

# EQUALIZER

SALT

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## WEEKEND IN THE WOODS Fifth Annual Cover Conference

Some 130 students, law professors and practitioners gathered at the Sargent Camp in the New Hampshire woods for the fifth annual Robert Cover Public Interest Retreat over the weekend of March 6-8. As the vans arrived from Logan Airport, we began to build our community for the weekend. After a welcome by USC Professor Judith Resnik, a group of returning conference attendees – public interest practitioners who had previously attended as law students – introduced themselves and talked about what the Cover conference had meant to them. BU Law Professor Avi Soifer and Yale Professor Steve Wizner then introduced themselves and related the history of the conference.

The Cover conference provides a unique opportunity for different groupings – practitioners, students, and professors – who share



Conference participants weather the cold with frozen smiles just to get their pictures in the EQUALIZER.

Continued on page 8

## PRESIDENT'S COLUMN

### HARVARD: Four More White Men

On February 28th, Harvard Law School invited four white men to become tenured members of the faculty. Two of these four white men are currently visiting at Harvard, and a third, who visited in the fall, was considered while he was still in residence. In the past two years, Harvard refused to *even consider* tenured appointments for three visitors of color, citing a firm rule against considering visitors for faculty positions during the year of their visit. They have made no offers to people of color or to women for many years. The faculty was asked to vote for the four as a package, without regard to assessment of the qualification of particular individuals.

Were this the Acme Widget Company, these facts would constitute a strong *prima facie* case of race and gender discrimination.

For the past two years, former SALT Vice President Derrick Bell has been on leave from Harvard protesting the fact that the school has never had a woman of color in a tenured or tenure-track position. In response to the offers to the slate of four, Derrick filed with the Department of Education a complaint against the law school, asserting that Harvard's hiring and promotion practices violate Title VI of the Civil Rights Act of 1964.

As in any discrimination case, the employer has responses. The four white men possess traditional credentials. The administration has pledged to undertake a serious search for qualified women for lateral appointment. The appointments emerged from a compromise in a committee that included one Critical Legal Studies person and several more conservative members.

Continued on page 10



## **LAWYERS CHALLENGING APARTHEID**

### **The Legal Resources Centre In South Africa**

I spent two months in South Africa during the summer of 1985 observing how lawyers were challenging apartheid. Much of that time, I studied the work of a lawyer who was helping a community of about 10,000 residents in the farming village of Driefontein in the Eastern Transvaal, southeast of Johannesburg. The villagers had been threatened with removal from land which they had owned for 70 years because the area had been officially designated as the exclusive domain of whites. Although the community had few legal rights or remedies under apartheid, it was able, ultimately, to resist forced removal.

Late last year, the attorney, Geoff Budlender of the Legal Resources Centre (LRC), spoke at a Cleveland State University conference about the responsibility of lawyers to challenge injustice. I am reminded of the special role that lawyers, especially those like Mr. Budlender and his colleagues at the LRC, are playing at this critical time in South Africa's history. It is a story that should be of particular interest to SALT members.

The LRC is a multi-racial, public interest law firm that has kept alive the belief that law can and should be an instrument of justice. The LRC has grown steadily since its founding in 1979 and now has a national office in Johannesburg and six regional offices. It employs over 100 people, including 40 attorneys.

When the LRC opened its doors in 1979, the pass laws separated families and controlled the day-to-day movements and employment of black citizens through a migrant labor system. The LRC brought three cases over the interpretation and application of these laws before the Appellate Division, South Africa's highest court. These three cases enabled families to live together in towns, and to live and be employed in urban areas without having to secure special permits, thereby contributing significantly to the ultimate repeal of the pass laws.

The LRC's most important work may well be undertaken during the next several years. De-

mand for the LRC's services is increasing. In the past year alone, the LRC opened approximately four thousand new cases, some of them involving communities consisting of thousands of people. These cases concerned human rights abuses, misuses of power by public officials, labor rights, and land, housing and development issues.

Unlike the villagers of Driefontein, countless other villagers were removed from their land under apartheid. The LRC is currently helping over forty communities return to their land. One case involves the Mfengu, a community of 4,000 people who had lived on 19,000 acres of fertile land west of Port Elizabeth for over 140 years. The South African government forced them at gunpoint to leave their land in 1977, paying them about \$75 for their houses and nothing for their land. The government transported them to the Ciskei and stripped them of their South African citizenship in 1981.

In 1982, the government sold 15,000 acres of the Mfengu's land near Port Elizabeth to 19 white farmers. Last year, the government gave one farmer permission to sell his land at a profit of nearly \$400,000. The LRC has challenged the matter in court, arguing that the forced removal was unlawful and that the government should return the land to the Mfengu. Archbishop Tutu (who is Mfengu) led a delegation of LRC attorneys and tribal representatives to meet with President F.W. de Klerk, who subsequently appointed a committee to consider the Mfengu's case.

In another case involving housing and development issues, over 6,000 families were living in shacks in a crowded township near Durban and had been on waiting lists for housing for years. The land promised earlier to them was sold to developers, who planned to build houses far beyond their financial reach. Private developers, with the help of the army and police, began removing shacks from the land. The shack dwellers became angry and resisted, and a truly dangerous situation developed. The LRC was asked by the community to intervene and was able to halt the demolitions while talks took place. At the talks, the developers agreed to build 1,100 homes on the land owned by the developers and another 4,900 homes on other land in Kwadabe-



ka. The community agreed to move temporarily to make way for the infrastructural work.

The LRC is challenging right-wing resistance to the repeal of apartheid in cases involving the desegregation of housing, libraries and even swimming pools. One case concerns the all-white town council in a small town called Springs which closed its public swimming pools rather than integrate them after the government repealed the Separate Amenities Act. The LRC's client opposed the town council's action. The court decided in favor of the LRC's applications, and the pools were ordered reopened.

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*"The LRC is challenging . . . apartheid in cases involving the desegregation of housing, libraries and even swimming pools."*

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In another important case, the Afrikaner Resistance Movement (AWB) had harassed and threatened black employees of the Palabora Mining Company because these employees had been assigned to live in company houses in all-white Phalaborwa. The LRC's client, the first black person to be assigned to a company house, was subjected to threats of violence by the AWB. The LRC challenged the individual who made the threats, and he withdrew them. The AWB subsequently appointed an attorney to respond to the LRC's demands. The LRC's client has been unharmed to date, although the car of another employee was completely destroyed by fire.

The LRC continues to bring landmark cases before the South African courts with mixed results. In *Mthwana and Others*, the LRC tried to establish a defendant's right to counsel in court. Over 80 percent of the people in South African prisons did not have legal representation at their trials. They had to defend themselves as best they could even though many did not understand the language of the court. Unfortunately, the Appellate Division dismissed the LRC's appeal last fall. However, the Chief Justice accepted the fact that a fair criminal justice system requires that indigents be represented in court and encouraged the government to take the neces-

sary steps to achieve this objective.

Victims of violence have also sought help from the LRC, particularly from its office in Durban. Since 1984, over 12,000 South Africans have been murdered as a result of the endless wave of political violence sweeping Natal and the Transvaal. In an attempt to help end the violence, the LRC brought a case challenging the State President's amendment of the Natal Code of Zulu Law which allowed Zulus to carry weapons in public for cultural purposes. In December, Judge Diddcott of the Durban Supreme Court declared the proclamation to be void on the grounds of vagueness. He agreed with the LRC's argument that permitting this practice would only result in exposing the people of Natal to considerably more violence.

The LRC has also helped countless individuals with their legal problems. For example, a television host introduced a segment about day care centers which was broadcast throughout South Africa and Namibia in 1989. The piece centered on the LRC's client, a domestic worker. When her face appeared on screen, the host said, "Bet she's got fourteen children and each one's got a different father probably." The LRC instituted an action for damages arising out of the defamatory statement. A settlement of 10,000 rands was agreed upon during the pretrial conference and was recently paid to her. In another case, the widow of a farm worker recently approached the LRC's office in Johannesburg for assistance. Her husband was allegedly beaten to death by his employer. She has instructed the LRC to bring a case to court against the farmer on her behalf.

The LRC is also involved in a complex matter involving environmental protection and the rights of indigent peoples. South African authorities are keen to link three reserves running along the Mozambique border to create a single, huge nature reserve. The LRC acts for a community living inside the boundaries of the Kosi Bay Nature Reserve, which has been told that it is no longer allowed to exercise traditional rights to harvest wild plants, animals and fish. Although no one consulted the inhabitants or discussed the need for conservation, they are now being told by strangers that they are a threat to the environment and should move from their homes. The



LRC is working to mediate a solution to the conflict. It has brought a court action to determine the rights of the people living within the areas of the reserve. It has also arranged several workshops on land and nature conservation to help develop a coherent policy.

Questions remain concerning how and when apartheid will be dismantled completely and what system and values will take the place of apartheid. As apartheid is dismantled, the LRC will continue to shape democratic traditions in South Africa, build respect for human rights and encourage belief in the rule of law.

The LRC receives no funds from the South African government. It is dependent entirely upon contributions from individuals, foundations, corporations, development agencies and churches. Approximately fifty percent of its funding comes from Europe, thirty percent from South Africa, and twenty percent from the United States and Canada.

In the United States, a group of lawyers established a non-profit organization called the Southern Africa Legal Services and Legal Education Project Inc. (SALSLEP) in 1979. SALSLEP's principal grantee is the Legal Resources Centre. SALSLEP would welcome contributions from SALT members to benefit the LRC. Contributions are tax-deductible. For further information or to make a contribution, please contact Ann Satchwill, Executive Director, SALSLEP, 2445 M Street, N.W., 5th Floor, Washington, D.C. 20037-1420. (tel. 202-663-6280). ■

— Lucie White

## BOOK REVIEW

### **RACISM AND JUSTICE: THE CASE FOR AFFIRMATIVE ACTION**

by: *Gertrude Ezorsky*  
(Cornell University Press, 1991, \$6.95)

At the beginning of this century, Dr. W.E.B. DuBois predicted that race would be the dominant issue in America for the rest of this century. Unfortunately, it appears that Dr. DuBois was overly optimistic; race certainly will be a domi-

nant issue in this country well into the next century.

The struggle to vindicate the 13th and 14th amendments absorbed our nation during the 1950's and 1960's. With the passage of significant civil rights legislation, many believed that the struggle had been won. The country had confronted its discriminatory past and seemed to be prepared to ensure equal opportunity for all Americans. Today, however, racial conflict continues to plague our nation. The struggle for equality never ceases. Each new generation must learn our tragic history and understand why special steps are required if we are to overcome that history.

Gertrude Ezorsky, a professor of philosophy at Brooklyn College, City University of New York, has produced a book that is a primer for the uninitiated. "Racism and Justice: A Case For Affirmative Action" begins with an explanation of racism — both overt and institutional — and the various ways we have attempted to combat it, particularly through affirmative action. She analyzes in detail the various contexts in which an affirmative action remedies have been employed. Professor Ezorsky then candidly discusses the criticisms of affirmative action. She does not deny that affirmative action may place burdens on white males but suggests some specific programs for alleviating those burdens. Professor Ezorsky goes beyond the legal arguments well known to lawyers in support of affirmative action and brings to bear her training as a philosopher to discuss the moral perspectives of affirmative action. Her book also includes various documents that bear upon the affirmative action controversy.

"Racism and Justice" is a concise, well-reasoned analysis of the affirmative action controversy and will be helpful to even the most informed and sophisticated. Supporters of affirmative action, who have allowed those who would turn back the clock to take the initiative, will find that Gertrude Ezorsky's book provides the ammunition to aggressively counter this initiative and the backlash it has generated. Essential reading for anyone who wishes to understand the affirmative action controversy and the historical, philosophical and legal principles underlying affirmative action policies, this book should be part of the bibliography of any course in which affirmative action is discussed. ■

— Howard A. Glickstein



## REFUSING TO BE SILENCED The Bread And Circus Literacy Test

"Virginia," he said, 'why are they trying to destroy me?'"<sup>1</sup>

O.K., P.C.-ers, now that it's all over, and transcribed into the Congressional Record – indisputable proof that blacks and women and their gleaming heaving body parts really, really are part of the Canon after all – here comes the final exam in Advanced Western Civ (cribs footnoted below). Imagine that Orrin Hatch is your professor.



### PART I – General Knowledge

1. Who spoke these immortal words: "How fetching you look, my dear. Bosom heaving and eyes wide with innocence. The pity of it is that you probably are innocent by your warped definition. Never mind the pain you've caused a harmless woman by casting your net over her witless husband."<sup>2</sup> (a) Alan Simpson; (b) Virginia Lamp Thomas, in *People* magazine; (c) Rhett Butler in *Scarlett: The Sequel*.

2. "By campaigning against the thing called 'date rape,' the feminist creates immense hatred and suspicion between men and women, so that the feminist advice to any woman going out on a date is to establish a virtual contract governing what will happen in the course of an evening. This is to destroy the free and easy relations between men and women which have long characterized the

Western world – and only the Western world . . . . But anyone contemplating this remarkable situation is likely to have a further thought. Political doctrines always invite the question: *Cui bono*? Who is it, one might ask, who would benefit from dormitories filled with attractive young women who have been worked up into a state of hysterical mistrust of men? One of the most influential fragments of feminism has been its lesbian wing."<sup>3</sup> This classic jeremiad is taken from which great text of Western Civilization? (a) the *Holy Bible*; (b) William Shakespeare's *As You Like It*; (c) William F. Buckley's *National Review*.

3. "[L]usty female professors seem to be quite common on campus, to judge from the tales of our male correspondents."<sup>4</sup> Is this: (a) gossip; (b) fantasy; (c) documented anthropological fact, as reported by Professor David Danziger in *Penthouse Hot Talk*?

4. "Modern psychiatrists have amply studied the behavior of errant young girls and women coming before the courts in all sorts of cases. Their psychic complexes are multifarious, distorted partly by inherent defects, partly by diseased derangement or abnormal instincts, partly by bad social environment, partly by temporary physical or emotional conditions. One form taken by these complexes is that of contriving false charges of sexual offenses by men. The unchaste (let us call it) mentality finds incidental but direct expression in the narration of imaginary sex – incidents of which the narrator is the heroine or victim. On the surface the narration is straightforward and convincing. The real victim, however, too often in such cases is the innocent man; for the respect and sympathy naturally felt by any tribunal for a wronged female helps to give easy credit to such a plausible tale."<sup>5</sup> This is: (a) news; (b) *Wigmore on Evidence*, 3rd Ed., Vol. 3, pp. 459, 460 (1924).

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1. Virginia Lamp Thomas, *People* magazine, November 11, 1991.
  2. Alexandra Ripley, *Scarlett: The Sequel to Margaret Mitchell's Gone with the Wind*, Warner Books.
  3. Kenneth Minogue, "The Goddess That Failed," *National Review*, November 18, 1991.
  4. Professor David Danziger, "Vox Pop Sexualis," *Penthouse Hot Talk: The Voice of America*, November/December, 1991.
  5. *Wigmore on Evidence*, 3rd Ed., Vol. 3, 1924.



5. "Moreover, the standards that the courts have been adopting – that the conduct be viewed from the perspective of a 'reasonable woman' and that the unwelcomeness of the speech or behavior has to be communicated – provide little guidance on what behavior or speech to avoid. It may well be that someone who engages in what might be considered harassing conduct is therefore entitled to a 'free bite' before liability can attach."<sup>6</sup> This is: (a) more from *Hot Talk*; (b) the *Labor Relations Reporter*, October 28, 1991, Vol. 138, No. 9, p. 268.

6. "If Clarence Thomas had been a woman, he might have been Anita Hill..."<sup>7</sup> This statement presupposes that: (a) Paris Is Burning; (b) if Long Dong Silver had wheels, he'd be a bus; (c) if a bus could write, there would be a job waiting for him at *Time* magazine.

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*"... someone who engages in what might be considered harassing conduct is therefore entitled to a 'free bite' before liability can attach."*

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7. "To let John the conqueror win your case; take one-half pint whiskey, nine pieces of John the Conqueror Root one inch long. Let it soak thirty-eight hours till all the strength is out. (Gather all roots by September 21.) Shake up good and drain off roots in another bottle. Get once ounce of white rose or Jockey Club perfume and pour into the mixture. Dress your client with this before going to court."<sup>8</sup> Identify "John the Conqueror"; he is: (a) a prophet; (b) a pimp; (c) a pope; (d) the secret of John Doggett's repeated success.

8. "Later, after two hours' sleep, we walked into the ... room, and people were lining the hallways, urging him on. 'Who are these people?' [he] asked me, and I said, 'I think they are angels.'"<sup>9</sup> What famous passion play do these lines come from: (a) David Duke, in *Born Again: The Sequel*; (b) the ghost of Christmas future, in his debut appearance on "Arsenio Hall"; (c) Virginia Lamp Thomas, at the portals of the Senate.

9. "In a righteous fury, he told his judges that their hearing was a 'national disgrace.... You are

ruining the country.' He had been a victim, he said, of the vitriol of the left. His message: 'Unless you kowtow to an old order...you will be lynched, destroyed, caricatured by a committee of the Senate rather than hung from a tree.'"<sup>10</sup> Who delivered this famous soliloquy? (a) Julius Caesar; (b) Hamlet; (c) Othello; (d) Joan of Arc; (e) Richard Nixon; (f) Harold Carswell; (g) John Tower; (h) Oliver North; (i) John Sununu; (j) Robert Gates; (k) Clarence Thomas; (l) etc., etc., etc.

10. True or False?

She said: "Objection to sexual harassment is not a neopuritan protest."<sup>11</sup>

She said: "This psychodrama is puritanism reborn."<sup>12</sup>

## **PART II – Language Skills**

Unscramble the sentences in the following essay, put them into logical order, and correct for grammar and ambiguity. Follow the example set in the first few lines:

Watching the ~~Anita Hill-Clarence Thomas~~ hearings [Clarence Thomas' ordeal], I [the third person] was reminded of something I [the third person] once [did not] read in ~~Hans Peter Duerr's book, Dreamtime~~ [the Uniform Commercial Code]: "In archaic times a person who stood outside the law, the culture, was considered 'dead' by ordinary people."<sup>13</sup> On the heels of Clarence Thom

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6. *Labor Relations Reporter* (Bureau of National Affairs), October 28, 1991.
  7. John Hull, "A Real Straight Arrow," *Time* magazine, October 21, 1991.
  8. Zora Neale Hurston, *Mules and Men*, Harper & Row.
  9. Virginia Lamp Thomas, *People* magazine, op. cit.
  10. "Judging Thomas," *U.S. News & World Report*, October 21, 1991.
  11. Catharine MacKinnon as quoted in "Harassment: Men on Trial," *ibid*.
  12. Camile Paglia as quoted in "Harassment: Men on Trial," *ibid*.
  13. Hans Peter Duerr, *Dreamtime*, Basil Blackwell.



as' self-proclaimed death and rebirth by religious, "faith"-based, senatorial confirmation, I found it riveting, this idea of illegitimacy as a form of death, of legality as its own life force. It seemed to me to be an intriguing paradigm from which to consider our profane national passion play, this Not-Truly-a-Trial, this bodily Ordeal. What is the "law of our culture," I have been asking myself. Who are the "ordinary," real-life people in our society who hold this power of "considered" death? Who are the unreal nonpersons who ghost-walk through the underworld of the illegitimate?

Now as everyone knows, it is settled law in our land that witches are those who fly upside down. Thus it is that Anita Hill is dispositively a witch. Everything she touched inverted itself. She was relentlessly ambitious yet "clinically" reserved, consciously lying while fantasizing truth.

Lie detectors broke down and the ashes of "impossible truth" spewed forth from her mouth. She was controlled yet irrational, naive yet knowing, prim yet vengeful – a cool, hotheaded, rational hysteric.

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*"... we live in a culture where Scarlett O'Hara and the Scarlet Letter compete with the Bible and the Exorcist for popularity."*

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It is also a tenet of our legal system that when an ordinary man is "tortured," "crucified," and then rises again after only 106 days of "scurilous" "inquisition," he may take his rightful place in the pantheon of apostolic prophets. Thus it is that Clarence Thomas, man of the People, was able to invoke "God as my judge" rather than Congress, and thus it was that the entire Senate of the United States of America fell back in reverential awe.

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I get into lots of trouble with lawyers, to say nothing of psychiatrists, for my frequent assertion that the boundary between the legal and

the illegitimate is just narrative transaction, a metaphysical scripting of negotiated power. But after the last several weeks, how could anyone doubt the Essential Truth of that? Just think: we live in a culture where Scarlett O'Hara and the Scarlet Letter compete with the Bible and the Exorcist for popularity. Where what took place in

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*"high-tech lynching" means A Broad With A Bullhorn.*

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the boardroom of the EEOC is walled off from questions in deference to Clarence Thomas' "most private sanctum, the bedroom." Where the lady with the red dress on (or the yellow or the purple or the turquoise with the double row of buttons down the front...) is all danger and unresolvable mystery; where the Mystery Man is strong-jawed, silent, and cuts a figure of quiet integrity. Where Hester Prynne has the uppity self-promoting audacity to try to recast herself as "the Rosa Parks of sexual harassment," and where Reverend Dimmesdale breaks with his faith and martyrs himself giving birth to the world's first case of "reverse sexual harassment." Where "witch-hunt" is used to mean not a posse against but by; where "high-tech lynching" means A Broad With A Bullhorn. Where kinder and gentler feels terribly cruel and ironic.

What account, in the name of the law, are we to make of all this? What accountability, in the face of chaos, are we to take from all this? Where's the truth? Where's the falsity? Where's Waldo? And where is Robert Gates?

In the rotunda inside the CIA building, the largest covert intelligence operation on the planet, there is an engraving of the words from the gospel according to John: "And ye shall know the truth, and the truth shall make you free."

So perhaps it is true that any woman who is not a witch shall simply refuse to burn when tied at the stake. And perhaps it is true, after all is said and done, that masturbation really does make men go blind. ■

– Patricia J. Williams  
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magazine)





common political and social values to come together, to empathize, to learn, and also to renew commitments as individuals and as a community. The conference brings passionate people together to think, talk, breathe, debate, rage and laugh about the possibilities of intense involvement in public interest law. The conference is held as a legacy of Robert Cover's commitment to innovation in legal education and scholarship and the use of law as a vehicle for social change.

During the conference, we engaged in substantive and strategic sessions, such as that led by NYU professor Sylvia Law on reproductive freedom. The discussion ranged from a blow-by-blow analysis of the opinions in the *Webster* case to the utility or advisability of asserting that *Roe* has been overruled.

The small group discussions were organized by methods of effecting change within par-



ticular subject matters. For example, in addition to Sylvia's discussion of lobbying for reproductive freedom, two sessions dealt with lobbying for minority rights and around gender/sexuality issues. Groups interested in community organizing, human rights work, and methods of bridging the gap between the ivory tower and the trenches also met to discuss environmental, labor, criminal justice, and international human rights issues. Attention was also given to balancing different legal strategies and approaches given the current reactionary climate in the federal courts. The strategic implications of concentrated legal aid work versus high impact federal litigation, state lobbying efforts and litigation, and community organizing and education were discussed throughout the weekend.



On Friday afternoon, the Camp staff led participants through some great adventure and trust games (such as figuring out how to get over a 12-foot wall). I was ready to scale that wall on Saturday, but the weather was not ideal - let's face it, the weather was lousy. The sleet turned the camp roads into sheets of ice, so the scheduled adventure games were moved inside. After Saturday dinner, we heard from community activists about community organizing on three very different levels: local (Pat Gowens of the Welfare Warriors), statewide (Roxanna Boddillo of the Connecticut Women's Education and Legal Fund), and national (Nan Aron, of the Alliance for Justice).

Some of the most important work of the conference took place after the formal workshop and discussion sections at Saturday night's par-



ty. We had all made some acquaintances the night before, but by Saturday night we had all heard each other speak up at one time or another in the day's workshops. The party at the South Lodge provided all the participants with an opportunity to forge alliances and make new friends.

Sunday morning, Henry Schwarzchild of the ACLU Capital Punishment Program discussed his lifetime of work on progressive issues and especially capital punishment. By sharing his impressions of the continuum of legal struggles – from the civil rights movement and poverty law, to defense of civil, political and human rights today – we were left with a strong sense of carrying forward the legacy of lawyering for social change.



After lunch, ace photographer Sylvia Law took our camp pictures and we began to wend our way back to Logan airport. Naturally, the weather cleared up as we were leaving, but it just made me determined to come back next year.

My goal in attending the retreat was to reconnect with the public interest roots that I felt had been somewhat subsumed in my teaching career. I also wanted to learn ways to help remove the barriers of indifference and hostility erected by the law school structure and the business of law against students who consider such a career. The practitioners and activist-professors I met have inspired me to become more active in the various communities of which I am a part.

For practitioners, the weekend was equally rewarding. Susan Waysdorf is a staff attorney at



Whitman-Walker Clinic's Legal Services Department in Washington, D.C., which provides legal aid to persons living with HIV and AIDS. Susan, who had also attended the Cover conference several years earlier while a law student at Maryland, noted that this kind of gathering was fairly common in the 1960's, when she cut her activist teeth, as an important method for building community and movement.

Victor Graves, a first-year student at Cath-



olic University reported that the students came back fired up to pursue public interest careers and also to bring some of the spirit of the conference back to the law school community. Some members of the Washington contingent have already begun talking about putting together a regional group.

In short, the weekend was a marvelous experience, and we urge anyone who has become a bit cynical lately to come on up to New Hampshire next year. ■

– Nell Jessup Newton



But, Harvard is not the Acme Widget Company. As Betsy Bartholet has cogently demonstrated, standard anti-discrimination norms are often not applied in professional settings and elite institutions.

The fact that Harvard Law School is not the Acme Widget Company is relevant for another reason. As a pace-setter in an hierarchical educational world, actions that are acceptable at Harvard are apt to be acceptable at other American law schools. SALT studies organized by Richard Chused and David Chambers demonstrate that the under-representation of women and minorities is a persistent problem in American legal education and that the problems are more acute in elite institutions.

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*"... standard anti-discrimination norms are often not applied in professional settings and elite institutions."*

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The Massachusetts Supreme Judicial Court is now considering whether Harvard students have standing to challenge the School's practices with respect to women and minorities. In 1989, the SALT Board voted to join an amicus brief in support of the students in this case. One of SALT's core purposes is to promote diversity in legal education. We provide a national forum for law school faculty to express concerns beyond the walls of particular institutions. In 1989, some SALT members on the Harvard faculty were disturbed that we supported the students' claim without first consulting them. This seems a fair criticism, even though we acted under time pressures. Our present circumstances allow broad consultation.

On May 15th, the SALT Board will consider whether we should use our collective voice to seek to affect the recent action at Harvard. I urge all SALT members, and particularly those with first-hand knowledge of the Harvard situation, to communicate with your colleagues on the Board so that we can act wisely.

## FLORIDA: "Voluntary" Pro Bono

Legal services for the poor has always been an issue of central concern for SALT. In 1990, we provided a small grant to the student-run National Association for Public Interest Law to enable them to publish and distribute a booklet describing the mandatory pro bono programs that have been adopted by several law schools. In this and other efforts, SALT seeks to encourage law teachers to consider how we can play a more active role in training students to meet their professional ethical obligations to provide pro bono service. Some of you read this action as reflecting an official SALT endorsement of mandatory pro bono. SALT has no formal policy on the complex issues raised by mandatory pro bono, either for lawyers or law schools. We do, however, seek to encourage people to address these issues, learn from the experience of others, and develop more effective means of meeting the legal needs of the most vulnerable. In this spirit, here is a brief description of an important recent decision.

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*"... the authority to practice law is a 'privilege' ... which may be regulated 'in the interests of the public ...'"*

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On February 20th, the Florida Supreme Court approved pro bono requirements for lawyers, resolving conflicts among the Florida State Bar, public interest lawyers led by ABA President Sandy D'Alemberte, and opponents of mandatory pro bono.

Each Florida lawyer is required to provide a minimum of twenty hours per year of "voluntary" pro bono legal services for the poor, or contribute \$350 to a qualified legal services program. The rules limit the circumstances in which pro bono obligations may be satisfied collectively to situations in which a firm undertakes a major case involving a substantial expenditure of resources. The chief judge of each judicial circuit is responsible for organizing a local program to identify unmet legal needs and facilitate the use of pro bono services to meet them. One of the most controversial aspects of the program re-



quires that lawyers file annual reports detailing how they met their pro bono obligations.

Two of the seven judges dissented, observing that the program is falsely billed as "voluntary" and that charity should not be compelled. Two judges concurred specially; they would make the minimal pro bono requirements openly mandatory.

Judge Overton's opinion for the court observes that what makes the American legal system special is "the ability of lawyers to challenge the constitutionality of government conduct before a separate, independent judicial branch of government. Although an independent judiciary is essential, an independent legal profession plays a critical role in maintaining our constitutional structure . . . The availability of lawyers to challenge government conduct that interferes with constitutional rights is essential to assure that these rights are protected."

A scholarly concurrence by Judge Kogan provides historical context for the Florida constitu-

tional provision guaranteeing residents access to the courts. Historically, laws were simple, litigants could and often did effectively represent themselves, and many judges were not lawyers. He reads the access to court provision as imposing an affirmative obligation on the Court "to ensure that access is genuinely meaningful in today's world." While separation of power concerns limit the court's ability to order legislative appropriations to fund lawyers for the poor, the authority to practice law is a "privilege or franchise granted by this Court" which may be regulated "in the interests of the public and in harmony with the goals of the Florida Constitution." Judge Kogan observes that the median annual salary of Florida attorneys is \$71,000, while the average per capita income of all Floridians is only \$18,586. "This wide disparity in income shows not only how profitable the franchise to practice law can be; it also poignantly demonstrates that legal services lie beyond the means of most Floridians." ■

— Sylvia A. Law

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