). The tort was adopted at the urging of legal scholars, and, as it first appeared, it was not broken down into component elements. Students also read *Golden v. Dungan*, 20 Cal. App.3d 295, 97 Cal.Rptr. 577 (1971), an intermediate appellate court decision issued nineteen years later after distinct elements of the tort had been developed. The lecture focused on the elements of a judicial opinion and the development of common law principles.

The second reading assignment introduced students to the less controversial elements of the tort: intent, causation and severity of the distress. The discussion led students to an understanding that law is often composed of definitions, elements or factors which must be proven by the existence of certain categories of facts. *Taylor v. Vallelunga*, 171 Cal.App.2d 107, 339 P.2d 910 (1959) disallowed a claim for intentional infliction of emotional distress because the plaintiff had failed to prove intent. *Adams v. Murakami*, 228 Cal.App.3d 885, 268 Cal.Rptr. 467 (1990), although depublished by the California Supreme Court, provided an opportunity to include inaction within the element of intent in a case dealing with a doctor's failure to treat a mentally disabled adult in custodial care. *Venerias v. Soncrant*, 127 Ariz. 496, 622 P.2d 55 (1981) found lacking the element of severity of distress. The case arose from allegations that senior citizens harassed a young family to move from a retirement community. *Cortez v. Macias*, 110 Cal.App.3d 640, 167 Cal.Rptr. 905 (1980) introduced students to the element of causation.

The third reading assignment focused students on the controversial element of "outrageous conduct." Students were asked to read four cases, all of which dealt with use of the tort

to redress a harm caused by intolerance. The inquiry required an examination of whether the conduct complained of violated the community's standard of decency, whether it was "outrageous" to the reasonable person. When dealing with perceived injuries caused by racial or ethnic intolerance, homophobia, gender or religious bias, courts must decide whether these injuries are outrageous to the community and, consequently, whose community values and standards apply. *Logan v. Sears, Roebuck Co.*, 466 So.2d 121 (1985) was brought by a homosexual man who alleged that the use of the word "queer" was actionable. After discussing the linguistic history of the word, the court found that he did not raise a claim because of its common usage in the heterosexual community. In contrast, the court in *Alcorn v. Anbro Engineering Inc.*, 2 Cal.3d 493, 86 P.2d 216, 86 Cal. Rptr. 88 (1970) also discussed the linguistic history of a word, this time "nigger," and found a cause of action based upon its use by a superior to an employee in an employment setting. A battered woman was allowed to assert a claim of intentional infliction of emotional distress in *Murphy v. Murphy*, 109 A.D.2d 965, 486 N.Y.S.2d 457 (1987), although there was a rigorous dissent, in part, questioning why the plaintiff remained in such an abusive home. *Russo v. White*, 241 Va. 23, 400 S.E.2d 160 (1991) was brought by a woman who was hounded by a man for months after a single date. The court found that the plaintiff had failed to allege severe distress, although the dissent found that all of the elements were clearly satisfied.

In preparation for the third day of the academic program, students were given five fact patterns involving diversity issues. These fact patterns raised possible claims based on racial and ethnic intolerance, anti-semitism, discrimination against persons with disabilities and discrimination against women. The fact patterns allowed arguments for both sides. Students worked on one of these problems in their small groups and then, through their reporters, presented arguments to the entire class when the lecture sections resumed.

These discussions allowed students to identify and perhaps recognize the claims of individuals whose primary identities might be different from their own. This was not their initial reaction. Students inevitably validated the claims of the plaintiffs who were most like themselves. That tendency was articulated and revealed during the follow-up discussions, which never became disrespectful. The discussions were lively,

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albeit self-conscious. Possible claims based solely on hateful words initially were found to be inactionable, although not for First Amendment or libertarian reasons. Perhaps this generation has been desensitized to inflammatory words through television, MTV, film, shock jocks and rap music. What was clearly evident was the enthusiasm and respect with which students spoke and listened to each other in the small groups as well as in the follow-up sessions.

The International Buffet and Film Festival

Orientation culminated in a social event that utilized the efforts and cooperation of the many student organizations at Touro. A giant international buffet was assembled at a local cinema arts theater, and representatives from the student organizations assisted in serving the foods. Two films were shown: "A Soldier's Story" and "Let Him Have It." "A Soldier's Story" deals with issues of race in the investigation of the murder of an African-American sergeant in the segregated United States military. "Let Him Have It" involves the trial and execution of a mentally disabled man in England. After each film, several faculty members and student leaders led discussions drawing out the themes of the two films.

The Results

So far the results of the program have been encouraging, although these observations are informal and personal. Study groups were formed among students who worked together during that first week of school. A number of these groups include students of color, who, in years past, might have been excluded. There seems to be less segregation in the cafeteria and in the library. Student journals submitted in Legal Methods have not expressed that feeling of isolation. By the time school began, friendships had already formed. Because of their increased numbers, students of color are more active in classes and often sit closer to the front of the room. However, they still may be perceived by majority students as the recipients of special admissions and support programs.

The Orientation program is part of a greater emphasis on introducing diversity issues into the Law Center's daily life. Orientation only set the tone. At a faculty retreat scheduled for this month, one of the two days is dedicated to edu-

cating ourselves on ways to incorporate diversity into the curriculum so that issues of race, gender, ethnicity, sexual orientation, and religious intolerance are not isolated into "boutique" seminar classes. Collaborative learning is stressed as a technique during the first year; students are encouraged to work together on common educational projects, thereby dispelling some of the stereotypes that flourish when students keep to themselves. A faculty committee has devised a student teaching assistant program to work with all students during the first year. Anxiety and hyper-competitiveness among students can be reduced, and majority students have less reason to suspect that students of color are being advantaged. Furthermore, the TA program has been expanded to include two second-year required courses.

The work of the Diversity Committee continues, requiring student, faculty and administrative resources and cooperation. We would love to receive your comments and suggestions and, if you would like, to provide you with a copy of the Orientation Workbook and teaching materials. ■

SALT BOARD MEETS IN CHICAGO

— Joyce Saltalamachia
New York Law School

Breaking the long-standing tradition of holding Board meetings on either the East or the West Coast (with the winter meeting held during the annual AALS conference), the SALT Board ventured forth into the great Midwest for its regular Fall meeting on September 18, 1992 at Northwestern University Law School in Chicago.

One measure of SALT's importance and influence is that we are frequently asked to lend our name to amicus briefs, take public stands in



favor of or against current issues, or co-sponsor events with other organizations. The common practice has been to put these requests on the agenda for a Board meeting or, if the requests are particularly timely, for the president to poll the Board for an appropriate response. Frequently, these requests are only tangentially related to legal education, although they may raise important issues of freedom and equality. When such requests have been made, the Board has fre-



quently debated the scope of our concern as an organization. And in an effort to clarify the scope of SALT's concerns, a Committee on Public Positions was established to define the sorts of topics that SALT should address. On behalf of the Committee, Stephanie Wildman and Pat Cain proposed the following policy statement which was approved by the Board:

As a general matter, SALT will take public positions on issues involving equality, diversity or academic freedom. Priority will be given to issues which affect legal education or to issues which are particularly significant.

All requests for SALT to take a public position shall be directed to the president of SALT, who shall then refer the matter to the Standing Committee on Public Positions. Before the Committee reports to the Board, the Committee shall consult with SALT members at any school directly involved in the issue. The Committee shall consider the request and make a recommendation at the next Board Meeting.

As to who has the ultimate authority to make public pronouncements on behalf of SALT,

the Board reaffirmed the Code of Ethics, which provides that the Board of Governors "may poll the members of the Society on major questions and may publicly announce as the position of the Society a position on which two-thirds of the members voting agree."

Alternatively, the Board may vote to take a position. The by-laws provide that a quorum for a meeting of the Board is one-third of the total number of members then in office. The Board may issue a statement if the statement is approved by a majority of those present and voting.

Regarding issues which arise between Board meetings, the by-laws provide that the Board may take action when the President or any three members believe that the Board should speak promptly. The President shall cause all members of the Board to be polled by telephone or letter. The statement shall then issue if two-thirds of the members of the Board voting (and at least a majority of the Board) approve.

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The Board also considered the proposed ABA rule on mandatory pro bono at the request of president Sylvia Law. In discussing whether SALT should support the proposed ABA rule establishing mandatory pro bono for attorneys, Board members were divided. Several members of the Board preferred a provision allowing lawyers to "buy out" of the requirement, provided



the money would be used to fund highly qualified public interest lawyers. Others objected that the pro bono requirement would apply across the board and would have an unduly burdensome impact on legal services lawyers and solo practitioners, in particular. Some members of the Board preferred a tax on lawyers instead of a mandatory pro bono requirement. Sylvia argued

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in favor of the pro bono requirement on the ground that the requirement would bring all lawyers in contact with poor citizens.

The Board decided to gather more information and discuss the issue at a later Board meeting. In the meantime, the Board resolved to communicate to the ABA SALT's continuing support for the traditional ethical obligation to provide legal services to the poor.

Arthur Leonard spoke to the Board regarding the AALS working group on compliance with the AALS policy prohibiting discrimination. AALS Executive Committee Regulation 6.17 governs the degree to which religiously affiliated schools are bound by the AALS non-discrimination policy rules. In essence, this regulation provides that religiously affiliated schools may give hiring preference to members of their own religion but that no school may discriminate against the categories listed in the AALS rules. When sexual orientation was added as one of the categories in 1990, some religiously affiliated schools objected to being bound by this category if it violates the precepts of their religion, thereby raising a free exercise challenge.

The working group, which was established in order to formulate a policy that will reconcile the AALS mandate against discrimination and the religious schools' need to follow the tenets of their governing bodies, has proposed that the AALS not insist upon compliance if the religiously affiliated school has a strong objection, but, that each school should comply with the non-discrimination rules to the greatest extent possible. Questions remain as to who or which body should decide whether each school is in compliance.

The AALS Section on Gay and Lesbian Legal Issues is in the process of formulating a position paper on the working group recommendations. The question was raised as to whether SALT wished to take a position on this issue. Richard Chused suggested that SALT should support the application of the AALS non-discrimination policy to all law schools except those religious law schools needing an exemption because of religious principles. The Board generally agreed with this position but decided to contact the AALS Section on Gay and Lesbian Legal Issues and to obtain a copy of that section's position on the working group recommendations before communicating SALT's position.

On the same topic, Howard Glickstein reminded the Board that the ABA is now actively considering the adoption of a policy prohibiting discrimination on the basis of sexual orientation.

As a member of the AALS Committee on Statistics, Richard Chused reported that there is a proposal pending before the AALS Executive Committee to establish a presumption in favor of releasing the statistical data that the AALS collects and to publish analyses of the AALS data. Because SALT pioneered the collecting of data on race, ethnicity and gender, Richard suggested that, if the AALS adopts the proposal, SALT might want to begin to collect data about gay and lesbian law professors or some other type of data that the AALS does not currently collect. Undoubtedly, AALS's new willingness to collect and share data of this type is the result, in large part, of SALT's leadership in bringing diversity issues to the forefront of discussion. ■

**Now is the time
to register for
SALT'S 1993
Teaching Conference
in New York,
May 22-23.
For description and
registration form,
see red insert.**

REPRESENTING DEATH ROW INMATES:

Bringing Reality into the Classroom and Justice to the Unrepresented

– Margery Koosed
University of Akron School of Law

A general consensus appears to have developed among our colleagues on three specific means of improving our criminal justice system courses. This consensus is a product of discussions with fellow SALT members, with colleagues in the AALS Criminal Justice Section, and with participants in last year's Justice Mission Conference in Cleveland.

First, there seems to be considerable support for "bringing more doses of reality into the classroom." Second, many faculty wish to encourage a greater sense of professional service among their students. Third, many of those teaching criminal justice courses agree that capital case decisions of the United States Supreme Court are fine vehicles for class discussion of essential issues.

In keeping with these views, I am again including in my seminar course an opportunity for students to assist an indigent death row inmate petitioning for writ of certiorari to the United States Supreme Court, under my supervision as counsel of record. I am writing to encourage other faculty members teaching seminar or clinical courses to consider incorporating into their classes such an opportunity to assist a death row inmate.

From a pedagogical standpoint, giving students the opportunity to research cutting-edge legal issues, to assist in preparing a petition seeking review in the nation's highest court on behalf of a death-sentenced client, and to participate in a pro bono legal experience would appear to satisfy many of the goals which we frequently espouse. From a professional and individual standpoint, taking on the responsibility to serve as counsel for an unrepresented death row inmate, even if only at one stage of review, allows us the opportunity to serve our profession and community and to personally participate in the justice mission.

The need is desperate. If you are interested, please contact me at University of Akron School of Law, Akron, Ohio 44325, telephone: (216) 972-6793. ■

SALT-MINDED EVENTS in SAN FRANCISCO

Board Meeting – Wednesday, January 6, 1993, 5:30 pm - 8:00 pm, over dinner. Location to be announced.

Robert Cover Memorial Study Group – Wednesday, January 6, 1993, 8:00 pm - 10:00 pm. Location to be announced. Entitled "The Jewish Persona in American Law Schools" with Prof. Pinina Lahav. Background readings will be distributed to people who have participated in this group in years past. Anyone who would like to be added to that list should contact Professor Avi Soifer at Boston University School of Law (telephone: 617-353-3117).

Panel on Exploring Differences – Thursday, January 7, 1993, 9:00 am - 12 noon. Location to be announced. Entitled "Exploring Differences in Education: Issues of Integration, Segregation and Equality," this program will be co-sponsored by SALT and the Section on Law and the Community and will feature Jonathan Kozol. Panelists include Jacqueline Irvine, Department of Education Studies, Emory University; Sonia Jarvis, Director, National Coalition on Black Voter Participation; Diane Lipton, Staff Attorney, Disability Rights, Education, and Defense Fund; and Steve Schwartz, Adjunct Professor, Harvard Law School. Professor Arlene Kanter of Syracuse Law School will moderate the panel.

Annual Teaching Award Dinner – Friday, January 8, 1993, 6:30 pm cocktails, 7:30 pm dinner. Hotel Nikko, 222 Mason Street, Ballroom II, 3rd floor, honoring Professor Cruz Reynoso. Please make reservations immediately (before December 22, 1992 to guarantee a seat) by calling Professor Stuart Filler at 203-576-4442, and then sending a check for forty dollars (\$40.00) to him at Bridgeport Law School at Quinnipiac College, 600 University Avenue, Bridgeport, Connecticut 06604-5651.

Diversity Forum – Saturday, January 9, 1993, 8:30 am - 10:15 am. Location to be announced. The AALS is sponsoring a Forum on Meeting the Challenges of Diversity in an Academic Democracy. People are urged to bring stories of problems, successes and failures in dealing with second generation diversity issues. ■

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