

LT EQUALIZER

Volume 2001, Issue 4

Society of American Law Teachers

December 2001

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Rep. Barbara Lee to Speak at SALT's Annual Banquet

30th Anniversary Banquet Honors SALT's Founders

Paula Johnson and Michael Rooke-Ley, SALT Co-Presidents Elect



Rep. Barbara Lee

SALT is pleased to host Rep. Barbara Lee (D-Calif.) as our special guest speaker at the 30th Reunion Banquet on Saturday, January 5, 2002, in New Orleans.

First elected to the House of Representatives for the Ninth District of California in 1998, she currently serves on the International Relations Committee (Subcommittees on Africa and Europe), on the Financial Services Committee (Subcommittees on Housing and International Monetary Policy), as vice chair of the Progressive Caucus, as chair of the Congressional Black Caucus (CBC) Task Force on HIV/AIDS, and as a member of the CBC Minority Business Task Force.

**Gala Anniversary
Celebration details on
page 3.**

Barbara Lee continued on page 4

Presidents' Column—December 2001

Yesterday was Thanksgiving, a holiday made more difficult this year by the tragedies that have affected all of us: the attacks on the World Trade Center and the Pentagon, the crash of a hijacked plane in Pennsylvania, the anthrax-laden letters that have made the mail unsafe, the crash of American Airlines Flight 587 near New York City, the detention of hundreds of fellow citizens and immigrants, and the related tragedies that have befallen the Afghan citizens from our government's war against the Taliban. In this time of war, laden with cross-cultural conflict and religious differences, it is poignant to remember the circumstances of the early Thanksgiving celebrations. Our colonial predecessors—indigenous peoples, European settlers, and Africans—faced their own challenges arising from war, cultural conflict, and religious differences. There is much to reflect upon in both recent events and our shared histories from a remote past.

This time of war poses a special challenge to us as progressive educators. The current



Outgoing Co-Presidents Carol Chomsky and Margaret Montoya

Presidents' Column continued on page 16

Founder Norman Dorsen Pledges Challenge Gift to Endow SALT Fellowship

*Sylvia A. Law,
New York University Law School*

Thirty years ago Norman Dorsen conceived the idea of the Society of American Law Teachers. As a consummate institution builder he consulted broadly on the initial board, the mission, and the name. SALT has flourished in



Dorsen continued on page 21

AALS Meeting, Jan. 3–5, 2002, New Orleans

SALT Activities at AALS

Thursday, Jan. 3

3:30–6:00 p.m.

Progressive Approaches to Law Teaching: An Orientation for New (and not-so-new) Law Teachers
Marriott Hotel (page 4)

6:00–8:00 p.m.

Informal pay-your-own dinner with those attending the Progressive Approaches workshop (see above). Starts immediately after workshop ends. Place: The Gumbo Shop

8:30–10:30 p.m.

SALT's Annual Cover Workshop, focusing on Affirmative Action and University of Michigan Litigation
Place will be listed in AALS schedule

Friday, Jan. 4

8:00 p.m.

Discussion of peace activism.
Starts towards the end of the AALS Reception. Place: SALT suite

Saturday, Jan. 5

30th Year Celebration and Reunion Banquet: "Honoring Our Founders," featuring Rep. Barbara Lee

Cocktails 6:30–7:30 p.m.

Dinner 7:30 p.m.

Place: Azalea Room of the Wyndham Hotel

Robert Cover Workshop to Focus on Affirmative Action and University of Michigan Litigation

The Society of American Law Teachers will hold its annual Robert Cover Workshop on Thursday, January 3, 8:30 p.m., to 10:30 p.m. in conjunction with the AALS Meetings in New Orleans. Place to be announced. The topic for the workshop is affirmative action in higher education admissions, with a particular focus on the University of Michigan litigation. In addition to speakers who will discuss the current status of affirmative action law and the particulars of the University of Michigan litigation, the workshop will feature speakers who will provide guidance on how to use teaching materials that participants can use on their own campuses, to include units on affirmative action in existing courses, for presenta-

Support SALT — Place a Congratulatory Ad

Help celebrate SALT's 30 years of activism for social justice. Place a congratulatory ad in the Dinner Program. The ad can congratulate particular individuals who have contributed to SALT or the organization (or both!). To place an ad, contact Prof. Paula Johnson, Syracuse Law School, pcjohnso@law.syr.edu, (315) 443-3364 phone, (315) 443-4141 fax. Costs for ads are \$200 whole page; \$100 half page. All proceeds from congratulatory ads support SALT programming. Ad requests should be received by December 21.

tions before student groups, or to design teach-ins on the topic. For further information, please contact Professor Roberto Corrada at rcorrada@law.du.edu.

Peace Not Bombs: Networking Session for Peace Activists

Editor's note: Several members of SALT have organized an informal session to provide a forum for those who oppose the war in Afghanistan to exchange ideas. They have provided the following description.

Many SALT members are engaging in peace activities in their communities. What are these activities? What has worked? What are the challenges? How is the imperative of peace linked to other social justice imperatives? We are faced with backlash, threats to academic freedom, and the basic difficulty of talking peace in a nation full of fear. A media blackout erases the dissenting voice and creates the false impression that those standing for peace are an isolated and marginal few. Thousands have marched for peace in our cities since September 11. They have done so because of a deep love of country and commitment to the democratic process. We are branded pro-terrorist, but we choose peace and justice as the only path to defeat terrorism. Facilitators Bill Quigley and Mari Matsuda invite you to bring your ideas about how law professors can participate in the current peace movement and to forge solidarity with those who are thinking about the meaning of peace on our beleaguered and infinitely beautiful planet. Our discussion is planned for Friday, January 4, in the SALT suite, to start at about 8:00 p.m. towards the end of the AALS Reception. The location of the SALT suite will be announced at the Cover workshop and other SALT events on Thursday, and the hotel desk should be able to refer interested people to our location.

SALT to Honor its Founders at 30th Year Reunion Banquet

Michael Rooke-Ley and Paula Johnson,
Co-Presidents-elect

On Saturday, January 5, 2002, during the annual AALS meeting in New Orleans, SALT will host its 30th Year Celebration and Reunion Banquet, honoring its founders—the first SALT Board of Governors—who, along with other progressive voices during SALT's first three decades, have changed the face and content of legal education across our nation. In 1972, a group of law professors first met to discuss the need for an association of law teachers to address perceived problems with legal education as well as larger societal issues. "Richard Nixon had just been elected to a second term," recalls one participant. "The Watergate scandal was the national obsession, and lots of us in law teaching were depressed at the thought of 'four more years.'" A more conservative Supreme

Court, a slowing of our nation's commitment to racial integration, and the debate over capital punishment all fueled a rising sense that legal institutions needed serious reform. These professors shared a deep concern about the future of legal education, knowing all too well that the standard law school curriculum was simply not responsive to society's needs and that law faculties and student bodies did not adequately reflect our multi-cultural society.

A year later, a 31-member Board of Governors was selected, bylaws were drafted and, by 1974, 149 law teachers from 69 law schools had joined SALT. The rest is history. With a current membership of several hundred law professors and administrators, SALT is deeply engaged on many fronts, striving to make the legal profession more inclusive, enhance the quality of legal education, and extend the power of law to underserved individuals and communities.

We are grateful to you, dear founders, for your vision, your ground-breaking work and your continuing commitment

to the values of equality and justice. Look what ye have wrought!

SALT Founders

George J. Alexander • David I. Cavers • Harry Kalven • Anthony G. Amsterdam • David L. Chambers • Sylvia Law • Charles E. Ares • Leroy Clark • Howard Lesnick • Frank Askin • Alan Dershowitz • Ian R. MacNeil • Barbara Babcock • Norman Dorsen • Jay W. Murphy • E. Clinton Bamberger • Thomas I. Emerson • Frank C. Newman • Derrick A. Bell Jr. • Monroe Freedman • Melville B. Nimmer • David Skillen Bogen • Ruth Bader Ginsburg • Robert Pitofsky • Addison M. Bowman • Nathaniel E. Gozansky • Robert J. Rabin • Ralph S. Brown Jr. • Charles R. Halpern • Cruz Reynoso • Herman Schwartz • Robert A. Sedler

"Over the past 30 years, SALT's impact on issues of access, diversity and justice within our profession has been enormous. I'd hate to contemplate the face of the academy without it." — Derrick A. Bell Jr.

Reservation Form

SALT 30th Year Celebration and Reunion Banquet: "Honoring Our Founders"

Wyndham New Orleans, Cocktails 6:30 p.m., Dinner 7:30 p.m.

Name _____ Number in Party _____

Mailing Address for Tickets _____

Telephone _____ E-mail _____

Note: Tickets reserved by Dec. 21 will be mailed to this address. Tickets reserved after Dec. 21 will be held at the door.

Please indicate your menu choices: (All dinners include soup, salad, and dessert. The vegetarian and salmon dinners are \$50 if reserved before Dec. 21 or \$55 if reserved after Dec. 21. The beef dinner is \$60 if reserved before Dec. 21 and \$65 if reserved after. Wine is \$6.50 per glass.)

Vegetarian entree _____ Fillet Atlantic salmon _____ Angus beef tenderloin _____ Red wine _____ White wine _____

Total Enclosed \$ _____

Please make checks payable to "Society of American Law Teachers." For reduced prices, reservations must be received by Norm Stein by Dec. 21.

Send reservation form and check to Prof. Norm Stein, SALT Treasurer, University of Alabama, 101 Bryant Drive East, Tuscaloosa, AL 35487-0382

Questions? Need more information? Contact Norm Stein, nstein@law.ua.edu, 205-348-1136 phone.

AALS Meeting, Jan. 3–4, 2002, New Orleans

Progressive Approaches to Law Teaching: An Orientation for New (and not-so-new) Law Teachers

The Society of American Law Teachers (SALT) is sponsoring a program to explore progressive approaches to law teaching and scholarship. This free program, to be held at the Marriott Hotel in New Orleans, is scheduled for 3:30 p.m. Thursday, January 3, 2002. The date coincides with the opening of the AALS Annual Meeting. Designed primarily for faculty who have been teaching less than four years, but open to all, this workshop will consist of two separate sessions. In the first, starting at 3:30 p.m., presenters will focus on how to respond to difficult challenges in the classroom that relate to such issues as race, class, and gender. Presenters include Devon Carbado (UCLA), Fran Ansley (Tennessee), Charles Calleros (Ariz. State, confirmed). The second session will discuss the process of finding (or keeping) one's voice in legal scholarship. Presenters are Jody Armour (USC), Bev Balos (Minnesota), and Martha Mahoney (Miami). The Orientation program is to be followed by a group dinner at the Gumbo Shop where incoming and outgoing SALT presidents—Carol Chomsky (Minn.), Margaret Montoya (N.M.), Paula Johnson (Syracuse), Michael Rooke-Ley (Eugene, Ore.)—will help facilitate a discussion for the nontenured on surviving institutional politics. (Dinner will take place around 6:00 and, unfortunately, is not free.) Questions about the program can be directed to Martha Chamallas (chamallas@law.pitt.edu) or Nancy Cook (nancy-cook@postoffice.law.cornell.edu).

AALS Law & Community Section Presents Session on Lawyering for Social Justice: Community Struggles and Political Power

AALS, New Orleans, 8:30 a.m., Saturday, January 5.

In May 2001, Toni Morrison told the graduating class at Smith College:

"I am not certain, nor should you be, that somehow a burgeoning menage a trois of political interests, corporate interests, military interests will not prevail and literally annihilate an inhabitable humane future. It is possible that with the company of obedient, quisling media such an unholy trinity can arrange things so that that human invention called the future will encompass that inhuman invention called fascism. . . . We can no longer rely on the separation of powers to

Barbara Lee:

▼ *continued from page 1*

A Texas native, she graduated from Mills College in Oakland, Calif., in 1973 and earned a master's degree in social welfare from UC-Berkeley in 1975. Her political career began in former Congressman Ron Dellums's office, where she rose from intern to chief of staff. Thereafter, she served in the California State Assembly from 1990–96 and in the California State Senate from 1996–98.

Congresswoman Lee regards AIDS as "the crucial humanitarian issue of our time" and has emerged as a key leader in Congress in the fight against HIV/AIDS at home and abroad. She recently introduced legislation to increase the world-

keep this country invulnerable to that possibility while finite humans in the flux of time make decisions of permanent damage. . . . So I'm not going to speak to you about the future." (*New York Times*, May 28, 2001).

If the courts are not the answer, then lawyers may not be the leaders. Law is, however, a powerful force in American society. Lawyers are an important part of work for social justice. The panel will discuss how lawyers, law teachers, and theorists can work with community struggles in our time.

Participants: Charles Lawrence, Georgetown (newly a member of Washington DC School Board); Bill Quigley, Loyola-New Orleans; Barbara Major, People's Institute for Justice and Beyond, St. Thomas Community Health Center; Stephanie M. Wildman, Santa Clara University School of Law, Center for Social Justice and Public Service. Chair: Audrey McFarlane, Baltimore.

wide affordability of AIDS drugs and to link international debt relief to prevention and treatment. Lee believes that "healthcare is a basic human right" and has introduced the Universal Healthcare Act; she has played a leading role in the fight for affordable housing; she has advocated for greater education expenditures and a reduced defense budget; and she has supported legislation to improve mass transit, to raise fuel economy standards, to reduce pollution, to address environmental racism, and to address global climate change. Lee has sought to bridge the digital divide, opening doors to minorities and women in our schools and communities at large, and she has protested the Boy Scouts's policy of

Barbara Lee continued on page 5

Correction on Law School Admissions

Michael Rooke-Ley

In the last issue of the *Equalizer*, I wrote an article critiquing the overreliance on the LSAT in admission processes nationwide and urged faculty members to engage themselves in the process at their home institutions. In a subsequent letter and telephone conversation, Phil Shelton, president of the Law School Admission Council, expressed his full agreement with the thrust of the article, including his own quoted statement: "All that the LSAT was ever intended to predict was performance on property, contracts and torts essay questions. That's all. Period." However, he asked that we print the following important correction: With regard to this narrow objective, the LSAT predicts *equally well* for *all* racial subgroups.

Barbara Lee:

▼ continued from page 4

excluding gays.

Congresswoman Lee gained recent notoriety as the lone dissenting voice against a September 14 resolution granting the President the authority to use military force against terrorism. She had voted alone before: in 1999, she was the sole House vote against President Clinton's plan to use force against Serbia, and in 1998, she was one of five House members to vote against bombing raids on Iraq.

Although she garnered 85 percent of the vote in the last election and was recently honored by a crowd of 3,500 constituents and celebrities (including Danny Glover and Alice Walker) for her post-September 11 vote, that dissenting vote has also engendered severe criticism, occasional death threats, and a spirited challenger in the Democratic primary this coming spring.

Letter to the Editor:

Dear Editor:

I write in response to Professor Montoya's column in the SALT Equalizer ("*Bush v. Gore*: Implications for Teaching and Scholarship," *Equalizer* June 2001) (and to the law professors' ad she cites) suggesting that the decision by the U.S. Supreme Court in *Bush v. Gore* was illegitimate or an usurpation. I do not know whether *Bush v. Gore* ultimately was correctly decided, but I am convinced that it was legitimate. Here is why:

1. The second and manual recount directed by the Florida Supreme Court created serious equal protection problems. Punch card ballots run the full spectrum from clear punches removing the chad to minor indentations which may not even have been made by a stylus. One must have standards to know where on this spectrum legitimate votes are found. Florida demonstrated that it had no such standards. For example, it is my understanding that two of the counties which used punchcard ballots finished or largely finished the manual recounting: one found roughly 25 percent of the undervotes to be valid votes, while the other found only about 5 percent to be valid votes. That suggests that different standards were being applied, contrary to the normal expectation of statewide uniformity. Both Palm Beach County and Broward County, I believe, changed the standards during the recount. Changing standards during the process suggests problems of equal treatment. This huge uncertainty, combined with the many partisan and inexperienced county canvassing boards, suggests serious equal protection problems. Seven justices, including half the liberals, agreed. One of course can disagree with any or all of the Supreme Court justices, but it is hard to say that a view in which seven of nine justices join (all the conservatives and half the liberals) is illegitimate.

2. There were serious problems in fixing the problem in 1. First, the Constitution says that the legislature (not the state, not the judiciary, not the executive, but the legislature) decides how the electors are to be chosen. Here is an example of separation of powers mandated by the Constitution. Under this provision, traditional deference to state court interpretations of state legislation is inapt, as here we are dealing with a constitutional provision intending to confer authority on the legislature and not on the courts. Second, time was very short. The Florida Supreme Court had determined that the Florida Legislature very much wanted to comply with the Dec. 12 deadline to have the Florida electors unchallengeable by Congress. The (unfortunately standardless) manual recount the Florida Supreme Court ordered would have complied with that deadline. The Florida Legislature was ready to make its own choice of electors if that deadline was not met, thus opening a political can of worms and risking an even worse constitutional crisis. Thus while Dec. 12 was not an absolute deadline, it was still a very important deadline with significant adverse consequences for noncompliance. One might

Letter continued on page 19

SALT EQUALIZER

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

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

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Cincinnati Affirmative Action Conference: Summary

SALT Supports Defense of Affirmative Action in Legal Education; Co-Hosts Conference on Grutter v. Bollinger

SALT cosponsored a conference in October at the University of Cincinnati focused on the litigation attacking the University of Michigan Law School's admissions affirmative action policy. SALT has provided support to the students who have intervened in the litigation to support the use of affirmative action in higher education admissions. In this issue, we feature a variety of perspectives on this litigation, including brief excerpts from the trial testimony of Chrystal James, a law student at UCLA, and from the closing arguments of student-intervenors' attorney Miranda K.S. Massie and University of Michigan attorney John Payton. Phoebe Haddon's conference presentation, "A Critique of the Diversity Rationale of Bakke," is reflected in her article on page 10.

Testimony of Chrystal James

(Ms. James is an honors graduate of Stanford University and a student at the UCLA School of Law. She began her studies after California ended the use of race as a factor in admissions and was one of two African-American students in her entering class.)



UCLA student and Grutter witness Chrystal James

...
In my civil procedure class . . . anytime a minority spoke, anytime a woman spoke there's this line of students sitting behind me who are snickering, who are making comments . . . Later in the semester . . . somebody came in wearing the Affirmative Action T-shirt, and stood up to make an announcement. And these people in the back . . . I could hear them saying . . . 'F' affirmative action.

...
I didn't want to speak up. I felt very silenced in that classroom . . . [T]hat's the experience that I'm getting, . . . don't speak up in class, don't raise your hand. . . .

Chrystal James continued on page 8

Closing Argument of Miranda K. S. Massie, Attorney for the Intervening Defendants

Our progress towards equality and fairness and integration has always required tremendous conscious efforts and those are the efforts that are required now. . . . We can't afford complacency. . . . Our options are: We can keep moving forward, or we can fall backward . . .



Conference panelists: High school student organizer Tristan Taylor, student intervenors' attorney Miranda Massie, and University of Michigan student and named intervenor Agnes Aleobua

...
Is there a double standard under which minority and white students are treated differently? . . . [A]bsolutely . . . , but it's the opposite of the one implied by

Massie continued on page 8

Closing Argument of John Payton Esq., Attorney for the University of Michigan

...
We believe that this case is controlled by *Bakke* . . . and the educational benefits that come from having a racially and ethnically diverse student body. . . . [T]he way that the Law School makes admissions decisions is exactly the way that Justice Powell said that a Constitutional admissions system should work.

...
All of the applicants are judged by . . . one standard. . . . [R]ace is not given so much weight that it prevents each applicant regardless of race from competing with other applicants to gain admission. . . . [If] using race is a double standard[,] . . . [then] the use of any factors that may not be present in all applications would also be a double standard. . . . If race couldn't make the difference in some cases, *Bakke* would have no meaning at all.

...
[A] preeminent law school needs to care about the composition of the class it is selecting. We've concluded . . . that having a diverse student body is essential to our educational mission. . . . [F]or this

Payton continued on page 9

Victory in Affirmative Action Cases is Imperative

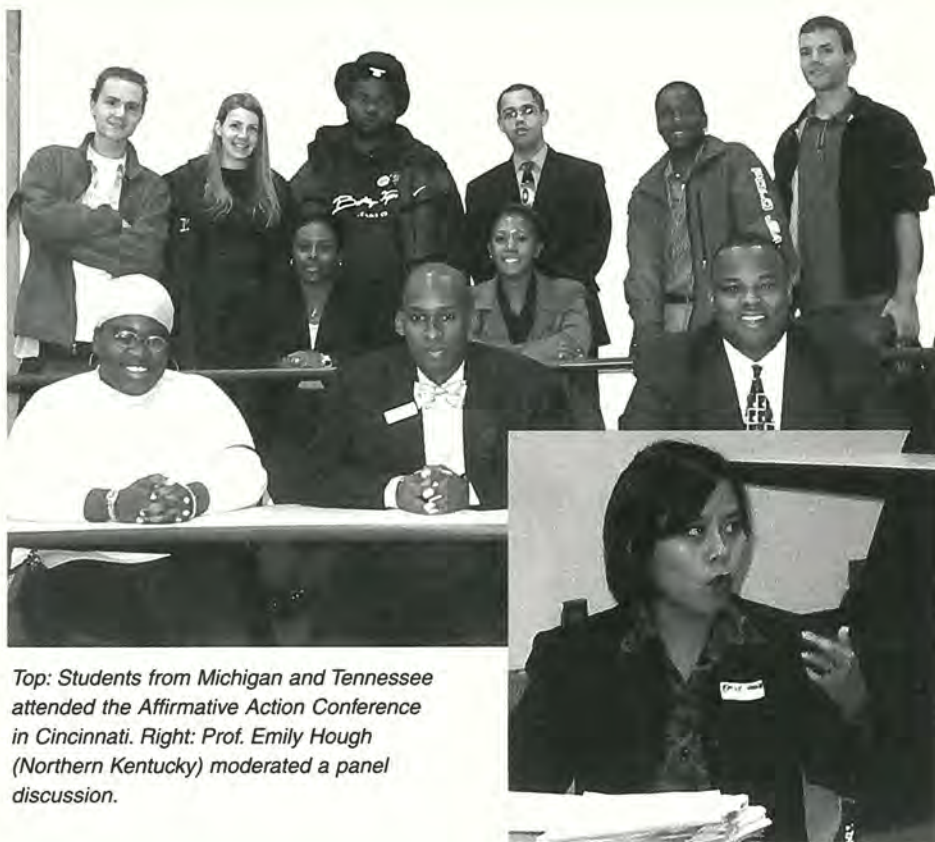
Shanta Driver, National Organizer, BAMN
(By Any Means Necessary)

Editor's note: The following is an excerpt from a national e-mail sent by Shanta Driver in connection with the December 6, 2001, arguments before the Sixth Circuit in the University of Michigan affirmative action cases.

On Thursday, December 6, 2001, in Cincinnati, Ohio, arguments will be heard in the federal Sixth Circuit Court appeals of the two University of Michigan affirmative action cases. These cases are our generation's *Brown v. Board of Education*. At stake is all we have achieved in the way of integration in higher education since the Civil Rights Movement of the 1960s. This Appeals Court hearing originally scheduled for October 23 has been moved to Thursday, December 6. Instead of being heard by the assigned three-judge panel, the December 6 hearing will be in front of the entire set of nine Sixth Circuit Court judges. This extraordinary procedural step reflects the court's recognition of the extraordinary importance of these two cases to American society. BAMN has been fighting to place this issue and these two cases at the center of the American political agenda for the last year.

Immediately, these two cases will determine if it will be legal to take any positive steps to integrate higher education in Tennessee, Kentucky, Ohio, and Michigan. If we lose at the December 6 hearing, the incoming classes for fall 2002 at colleges, universities, and graduate and professional schools will see

Driver continued on page 9



Top: Students from Michigan and Tennessee attended the Affirmative Action Conference in Cincinnati. Right: Prof. Emily Hough (Northern Kentucky) moderated a panel discussion.

New Scholarship

Charles R. Lawrence III, Two Views of the River: A Critique of the Liberal Defense of Affirmative Action, 101 Colum. L. Rev. 928 (2001)

Corwin Kruse, William Mitchell College of Law student

In recent years, affirmative action policies at educational institutions have come under increasing legal and political attack. In response, many supporters of affirmative action have defended race-conscious admissions policies by use of a diversity argument: such policies produce benefits by increasing the racial and ethnic diversity of the student population. In this article, Professor Lawrence critiques this "liberal defense" and offers a more "radical" alternative.

As Professor Lawrence discusses, the diversity defense finds its legal origins in *University of California v. Bakke* (438 U.S. 265 (1978)). In this decision, Justice Powell suggested that race-sensitive admissions policies might be Constitutional if they were necessary to attain racial diversity among the student body. Since this time, liberal supporters have typically justified affirmative action programs by pointing to the benefits of diversity. For

Lawrence continued on page 10

Cincinnati Affirmative Action Conference: Summary

Chrystal James:

▼ *continued from page 6*

I wasn't that embarrassed to be wrong. I've been wrong before in my life. But . . . I'm not going to risk . . . being ridiculed and laughed at . . .

. . .
I was the only black student in [torts] class . . . I was the only student in that semester who never got called on to give a full case reading. . . [O]n days when [the professor] was being evaluated, only white males were on call that day.

. . .
I remember being upset in [Constitutional law] almost every single day. . . [W]hen anything was mentioned about color . . . I had students sit there and turn to me, and stare at me, to wait for my reaction. . . I remember lots of racist comments being made.

. . .
It's like taking a battering every day. . . [Every] first year student has horrors . . . [I]t's even more horrible when you're only one of two, or you're the only one, and you're sitting there with these extra burdens on you, on top of just the horrors of being a first-year student.

. . .
That's what the end of affirmative actions means, is that the few minorities that do get in, are feeling defeated the whole time. And the other students are feeling empowered. When we go into the classroom . . . we are competing against people . . . who are not carrying [this] burden . . .

Massie:

▼ *continued from page 6*

the question and by the plaintiff's lawsuit. There's a systematic double standard that operates to favor white people . . . [A]ffirmative action operates to offset that double standard incompletely. To offset it a little bit, to make it less of a double standard.

. . .
[T]he alternative to ensuring the enrollment of a critical mass of minority students is tokenism. . . Chrystal James . . . made it clear that the token numbers at UCLA, the fact that there was only one other black student in her class, the lack of a critical mass of minority students has absolutely thwarted her legal education, and harmed her own sense of herself, of her potential, of her promise.

. . .
The evidence shows indisputably and overwhelmingly that there's a built-in double standard in education generally . . . and . . . that that double standard favors white students and white law school applicants. . . There's a set of ways in which race and racism structure the educational experiences and performances of even the most economically privileged minority student.

These modes include differences in material resources. They include unequal treatment that is racialized . . . They include the stigma and the false racist stereotype of intellectual inferiority that affects every [minority] student regardless of class . . .

. . .
[I]t is imperative for white people who haven't ever faced the systematic degradation of their mental capacity and worth

based on race, to grapple with the extent to which their own privilege in this regard has shaped their experiences, to grapple [with] the extent to which their educational achievements no matter how hard fought, no matter how impressive, are always made . . . under circumstances and conditions that favor them while disadvantaging and disfavoring the success of minority students.

. . .
Undergrad GPAs and LSAT scores are thoroughly saturated with unawareness and bias. They don't measure real achievement . . . [and] they certainly don't measure the capacity to practice law and to be successful in a law practice. . . Affirmative action has the effect of . . . offsetting what would be the astonishing unfairness of looking at numbers, credentials that are shaped by racism and unfairness, and . . . using them as a basis for imposing more hardship, more exclusion, less opportunity at every stage of the educational process.

. . .
[S]hould race matter in law school admissions? . . . It should matter much more than it does. It should matter enough that it offsets . . . the racism and bias that saturate the credentials and that saturate the educational experiences of all students, but differently depending upon their races.

Driver:

▼ *continued from page 7*

a dramatic drop in black, Latina/o and Native American admissions. There will be no stay of a negative decision.



Shanta Driver, national organizer for the affirmative action group BAMN

These cases are very likely to go to the U.S. Supreme Court and determine whether it will be legal to take any positive measures at all to overcome the racism and sexism of our society. At stake is all that has been achieved in the way of integration and progress toward equality in education and employment since the civil rights struggles of the 1960s. Our society is going to move either forward or backward—it can no longer remain where it has been. The question that the court will answer with its ruling is whether we as a society move backward toward more inequality, segregation, racism, and injustice or forward toward more equality and integration, justice, and democracy.

It is imperative that we win these cases at the Appeals Court level. A defeat on December 6 will mean all colleges and universities throughout Tennessee, Kentucky, Ohio and Michigan are *immediately banned* from using

affirmative action. Affirmative action plans are the only effective desegregation programs for higher education. Integration and equality in education is a precondition for democracy and justice. These two University of Michigan cases are very likely to go to the U.S. Supreme Court and determine the legality of affirmative action in higher education across the country.

We can win this critical fight.

A Very Fluid Situation: Lesson of the California Victory

The new civil rights movement that has emerged in response to the attack on affirmative action has changed the national political climate on this question.

On May 16, 2001 the new civil rights and student movement in California forced the University of California regents unanimously to reverse the ban on affirmative action in the UC system, thereby defeating the attack that initiated the national assault on affirmative action of the last six years. The 7,000 college and high school youth that mobilized at UC Berkeley on March 8 of this year played a decisive role in compelling the UC regents to reverse the ban.

The recent surprise decision by the Bush administration to intervene in favor of affirmative action in Adarand, the federal contracting case about to come before the US Supreme Court, is a remarkable testament to the change in climate brought about by the new civil rights struggles.

How Do We Win?

We must now make the federal courts accountable to the people. We must make clear to them that resegregating higher

education will not be accepted—that the condition whereby black, Latina/o and Native American people are marginalized and relegated to inferior education will no longer be tolerated. We can convince them to rule for justice and integration by using the same persistent methods of mass organizing and mass struggle that secured the historic victory in California. The mass petition campaign must be stepped-up. We must mobilize thousands for December 6.

Payton:

▼ *continued from page 6*

to succeed . . . it's simply necessary that . . . meaningful numbers of [minority] students . . . be present. . . This provides the minority students with the freedom to express a diversity of views. It also provides the non-minority students with a demonstration that not all members of a minority group think alike. . . It's not possible to achieve a critical mass under a race neutral system.

[T]his case is about more than a law school classroom. It's about our future leaders and our society. . . Proposition 209 in California . . . has resulted in otherwise eligible [minority] students not being at UC Berkeley or UCLA. . . We ask this court to find our Admissions Policy fully Constitutional, and let us go about our important mission of educating our students, future members of the bar, future members of the bench, leaders of our communities and of our country.

Cincinnati Affirmative Action Conference: Summary

Lawrence:

▼ *continued from page 7*

example, the University of Michigan has defended its programs by presenting research demonstrating higher levels of intellectual growth and motivation among students who experienced greater classroom diversity.

In Professor Lawrence's view, such arguments simply perpetuate the status quo. They support integrating the elite, but do nothing about the perpetuation of the system of institutional racism in which the elite play an integral role. The liberal defense neither questions the validity, nor challenges the use, of standardized admissions criteria that serve to maintain privilege.

As an alternative, Professor Lawrence suggests restructuring admissions criteria to take into account students' backgrounds and opportunities. Rather than ignoring the effects of past and current discrimination, educational institutions should accept responsibility for their part in its propagation and attempt to make amends through race-conscious admissions.

Although he acknowledges that the liberal defense is likely the best legal strategy, Professor Lawrence proposes that it cannot be the end of the story. Instead, we must work to transform the current systems of subordination and empower those whom such systems currently oppress. We must reassess our concepts of "merit" and take a proactive stance to ensure that all students have access to higher education, regardless of their race, ethnicity, gender, or class.

A Critique of the Diversity Rationale of Bakke

Phoebe Haddon,
Temple University School of Law

"Between me and the other world there is ever an unasked question: unasked by some through feelings of delicacy; by others through the difficulty of framing it. All, nevertheless, flutter around it. They approach me in a half-hesitant sort of way, eye me curiously or compassionately, and then instead of saying directly, How does it feel to be a problem? They say, I know an excellent colored man in my town...."

WEB DuBois, *The Souls of Black Folk* 1903

As in other contexts, the writing of Dr. DuBois helps to clarify why for me the educational diversity argument rings hollow as a substitute for other affirmative efforts to secure racial inclusion. Faced with the likelihood that the Supreme Court will consider challenges to race-conscious admissions in law schools and other institutions of higher education in the near future, I confront this discomfort to which DuBois refers. We should consider forthrightly the limitations of promoting a strategy that does not challenge the structural inequality that is perpetuated in a merit system that relies primarily on quantitative test scores to define student excellence. We must do so even as we acknowledge that education diversity may be the only argument having any chance of litigation success.

The University of Michigan has undertaken the most comprehensive effort to convince judges and other skeptics of the value of diversity using tools that they can comprehend. In its supplemental documents in response to litigation challenging its selection process (which can be found at 5 Mich. J. Race & L. 439),

UM presents its justification for using race conscious decision making in order to attain a more racially inclusive student body than is possible if all students were admitted based on scores of quantitative tests like the LSAT. Michigan argues that admitting students of color is not its response to past discrimination or adverse impact perpetuated by the selection process. Rather, students of color, like other individuals, bring different perspectives that promote learning for all and ought to be included in the classroom. Diversity is described as an essential part of the education process since learning is stimulated in an integrated classroom, but also Michigan has documented the tendency for students who have been exposed to students of other backgrounds to learn better and to live more integrated lives after they leave the university. The evidence marshaled by Michigan captures the stark fact of residential segregation in most cities, including Detroit, that makes it likely that for many students secondary education or post-college training is (incredibly) the *first* opportunity for meaningful interchange across racial lines. The inference to be drawn is that there are undeniable social costs associated with losing the opportunity to bring people of color into the classroom with whites that justify extraordinary action.

In support of its claims about the value of diversity the University also offers an impressive response to conservative sociologists and legal scholars who have argued that affirmative action stigmatizes and unduly privileges minority students who are not equipped to do the work. The longitudinal studies of Bowen and Bok presented in *The Shape of the River* and a study of its graduates undertaken by

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Diversity Rationale:

▼ *continued from page 10*

Michigan refute these contentions with powerful evidence that Blacks who have been admitted under the affirmative outreach programs at highly selective institutions like Michigan achieve success in their professional lives and serve their communities. This data could offer insights about how to redefine merit to avoid or minimize the racially disproportionate effects of reliance on quantitative tests, though Michigan's use of the data does not go so far.

Michigan's response is far more enlightened than the position taken by other institutions which have also verbalized a commitment to diversity but have not documented their intuitive understanding of the benefits derived from having a diverse student body. This lack of a sustained and consistent rationale for race-conscious efforts to increase minority presence has led courts to characterize the value of diversity as "amorphous" and to charge that it is unfounded, racialized decision-making.

If courts are so inclined they can embrace Michigan's principled, rational

explanation that outreach has academic and social value. Given the Supreme Court's colorblindness rhetoric and what former Board SALT member Eric Yamamoto has called its dismantling of the "Second Reconstruction," (in "Dismantling Civil Rights: Multiracial Resistance and Reconstruction," 31 *Cum. L. Rev.* 523 (2001)), it is unfortunately just as likely that the courts will not accept the rationale of education diversity as a "compelling" interest or find it sufficiently narrowly tailored to survive strict equal protection analysis.

I am troubled by this undertaking to characterize educational diversity as the pressing objective of racial inclusion efforts because of the importance of continuing to make the morally important connection between our present demand for minority participation and past and continuing perpetuation of inequality in education. As important as it is to have an institution like Michigan make the best case for educational diversity it is also critical to reaffirm our commitment to eradicating discrimination. Michigan does little to challenge the status quo of economic and racial privilege experienced in highly selective

Diversity Rationale continued on page 20

SALT Board Welcomes New Members, Thanks Retirees

The SALT Nominating Committee has announced the results of the most recent election for members of the Board of Governors. The following were elected or re-elected for three-year terms:

Alicia Alvarez (DePaul)
 Fran Ansley (Tennessee)
 Margalynne Armstrong (Santa Clara)
 Jack Chin (Cincinnati)
 Nancy Ehrenreich (Denver)
 Joan Howarth (Boyd-UNLV)
 Beto Juarez (St. Marys, visiting Oregon)
 Tayyab Mahmud (Cleveland-Marshall)
 Marc Poirier (Seton Hall)
 Bob Seibel (CUNY, visiting Cornell).

SALT thanks the following retiring members of the Board for their service:

Sumi Cho
 Karen Czapanskiy
 Dennis Greene
 Natsu Saito
 Frank Valdes
 Eric Yamamoto
 Fred Yen

Social Justice Litigation by SALT Members

Esperanza Peace and Justice Center v. City of San Antonio

Amy Kastely,
 St. Mary's University of San Antonio

"We should be most wary whenever a government official undertakes to restrict speech because it is too 'political.' Labeling expression as 'political' can often serve as proxy for suppression of unfavored ideas."

Esperanza Peace and Justice Center, San Antonio Lesbian & Gay Media Project, and VaN v. City of San Antonio, 2001 WL 685795 (W.D.Tex.).

This is the first of two installments about litigation brought against the City of San Antonio by the Esperanza Peace and Justice Center and two affiliated community groups. This entry describes the de-funding of the Esperanza and the next will describe the litigation and community organizing. I have been honored to be on the Board of the Esperanza and to lead a team of attorneys working on the case.

The next time you come to San Antonio, please stop by the Esperanza Peace and Justice Center, located in downtown San Antonio, at 922 San Pedro. You will enjoy visiting the Esperanza, one of the most active, community-based, multi-issue centers for cultural and social

justice organizing in the country.

Esperanza Peace and Justice Center

The Esperanza was created in January of 1987 by a group of Latinas, both queer and straight, working class and middle class, who saw a need to create a place for community-based organizations, activists, and cultural artists to meet, discuss issues, and take action against all forms of oppression. Throughout its history, Esperanza has been led by women of color—Latina, Black, Native American, and Asian—most of whom have grown up in San Antonio and now work as progressive activists among family, friends, and neighbors. The Board of

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Public Interest Retreats

Coming Soon, A Midwest Public Interest Law Retreat

Chris Lynch, Staff Attorney, Minnesota Justice Foundation

Organizers in Indiana and Minnesota are working to create a conference on public interest law in the Midwest. Modeled after the Robert M. Cover Conference on the East Coast and the Trina Grillo Conference on the West Coast, this new retreat will bring together law students, law professors, and legal practitioners from around the nation's heartland. Students



interested in working for the public good will have an opportunity to network with each other and to learn how the practitioners who have gone before them have made a difference in their communities. The First Annual Midwestern Public Interest Law Retreat is scheduled for March 22–24, 2002. The setting will be the University of Indiana's Bradford Woods Outdoor Center, a rustic retreat center nestled in the woods 40 miles southwest of Indianapolis. The organizers hope to involve

about 100 students, professors, and practitioners in this year's inaugural event. A decision has not yet been made about naming the conference and a keynote speaker has not yet been selected. If you would like more information about this exciting new event contact Prof. Robert Lancaster at Indiana University School of Law (rlancast@iupui.edu), or Chris Lynch at Hamline University School of Law (mjf@gw.hamline.edu).

Cover Retreat to Examine Lawyering in Context: Exploring the Intersections of Law and Community

The date has been set for the 2002 Robert M. Cover Retreat, to be held March 1–3, 2002, at Boston University's Sargent Camp near Peterborough, New Hampshire. In its 15th year, the Cover Retreat is not a typical legal conference. Every year, law students, professors, and public interest practitioners from around the East Coast and throughout the country gather for a weekend in an idyllic, camp-like setting to relax, share ideas, and recommit to work in the public interest.

This year, Yale Law School is organizing the retreat, the theme of which is "Lawyering in Context: Exploring the Intersections of Law and Community." Professors, practitioners, or students interested in attending should contact Toni Moore (toni.moore@yale.edu) or Raj Nayak (rajesh.nayak@yale.edu) for more information on practitioner participation and student registration.

Grillo Retreat to Study Coalition Building in Public Interest and Social Justice Practice

The Fourth Annual Trina Grillo Public Interest Law Retreat will be held March 16 (8:30 a.m. through dinner) and March 17, 2002 (8:30 a.m. through 12:00 p.m.) at the WestCoast Santa Cruz Hotel in Santa Cruz, Calif. The Trina Grillo Retreat provides a unique opportunity for public interest and social justice-oriented law students, faculty, and practitioners to forge an alliance by exchanging viewpoints, exploring career opportunities, and formulating strategies for social justice.

The Retreat is cosponsored by the Society of American Law Teachers (SALT), Santa Clara University School of Law, the University of San Francisco School of Law, the Boalt Hall Center for Social Justice, and the Santa Clara University School of Law Center for Social Justice and Public Service. The retreat honors the memory of Trina Grillo (1948–1996) and includes the Ralph Abascal Memorial Lecture.

Confirmed participants include: Gary Blasi (UCLA), Karen Czapanskiy (University of Maryland), Connie de la Vega (USF), Members of the Equal Justice Society, Mary Louise Frampton (Boalt), Joan Graff (Legal Aid Society of San Francisco/Employment Law Center), Joan Howarth (UNLV), Victor Hwang (Nihonmachi Legal Outreach), Anamaria Loya (La Raza Centro Legal), Sam Paz (Law Offices of R. Samuel Paz), Michael Rooke-Ley (Society of American Law Teachers), Margaret Russell (SCU), Julie Su (Asian Pacific American Legal

Grillo on page 15

SALT's Response: All Qualified Lawyers, Straight and Gay, Should Have Opportunity to Serve in the Military

Carol Chomsky and Margaret Montoya,
Co-Presidents, Society of American Law
Teachers

Editors note: The following is the text of SALT's response to the Morriss article, submitted to the Wall Street Journal.

In his article published in the *Wall Street Journal* on November 12, Andrew Morriss takes issue with the position of the Association of American Law Schools and the Society of American Law Teachers regarding the presence of military recruiters on law school campuses. He seems to equate our commitment to nondiscriminatory hiring and our support for gay and lesbian students and faculty with opposition to the military, though nothing in our publication does so. Put simply, we believe that law schools have a special role to play in developing and maintaining a learning and work environment that is inclusive and free of bias, and that sticking to those principles is even more important in times of national crisis. We do not believe that lawyers should refrain from serving in the military, as Professor Morriss insinuates. Rather we believe that all qualified lawyers, whether gay or straight, should have that opportunity, and that law schools should not themselves be complicit in the discriminatory actions of the military or any other employers.

The Association of American Law Schools (AALS) requires its member schools to refrain from discrimination in sexual orientation, just as they must refrain from discrimination on the basis of race, nationality, religion, and gender.

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SALT's Solomon Brochure Stirs National Response

Eric S. Janus, William Mitchell College of Law

SALT's Solomon brochure briefly placed the organization and its leaders in the national spotlight of a variety of conservative media outlets. The brochure, part of SALT's efforts to oppose the discrimination against gays and lesbians in the military (described in Frank Valdes' article on this page), was sent to law school deans this fall. Andrew Morriss, a professor and associate dean for academic affairs at Case Western Reserve Law School in Cleveland, targeted the brochure and SALT's position in an op-ed piece in the November 12 issue of the *Wall Street Journal*. A flood of media outlets—many highly conservative—sought interviews with the SALT leadership, and a second wave of media exposure followed.

Morriss' *Wall Street Journal* piece characterized SALT as "a group of left-wing professors" and referred to the "obsessions of many members of the legal teaching profession." While acknowledging that "whether the military's policy on homosexuality is sensible is open to debate," Morriss described SALT's position as seeking to "obstruct military recruiting at a time when we are engaged in a struggle to defend the rule of law." SALT Co-President Carol Chomsky received more than 50 e-mails and phone calls about the story, reporting to the SALT Board: "Reactions I've been receiving range from 'why don't you go teach in Uzbekistan' to 'consider the WSJ article a badge of honor'."

The *Wall Street Journal* declined to publish SALT's response to Morriss' article (reproduced on this page).

Solomon: An Update

Frank Valdes, University of Miami School of Law

SALT has updated its Solomon brochure to reflect the current status quo, and copies of the brochure are now available on request for use on your campus in connection with your school's amelioration activities. The brochure provides an overview of the Solomon amendments background, as well as an Action Checklist for law schools amelioration activities. This Action Checklist is derived from past and current reports gathered from schools around the country describing the ameliorative actions that have worked well, and which therefore might be duplicated at other schools. In accordance with AALS policy, these actions are designed to lessen the impact of the military's discriminatory interviewing practices and policies. In addition, the new SALT brochure provides a Listing of Resources that guides interested schools, faculty, and students to additional sources of information or support in Solomon-related issues. To request copies of the brochure, please contact Frank Valdes via his assistant, Belkys Torres, at btorres@law.miami.edu.

Please also note that the AALS Section on Gay and Lesbian Legal Issues is sponsoring a Solomon-related program at the upcoming AALS Annual Meeting in New Orleans. The program, *Military Policy Towards Sexual Minorities and Its Impact on Campus: The Culture Wars Go To Law School* is intended to provide an update on current developments as well as a forum for faculty and others from different schools to exchange ideas and information. The program is scheduled for Sunday, January 6, at 9:00 a.m. (look at AALS program for location).

In addition, the Section has published two reports on Solomon-related issues, which can be found at the Sections website: www.cwsl.edu/aalsqueer. The second of these reports, dated December 1998, provides a comprehensive analysis of the Solomon legislation that remains

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The United Nations World Conference Against Racism: The NGO Forum

Vernellia Randall, University of Dayton School of Law

Editor's note: Prof. Vernellia Randall attended the World Conference Against Racism, and forwarded this report to the Equalizer.



Writing about the World Conference Against

Racism, Racial Discrimination, Xenophobia, and Related Intolerance is more difficult than I imagined. The difficulty arises primarily because the conference itself consists of three different "conferences:" the Youth Conference, the Nongovernmental Organization (NGO) Conference and the governments' conference generally referred to as "WCAR." The purpose of all three conferences was to produce a document which consists of a declaration and programme of action. The conferences effectively started 15 months before meeting in Durban because that is when the work on the documents started. This work occurred first through the development of regional documents (Africa, Europe, Asia, and Americas) and then through the development of the draft of the final documents at the World Preparatory Conference. In this article I will only address the NGO Forum, primarily because the United Nations has not yet release a final document. There is still a struggle over the paragraphs related to slavery, apology, and reparations. So "Part II: WCAR" will be reported in the next issue.

The NGO Forum

Even though, over 8,000 persons

attended NGO Forum and attended many interesting educational workshops, the NGO Forum has been generally denounced as a failure. I don't agree. No doubt the NGO Forum had some amount of disorganization and confusion. That

disorganization and confusion occurred in large part because the NGO Forum was seriously under-funded and understaffed. As a comparison, the United States gave \$6 million dollars to Beijing's Conference (Women), but gave only \$250

thousand dollars to the Durban Conference. Because of the under-funding there were many issues including the serious lack of translators and transportation. The culprit in this nominal funding of WCAR by the United States was former President Clinton; President Bush refused to increase the funding.

Furthermore, there was a power struggle between the South African Nongovernmental Organization Coordinating Organization (SANGOCO) and the International Coordinating Committee (ICC) which manifested itself in many ways, including the ICC changing the program weeks before the start of the conference and after the program had been printed. There was also cultural conflict, mostly evidenced in the struggle between the Palestinian delegates and the Jewish delegates. While this conflict occupied only a small part of the conference space, unfortunately, that conflict occupied much of the media focus.

Finally, the NGO document is criticized because it contains language which some find offensive. In particular, it denounces Israel as a racist state that practices genocide and apartheid.

So given, the disorganization, confusion, and conflict—why wasn't the conference a failure? Primarily, because it

accomplished the goal of providing voice to the victims. Starting from the regional preparatory conferences (Prepcon) through the 2nd and 3rd World PrepCon, caucuses formed to develop the declaration and programme of action. There were the caucus focused on Victim groups such as Africans and African Descendants, Asians and Asian Descendants, Arabs and Middle East, Dalits and Discrimination Based on Descent and Work, Ethnic and National Minorities, Indigenous Peoples, Jews and anti-Semitism, Migrants and Migrant Workers, Palestinians, Refugees, Asylum Seekers, Stateless and Internally displaced person, Roma Nation and Travelers. But this approach resulted in conflict between the Jewish Caucus and the Palestine Caucus, in part, because the Jewish Caucus was seen as both victim and oppressor. This conflict was ever-present and one which the media was ready to highlight.

Another criticism voiced about the NGO Forum is that the Declaration and Programme of Action was not adopted either by consensus or by majority vote. However, that is not necessarily a failure. If what you want is a strong document that represents the voice of the victims, then majority vote or consensus is not the appropriate approach. Both these approaches have significant potential for silencing or weakening the victims' voice. The Declaration and Programme of Action was drafted primarily in thematic commissions that met for seven hours. The thematic commissions not only addressed the victim groups outlined above, but also intersectionality groups (Persons with Disabilities, Gender, Sexual Orientation, Young People, Children and the Girl Child) and topical issues (Colonialism and Foreign Occupation, Criminal Justice and Judicial System, Education, Environmental Racism, Globalization, Hate Crimes, Health (Including HIV/AIDS), Labour, Media and

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NGO Forum:

▼ *continued from page 14*

Communications, Religious Intolerance, Reparations, Slave Trade and Slavery, Trafficking). Each commission took testimony from participants, who were then responsible for drafting language that was submitted to a conference drafting committee. The conference drafting committee edited the submission and produced an 88-page document which in the most expansive way represented the voice of the victims. The NGO Forum Declaration and Programme of Action (<http://academic.udayton.edu/rice/06hrights/WCAR2001/NGOFORUM/index.htm>) certainly has passages with which some will disagree (such as the identification of Israel as a racist, apartheid state). But it contains so much more that can be used during the next 10 years in our struggle to eliminate racism, racial discrimination, xenophobia, and related intolerance!

More significantly, for the first time, a real first step was taken to build an international relationship and coalition among civil society for long-term efforts to eliminate racism. In my book that makes the NGO Forum a success.

Esperanza:

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Directors and staff has included both men and women of color, white women and men, old people, young people, immigrants, economically disadvantaged *trabajando junto con la gente de clase media*, queer and straight, people with advanced degrees and people who cannot read.

The programming of the Esperanza is based on two simple ideas. The first is that long-term progressive work must address multiple forms of systemic oppression. The second is that empowerment requires cultural grounding—that we must come to know and value ourselves, to challenge

Grillo:

▼ *continued from page 12*

Center), Catharine Wells (Boston College), Stephanie M. Wildman (SCU), Scott Williams (Alexander & Karshmer), Eric Wright (SCU), and Nancy Wright (SCU).

The Retreat will be held at the WestCoast Santa Cruz Hotel (<http://www.westcoastsantacruz.com/>), overlooking the beautiful Pacific Ocean and located in the heart of Santa Cruz. The “Twelve Winds” Conference Room features a panoramic view of beautiful Santa Cruz Beach. You can take a short walk to the beach or the Santa Cruz Boardwalk and Wharf with fellow students, law faculty, and public interest practitioners.

The \$75 Registration Fee includes three meals on Saturday, March 16, and breakfast on Sunday, March 17. Financial assistance is available. Hotel accommodations are not included in this registration fee. *Conference registration is separate from hotel arrangements. Registration does not guarantee hotel space.*

To make hotel reservations, please call the WestCoast Santa Cruz Hotel directly at (831) 426-4330 and request the group rate for the Trina Grillo Public Interest

and celebrate our cultural histories and practices. The Esperanza is about education—ongoing programs include *MujerArtes*—a collective of low-income Latinas located in the Westside who tell their stories through the art of ceramics, learned from Puebla artist, Veronica Castillo; *ArteEscuela*—a program of art and activism for youth; and *Puentes de Poder*, a community school of history, culture, and social activism for people of all ages. And it is about direct action—the Esperanza Environmental Justice project monitors air pollution in the predominantly African-American Eastside and challenges both the polluters and complicit governmental officials; Esperanza was the voting site for local

Law Retreat. Make hotel reservations as early as possible since space is limited. Please visit this link for additional information about other hotels in the Santa Cruz area: <http://www.funtastikcalifornia.com/Santa/Cruz/SantaCruzHotels.html>.

The special Grillo Retreat rate for a double room at the WestCoast Santa Cruz Hotel is \$130 (plus tax) (\$65 per person). Rooms at the Hotel have been reserved for both Saturday night, March 16, and for Friday night, March 15, should you wish to arrive early in Santa Cruz. The special group rate will only be available until February 15, 2002.

Additional program information will be available soon. Please check our website for updates: <http://www.scu.edu/law/socialjustice>. We anticipate heavy demand due to the exciting program and the exceptional location.

If you would like to register early for the conference, please contact Melanie E. Esquivel, Administrator, Santa Clara University School of Law, Center for Social Justice and Public Service, 500 El Camino Real, Santa Clara, CA 95053-0421; telephone (408) 551-1720, fax (408) 554-5440; socialjustice@scu.edu.

Registration due by March 1, 2002.

participation in the elections in Chiapas; and much more. Through *platicos*, dances, story-telling, theater, *teatro calle*, public song, film, marches, visual art exhibits, and everyday life, the Esperanza nurtures individual and social change.

For many people in San Antonio, Esperanza is home. Chicana activist and historian Antonia Castaneda says this: “Esperanza is home for me. . . . There is a space for every part of me, all my concerns and commitments and beliefs whether cultural, political, spiritual, artistic—and all my commitment to social justice. All of those parts are respected, attended and accepted.” For years Esperanza was the

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Presidents' Column:

▼ *continued from page 1*

assault on human rights and civil liberties through a consolidation of executive power is an attack against the democratic values of equality and justice that we have struggled for, as individuals and as an organization, during the 30 years since SALT was founded. SALT was born as the result of just such a crisis. In 1972, a group of legal educators called for creation of an association of law teachers to make legal education more responsive to social needs and in order to struggle against the slowing of the nation's commitment to racial integration, ongoing threats to academic freedom at American law schools, and perceived racism and arbitrariness in bar examinations and evaluations. As SALT celebrates its 30 years of shared history, we must rededicate ourselves to that struggle, born anew for our generation.

In conjunction with the AALS Meeting in January, SALT will be both commemorating our founding and moving forward as we address many of the critical issues on our current agenda. We are proud to host the following events in January 2002 in New Orleans (see articles elsewhere in this issue for more details):

- A conversation about peace activism, to be facilitated by **Bill Quigley (Loyola New Orleans)** and **Mari Matsuda (Georgetown)** on Friday, January 4, at 8 p.m., in the SALT suite at the Hilton Hotel. Given the current mood of the nation, it is a difficult and sometimes dangerous time to talk about peace. To cite just one example, the American Council of Trustees and Alumni, (co-founded by Lynne Cheney, wife of the Vice President, and described by the *New York Times* as "a conservative nonprofit group devoted to curbing liberal tendencies in academia") has compiled a list of 117

anti-American statements heard on college campuses and accused several dozen scholars, students, and even a university president of what they call unpatriotic behavior since September 11. The report criticizes faculty members for invoking "tolerance and diversity as antidotes to evil." It is fitting for SALT to provide space and time for concerned SALT members and others to come together to do just that.



Holly Maguigan (NYU, center) consults with outgoing SALT co-presidents Margaret Montoya (left) and Carol Chomsky.

- On Thursday, January 3, from 3:30–6:00 p.m., at the Marriott Hotel, SALT is holding the first of what we hope will be annual occasions for connecting relatively new faculty with the networks of progressive scholars and activists within the legal academy. Newer members of the law teaching profession may be unfamiliar with SALT and the support its members give each other in our efforts to teach with a consciousness about justice, access, and equality. Two panels of SALT members will address crucial issues for progressive faculty as they plan their teaching and scholarly agendas, to be followed by an informal dinner for further conversation. Urge your junior colleagues to attend the afternoon session and join us yourself for the informal meal afterwards—and then stay for the next event on the calendar:

- The Robert Cover Workshop, to be held on Thursday, January 3, from

8:30–10:30 p.m., will focus on affirmative action in law school and university admissions. The workshop is a follow-up to the conference SALT sponsored in Cincinnati in October. Workshop leaders will update all of us on the *en banc* appeal of the University of Michigan cases that will be heard by the Sixth Circuit on December 6, 2001, and very likely afterwards by the U.S. Supreme Court. In keeping with our role as educators, the workshop is designed to provide participants with guidance on how to conduct teach-ins or otherwise address the issues at our own institutions. The passion and commitment of the student intervenors in the Michigan case has reinvigorated all of us who have heard them speak. They are a powerful reminder to us that our classrooms will be radically altered if race-conscious admissions programs are banned, and thus the critical importance of these issues for all of us.

- Our annual banquet, on Saturday, January 5, in the Azalea Room of the Wyndham Hotel starting at 6:30 p.m., will be an extraordinary occasion this year. On this thirtieth anniversary of SALT, we will be honoring the 32 visionaries who formed the first Board of Governors of the organization. We are privileged to have as our guest and keynote speaker Rep. Barbara Lee, who provides a model for us of political courage and commitment, not only for her lonely vote against the blanket authorization for the use of force in response to the events of September 11, but for her entire career speaking out against injustice. Reservations and tickets are available from SALT Treasurer Norman Stein, University of Alabama School of Law, 101 Paul Bryant Drive East, Box 870382, Tuscaloosa, AL 35487-0382. (See page 3.)

This January also marks the end of our two-year co-presidency. We are truly

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Presidents' Column:

▼ *continued from page 16*

proud of what the organization has accomplished during that time and of the recognition SALT has received as an important voice on issues of access and social justice. Among SALT's accomplishments during this time:

- SALT has been the most visible organization within the legal academy challenging the Right in its efforts to resegregate higher education. In this connection, SALT has provided financial and moral support for the student intervenors in the Michigan litigation as they have worked to reframe the issue of affirmative action. At the AALS meeting in January 2001, SALT held a public information session and press conference to educate ourselves and others about higher education admissions policies and distributed widely a 50-page report commissioned from William Kidder (J.D. 2001 from Boalt Hall) on the status of affirmative action throughout the nation. In October 2001, SALT hosted a conference (with the Clinical Legal Education Association) (see pages 6–8) that brought the intervenors' arguments to a wider audience and provided a forum for the intervenors to explore their arguments and rationales in an intensive interchange with knowledgeable listeners.

- SALT continued its examination of state bar exams and its opposition to the coordinated efforts in a number of states to raise the passing score, compounding the discriminatory effect of the exam. SALT facilitated a well-attended information session at the 2001 AALS meeting to review these issues with administrators from schools affected. Board members **Lisa Iglesias**, **Joan Howarth**, **Eileen Kaufman**, and **Carol Chomsky** were active in Florida, California, Nevada, and Minnesota speaking out on the discriminatory effects of raising

passing scores, and they succeeded in delaying the implementation of higher pass scores in several jurisdictions.

- SALT sponsored its thirteenth annual teaching conference, held at NYU in October 2000, focused on Teaching, Testing, and the Politics of Legal Education.

- SALT is presenting this January for the first time a workshop for relatively new law teachers, focused on progressive teaching, which we hope will be held in conjunction with the AALS Annual Meeting each year.

- SALT issued a statement of support for the Organization of American Historians when it decided to relocate its

“SALT has been the most visible organization within the legal academy challenging the Right in its efforts to resegregate higher education.”

annual conference from the Adam's Mark Hotel to protest the hotel's racially discriminatory practices, and several SALT members then informally advised OAH's lawyer as they responded to the subsequently filed lawsuit against the organization for breach of contract.

- The SALT Board voted to add a Midwest Social Justice Retreat to the annual Robert Cover (East Coast) and Trina Grillo (West Coast) Retreats, designed to bring together practitioners, students, and academics to expand and deepen the public interest community. The first Midwest Retreat will be held in March 2002. See stories page 12.

- The SALT Board allocated \$2,000 to the Pre-Law Summer Institute for

native, tribal, and indigenous students who have been accepted to law school. The two students who received scholarships will collaborate with the Social Justice Retreat organizers to insure that native and indigenous practitioners, students, and activists are involved in future programs. These outreach projects to the indigenous communities have been promoted by Board member **Christine Zuni-Cruz**.

- Board member **Phoebe Haddon** was a SALT delegate to the AALS Diversity Task Force, helping that body to issue its recommendations on furthering diversity in the legal academy.

- SALT continued its advocacy on behalf of permitting gays and other sexual minorities to serve openly in the military by producing a new pamphlet on the AALS rule regarding discriminatory recruiting on law school campuses, written by Board member **Frank Valdes (Miami)**. SALT mailed the information to deans, associate deans, career services offices, GLBT law school advocacy organizations, and SALT members. The pamphlet and its listing of amelioration activities was attacked on the editorial page of the *Wall Street Journal* on November 12 and in assorted conservative news forums in the days following (see article on page 13, which includes our reply to the WSJ, which the newspaper declined to publish), demonstrating clearly the need for SALT's continued activism on this issue.

- SALT continued to produce the annual salary survey, thanks to **Howard Glickstein (Touro)**, and three terrific *Equalizers* each year, thanks to Editor **Eric Janus (William Mitchell)**.

- And, as always, SALT continued to hold its annual Cover Workshops at the AALS meeting, Cover and Grillo Retreats each spring, and the annual Awards Dinners each January.

SALT has also taken important steps to improve our organizational infrastruc-

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Presidents' Column:

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ture. In that connection we are particularly delighted to announce that founder **Norman Dorsen (NYU)** has demonstrated his enduring commitment to the organization he helped create by pledging a gift of \$50,000 to SALT over five years to establish the Norman Dorsen Fellowship. His donation must be matched by equal contributions from other donors or from SALT's treasury. Once fully funded—and even before, from Norman's additional annual gifts of \$2,500 for the next four years—the Fellowship will allow the co-presidents to hire one or two law students each year as Norman Dorsen Fellows to provide the organization with the research and other support so critical to permit SALT to continue its activist agenda in the coming years. We can think of no better way to ensure that the vision he and the other founders had in 1972 will continue unabated in the future. In addition, over the past two years:

- SALT has re-articulated our mission and vision and produced and distributed a pamphlet restating those precepts and describing the ongoing projects of the organization.
- We have organized an e-mail listserv for the SALT membership so that we can communicate with each other more easily and efficiently.
- We are in the process of enhancing and redesigning our organizational website, with the help of **Richard Chused (Georgetown)**.
- We have undertaken an academy-wide membership drive to strengthen our membership base and provide the funds needed to support our wide-ranging agenda.

As we come to the end of our co-presidency, we want to express our sincere gratitude for being given the opportunity to lead this organization and to speak on behalf of the truly extraordinary people who make up the Board of Governors. We especially want to thank departing Board members **Sumi Cho, Karen Czapanskiy,**

Dennis Greene, Natsu Saito, Frank Valdes, Eric Yamamoto, and Fred Yen for all they have done for SALT during their terms. SALT is a cooperative venture, relying on the joint leadership of its co-presidents, the combined accomplishments of its hard working



Incoming Co-Presidents Michael Rooke-Ley and Paula Johnson

Board, and the commitment and support of all its members. **Paula Johnson and Michael Rooke-Ley** will be superb co-presidents who will bring their own rich mix of talents to the next set of challenges. SALT's future is bright and we are confident that it will continue to advocate effectively for the values on which it was founded. Again, our heartfelt thanks to all of you for your support and for the opportunity to be part of this great endeavor.

SALT's Response:

▼ *continued from page 13*

All employers who use law school facilities for recruitment are asked for assurances that they, too, abide by such principles. The military cannot give such assurances and, before the passage of the Solomon amendments, were therefore barred from recruiting on campus, as would any employer who refused to comply. Because Congress has made all federal funds at any school—including, until recent amendments, funds sent directly to students for financial aid—dependent on allowing the military to recruit, the AALS has modified its position and required, instead, that law schools must ameliorate the discriminatory effect of the military presence. It is in response to this requirement that we at the Society of American

Law Teachers offered our suggestions. In his response, Professor Morriss highlighted only one of 27 different steps that a school might take to ameliorate such discrimination. Among other possibilities, we urge schools to post the school's nondiscrimination policy in conspicuous locations, to respond promptly and publicly to all incidents of discrimination or hate, to sponsor and invite the public to on-campus guest lectures that draw attention to the social ill effects of discrimination based on identity, to sponsor "teach-ins" by faculty to help educate students and others about the detrimental effects that discrimination has on the legal profession and society, to offer courses and seminars on "sexual orientation and the law," to encourage law faculty to include issues of sexual minority discrimination in teaching and

scholarship, and to identify and provide information about employment opportunities specifically for sexual minority students to help counteract the effects of homophobia in the employment process. And yes, we suggest that schools work to withhold as much as possible their own complicity in discrimination in the hiring process, even as they allow the military to recruit as compelled by federal law. Nothing we suggest is designed to, or capable of, obstructing military recruiting at law schools, as Morriss charges. Would we prefer to see the military do its recruiting without use of law school facilities? Yes. Do we believe the military is performing vital security functions for all of us, especially in these difficult days? Yes. Do we believe the United States military

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letter:

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also consider later deadlines such as the date of the electors voting, of the electors' ballots being counted, etc., but (as set forth below) it would also be difficult to meet those deadlines, and those later deadlines would only prolong the nation's uncertainty and exacerbate the President-elect's problems in forming a government. Third, the task may have looked very long. Some states (such as Texas and California) have detailed legislation about how to have a manual recount of punch card ballots, but Florida does not. Only after the rules were determined could the manual recount begin. Only after the deciders (possibly the inexpert and partisan canvassing boards, but also possibly judges or special masters) were selected could the manual recount begin. Presumably there would be opportunity for some sort of review after the manual recount was completed. All of this would take time, and there was very little time. Again, one may of course reject these arguments, but it is hard to see how one can assert that they are illegitimate.

3. One may say that the Supreme Court created a Catch 22: In its first opinion the Court suggested that the questions presented had to be decided by the legislature, but in its second opinion it said there were no standards (which standards the Florida Supreme Court might have created, had it not been told not to do so by the first U.S. Supreme Court decision). I think that the problem was created by the U.S. Constitution (which says that the legislature must create the rules for choosing the electors) and by the Florida Legislature (which never enacted rules for dealing with statewide second and manual recounts). Because the Florida Legislature's scheme had essentially no meaningful standards, it posed serious equal protection problems; because of the U.S. Constitution, no

other institution had the authority to fix this problem. Thus the problem was created by the Florida Legislature's failure to carry out its Constitutional obligations, and not by the U.S. Supreme Court creating a Catch-22. Thus the U.S. Supreme Court's decision was legitimate.

4. It is worth emphasizing that the problem is with the second and manual recount, not with the varied voting systems in different counties in Florida. It is true that different systems had different error rates, ranging from less than half a percent to a few percent. This is not good. It should be fixed. One should be disturbed if the state imposed this non-uniformity. But that is not what happened. The problem was created by the local governments' choices about voting machines. If a local government wants to dilute its own citizens' votes by having high error rate voting machines, that is a questionable policy, but it is not a violation of equal protection. Standardless manual recounts by various inexpert and partisan bodies, however, may reasonably be held to be a violation of equal protection.

5. There are charges of possible racial discrimination in voting. These should be investigated and fixed. But because an investigation of these matters had not begun because all involved focused on the partial manual recount, and thus had not been considered by lower courts nor included in the record, these matters could not be a factor in the U.S. Supreme Court's decision, and thus could not affect its legitimacy. It is time now to investigate, possibly to prosecute, and certainly to remedy.

I might add that it is my opinion that those who are using their role (here, as academics) to criticize others for departing from their role (here, as justices) should be very careful to be sure that they are acting in their role and not as partisans. The analysis I am forwarding suggests that it may be difficult to mount an academically respectable criticism of

the legitimacy of the Supreme Court majority in *Bush v. Gore*, a different question from whether or not that majority came to the most sound result.

Do you remember the scene in *A Man for All Seasons*, where the young man says he would uproot all the laws to get at the devil, and Thomas More asks where the young man would hide when the devil turned upon him, once all the laws were gone? Where will you hide, once the Court is lamed?

Michael J. Waggoner

Associate Dean for Academic Affairs
University of Colorado Law School

Esperanza

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only place in San Antonio, other than the bars, where Gloria Anzuldúa, Barbara Smith, Cherrie Moraga, and Scott Nakagawa could read and discuss their work. It is home to writer Sandra Cisneros and playwright Sharon Bridgeforth. It is home to mothers and fathers, grandparents, and grandchildren.

The work of the Esperanza is done by volunteers and a small staff. Graciela Sanchez has been the Executive Director for 13 years. Over the years, there have been times when Graciela was the only staff member and other times when as many as 17 people worked as full- and part-time staff. Currently, the Esperanza staff includes five full-time and five part-time employees. Funding for the Esperanza (now approximately \$500,000 a year) comes approximately one-third from individual donations (monthly donors give anywhere from \$3 to \$200 a month), one-third from earned income (ticket sales, book sales, and the like), and grants from public and private foundations (grantors have included Aestrea, the Rockefeller Foundation, the NEA, the Texas Commission on the Arts, and the City of San Antonio).

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Diversity Rationale:

▼ *continued from page 11*

educational institutions. Professor Barbara Sullivan warned in her article, "The Gift of Hopwood: Diversity and the Fife and Drum March Back to the Nineteenth Century," 34 Ga. L. Rev. 291 (1999), that diversity can be a distraction from justice and can leave unresolved questions about equality. As former SALT president Charles Lawrence has opined in his recent article, "Two Rivers: A Critique of the Liberal Defense of Affirmative Action," in 101 Colum. L. Rev. 928 (2001), the diversity arguments offered by UM are deeply conservative, leaving intact the selection system that keeps Blacks, other people of color, and poor whites disproportionately missing from elite institutions of higher learning.

Essentially by arguing in favor of educational diversity without challenging the elitist hierarchy built on its merit system Michigan preserves a selection process that works against the inclusion of intelligent and hard working African Americans and other people of color as well as many whites. The affirmative outreach efforts under review in the University of Michigan Law School case, for example, is a marginal part of a selection program that reinforces the notion that excellence is generally racially determinative because the racially disproportionate impact continues in the selection process of the majority of students. The assumptions it reinforces are that the best and brightest can truly be determined by assessments that overwhelmingly identify whites at the top and leave blacks at the margin and that such a system is fair and democratic despite its correlation with race and wealth.

Lani Guinier and Susan Sturm have eloquently expressed in their article, "The Future of Affirmative Action: Reclaiming the Innovative Ideal," (in 84 Calif. L. Rev. 953 (1996), and other work on fostering

inclusion in law schools that affirmative action that does not challenge the legitimacy of using the LSAT as an essential tool for selection of majority students unfairly continues to pit whites and blacks in ways that compromise the opportunity for achieving social justice. By adopting diversity factors to address the unequal standing of whites and blacks, elite institutions like Michigan continue to support a discriminatory system of entitlement that privileges whites with high incomes. It encourages white students (if not Blacks) to continue to view people of color as incapable of competing as equals under a "neutral" system of merit and to conclude that the inclusion of Blacks displaces jot for jot the legitimate presence of deserving whites who are further up the hierarchy of entitlement than Blacks though less qualified than other whites.

Continued reliance on this exclusionary testing based system, adjusted for the sake of racial exposure and other diversity considerations, can compromise the ability to engender much confidence in or commitment to equality as the inclusionary goal. For this reason SALT has expressed a commitment to redefining merit and has taken an important first step by critiquing the adverse effects of student selection procedures that unduly rely on the LSAT. But we have not significantly moved beyond this talk about the need for innovation even in our own, non-elite institutions. We also seem to be willing to accommodate our interest in a diverse student body to the traditional allure of selectivity, limiting our ability to develop valid approaches to address the problem of exclusion. The ABA and AALS, organizations which have warned against over reliance on the LSAT, continue to use average LSAT scores to assess the competitive quality of law schools. The *U.S. News and World Report* continues to drive law schools to raise their acceptance scores so that they can move up its competitive

ranking tiers. For many non-elite law schools the fear that they are admitting students who will not be able to pass increasingly high bar passage standards has also resulted in increased reliance on the LSAT as a gate-keeping feature, without much consideration as to whether there are less exclusionary alternatives.

Because of these challenges, the project of establishing alternative selection criteria has proven to be a complex and elusive task. Flagship public institutions like Michigan are well situated to lead the way in creative thinking that meaningfully challenges the status quo. For example, in its work justifying its marginalized diversity program the law school identified criteria for identifying a successful professional and found that its Black graduates had achieved "success." Why not use these criteria to develop indicia for merit selection for all students and avoid the exclusionary effects of the LSAT for all students seeking admission? Notably, the LSAC itself has offered funding in support of research leading to the construction of alternative admissions policies that avoid overreliance on quantitative tests and other discriminatory vehicles for defining merit. So far, few projects have received funding but the opportunity is available.

Students intervening in the Michigan litigation have spoken movingly about affirmative action as a response to injustice, focusing on the fact that African Americans have been disproportionately missing from the public university and are entitled to share in its educational bounty. These social justice claims which rest on conceptions of reparations and representation resonate for students as far away as Berkeley—where students have successfully organized and campaigned to have the UC Regents change the University of California admissions policy to include "comprehensive review," eliminating the requirement that 0–75 percent

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Diversity Rationale:

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of all students be admitted on the basis of grades and test scores alone. In fact, SALT board members have reported that a "new civil rights movement" seems to be emerging across the country in which students are raising such social justice concerns. Dr. DuBois challenged us to address the problem of inequality. In addition to supporting an effective litigation strategy based on educational diversity SALT must recommit itself to ensuring that equality remains our focus by supporting this student movement and by rededicating ourselves to our own work concerned with redefining merit.

SALT's Response:

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would be a stronger institution if it followed the same rules about nondiscrimination with respect to gay and lesbian citizens as it does for all others? Yes again. We support the AALS rules that encourage our law schools to educate and persuade our students and the public to fully implement our constitutional and moral commitment to equal opportunity for all our citizens, even—especially—at a time of public crisis. Professor Morriss claims that what distinguishes us from the Taliban is that we and our soldiers care about the rule of law. What truly distinguishes those who care about the rule of law from those who do not is an unrelenting commitment to ensuring that the law is not used for evil ends. Our country has a long and uneven history of struggling to vindicate the values of equality and liberty for all. In the recent past the military has exercised leadership in the dismantling of racial and gender-based segregation. It is with that history in mind that we pressure our government and its security forces to live up to our most cherished ideals.

Dorsen:

▼ *continued from page 1*

ways that even Norman probably could not have predicted.

In 2001, he offers SALT a new source of support and challenge. Norman has promised to give SALT \$55,000 over five years to create an endowed Norman Dorsen Fellowship Fund to enable SALT presidents to hire a law student to help them with the work of the organization. Norman has conditioned his gift on a requirement that we raise matching funds. So, basically we need to raise \$12,500 a year for five years.

Norman's proposal, accepted by the SALT Board, contemplates a front loading of funding to give immediate support to our next presidents, Michael Rooke-Ley and Paula Johnson. After five years, SALT will have an endowment of \$100,000 that will enable each new president to hire an assistant, without the need for further fund raising.

This is a magnificent gift and we are all tremendously grateful to Norman for his lifetime of inspiration and work, as well as his generosity. In his characteristic way, after close consultation with the SALT Board and Presidents, he has structured the gift to assure that it will grow and make the organization stronger.

Co-Presidents Carol Chomsky and Margaret Montoya have asked me to chair the fund raising committee. I am honored to do so. The committee is now in formation and includes: David Chambers, Howard Glickstein, Phoebe Haddon, Charles R. Lawrence, Avi Soifer, and Wendy Webster Williams. We will be looking to all of you for help. You could be the first kid on your block to contribute to the Norman Dorsen Fellowship Fund, by sending a check made out to SALT and designated to the Dorsen Fund to Sylvia A. Law, NYU Law School, 40 Washington Sq. So., New York, N.Y. 10012.

Solomon Update:

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current (except as to the sub-element rule, as discussed later in this article). This 1998 report also describes how schools can comply with the law without unduly supporting the military's discrimination. Anyone interested in an in-depth discussion of Solomon issues should download the report and review it.

These two publications the new SALT brochure and the Sections 1998 report jointly provide the most detailed, comprehensive and updated information on Solomon.

If you recall, after the successful grassroots effort to repeal the Solomon provisions that affected student financial aid funds, the AALS promptly reinstated its full nondiscrimination policy, which includes sexual orientation as well as gender, race and other categories. At the same time, however, the Defense Department issued an interim regulation that deleted the sub-element rule from existing federal administrative regulations. This deletion meant that funding under Solomon now is affected university-wide by the actions of any sub-element of a university, including the law school. While students' financial aid remains safe, many law schools now are affected by federal funds for *any* part of their university. And because many law schools are part of universities that depend on defense (and other) still-affected federal funds, the AALS later suspended its reinstatement of the full nondiscrimination policy pending further legislative, administrative, or judicial action.

This stalemate remains the status quo, and appears likely to remain so indefinitely due to the current political climate. This holding pattern therefore calls for multiple long-term strategies to avoid the divisions on law campuses incited by Solomon, and to make equality work on

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Esperanza

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The Targeting of the Esperanza

As members of SALT have learned, multi-issue organizing often means multi-directional attack. In 1997, City of San Antonio funding for the Esperanza (approximately \$75,000 a year) was eliminated after a series of public and private attacks. Through the litigation, we learned of convergent efforts, both in and

Solomon Update

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our campuses despite this federal interference. Because the interim regulation remains in effect, and because the potential benefits of further political activism appear limited for the moment, the new brochure is designed to help schools adjust to this open-ended state of affairs.

Of course, freestanding schools are not affected by this change in the regulations, nor are schools that are part of universities without significant defense department funds. Therefore, as before, schools should carefully review what type of funding actually may be at stake before deciding to permit discriminatory employers to invade their campuses. And, if permitting access to the military is unavoidable, schools should carefully follow the letter of the law, but not accommodate the military beyond legal requirements, as explained fully in the Sections 1998 report on Solomon. In addition, as explained in more detail in the new SALT brochure, schools should schedule at least some of their ameliorative actions to coincide with the dates of military recruitment. In any event, law schools should plan now how they will manage Solomon-related issues for the next couple of years, and then remain vigilant to ensure that their plans are being implemented effectively year-round, and year to year.

outside of government, to de-fund the Esperanza. In 1994, the Esperanza organized a Coalition for Cultural Diversity which effectively challenged the Euro-centricity of San Antonio's publicly-funded cultural projects, including the highly subsidized tourist industry. These efforts resulted in much controversy, public commitments to change by political and civic leaders, and then backroom deals to maintain existing patterns of funding. Through this work, Esperanza became known inside City government as a group that could bring out hundreds of people for a public protest rally and could mobilize thousands of people to write letters, sign petitions, and post signs. For City government, the Esperanza was a troublemaker. In the following year, some members of City Council attempted to cut the Esperanza's city funding, but they could not garner the support of a majority.

Meanwhile, pro-life activists targeted Esperanza because it was the site of a pro-choice "Break the Chain" held as an alternative to the pro-life "Chain of Life" event in 1995. Around the same time the conservative gay "Log Cabin Republicans" and the gay newspaper edited by one member of the Log Cabin Republicans began a series of attacks on the Esperanza as the "Latina Phalanx" and as a "local branch of Castro's Communism." The Log Cabin Republicans and allied conservative white gay men viewed the Esperanza as too brown, too female, and too political. As one put it: "What the f... do grapes have to do with being gay?"

The separate efforts to shut down the Esperanza coalesced when one pro-life activist worked in a populist political campaign with one conservative gay man. Together, they brought the subject of the

Esperanza to the Bexar County Christian Coalition and conservative talk show host Adam McManus, who was newly arrived in San Antonio and determined to become the local Rush Limbaugh. Focusing on the Esperanza's cosponsorship of Out at

the Movies, an annual film festival of the San Antonio Lesbian & Gay Media Project, Adam blasted the Esperanza and its "homosexual agenda" and urged listeners to "take a stand" against public funding for the Esperanza. Meanwhile the Bexar County Coalition sent "FAMILY ALERT" flyers to several thousand residents of the predominantly white Northside entreating readers to act against the Esperanza. Ministers at numerous Southern Baptist Churches called for the de-funding of Esperanza from the pulpit

each Sunday, the conservative gay newspaper, the *Marquise*, published a series of articles attacking the Esperanza as "radical," "racist," "man-hating," and generally anti-American. And finally, wealthy members of the Log Cabin Republicans met privately with Mayor Howard Peak and members of the City Council to tell them that they would support the de-funding of the Esperanza.

Unfortunately, the Esperanza community did not know of these efforts until too late. Barely a week before the vote, the Esperanza heard rumors of de-funding, yet City Council members refused to meet with Esperanza representatives, and Mayor Peak and several Council members appeared on the Adam McManus show, encouraging listeners to contact City Council in support of the de-funding.

The De-funding of the Esperanza

On September 10, 1997 (the night before the scheduled vote on the City budget) between 9 and 12 in the evening, Mayor Peak and several other Council

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The Esperanza's MujerARTES project is a collectivo of low-income women telling their stories through the art of ceramics taught to them by a Mexicana artist from Puebla.

Esperanza:

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Members were at City Hall, negotiating three or four controversial budget issues, including the de-funding of the Esperanza. The Texas Open Meetings Act requires that any meeting of a quorum of the Council (six or more) be in public, with public notice and access. That night, the Mayor sat in the City Manager's office. The other Council members rotated in and out—only five Council would be in the same room, but at least three others would be out in the hall, carrying on the same deliberations, awaiting their turn to rotate into the office.

By the end of the next morning, the Mayor had all eleven Council members sign a "memorandum" stating that they voted to de-fund the Esperanza. In the evening of September 11, 1997, following homophobic tirades ("it is an abomination against God...") the City Council

voted, without discussion, to de-fund the Esperanza, even though the Esperanza's primary application had been ranked number one in its category by the City's peer review panel and had been recommended for funding by the City's Cultural Arts Board and Department of Arts and Cultural Affairs.

Response to the De-Funding

The Esperanza community struggled for almost a year about how to respond to the defunding. It was difficult to survive—in addition to the City funding, the City withheld our state funding, and some local private foundations rejected our funding applications because of the adverse publicity. In addition, some individual donors were frightened off. In addition, the politics of the de-funding was difficult to address. Not only had we been attacked by an unlikely alliance among city officials, conservative white gay men, and the Christian right-wing, we

had been de-funded by a City Council that was majority Latino. In addition, the community was aware of the costs and diversions of legal action experienced by the Civil Rights Movement in the 1960s and were interested in litigation only if it was subordinate to a focused organizing and community education campaign.

By the summer of 1998, however, the Esperanza community had reached a consensus. We would file a federal lawsuit and we would undertake a Todos Somos Esperanza campaign.

Editor's note: Part 2 of this article will discuss the litigation brought by the Esperanza. In May, the Court ruled that the City had violated the First and Fourteenth Amendments to the U.S. Constitution and the Texas Open Meetings Act in an 85-page decision, 2001 WL 685795 (W.D.Tex.). The Court is still in the process of determining the remedial stage of the case.

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