

T EQUALIZER

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Solomon Amendment Litigation Update

Kent Greenfield, Boston College Law School

As the fall begins, we are on the verge of a crucial moment in the history not only of SALT but of the fight for academic freedom. As most readers of the *Equalizer* already know, the United States Supreme Court granted certiorari in *FAIR v. Rumsfeld* and has scheduled arguments for Tuesday, December 6. The government filed its opening brief in July, and the plaintiffs are preparing their briefs. Most commentators have listed the case as one of the upcoming term's "blockbuster" cases.

The government's brief (available at www.solomonresponse.org) essentially argues for a drastic narrowing of the doctrine of unconstitutional conditions. The government focuses on the argument that, because any limitation on free speech comes as a condition of funding, law schools and universities cannot complain about the condition once the funding is accepted. The government claims that the "educational institution cannot find the United States to be an acceptable partner in financial arrangements promoting the education of its students and then insist upon a constitutional right to deem the United States unacceptable when it comes to having military representatives on campus recruiting

Solomon continued on page 3

Co-Presidents' Column

Beto Juárez, St. Mary's University School of Law
Holly Maguigan, New York University School of Law



Greetings! As you can see from this issue of the *Equalizer*, SALT has been busy this year!

Much of SALT's work is long term. The kinds of changes SALT advocates often take years to achieve. A good example of this is the upcoming appeal before the United States Supreme Court of SALT's successful challenge to the Solomon

Amendment. (See Kent Greenfield's article above.) This lawsuit was filed when Paula Johnson (Syracuse) and Michael Rooke-Ley (Seattle) were SALT Co-Presidents. The Supreme Court's decision is likely to come down after we hand things over to our successors, Eileen Kaufman (Touro) and Tayyab Mahmud (John Marshall). And, regardless of the outcome of that decision, Eileen's and Tayyab's successors are quite likely to be embroiled in the continuing struggle to combat discrimination on the basis of sexual orientation.

Our work to secure a racially diverse profession is also long-standing, and will not end next month or next year. SALT's work advocating proposals for changes in the ABA's law school accreditation standards has been underway for nearly a year; that process, too, will likely take a good while longer. (See Beto Juárez's article on page 10.)

Co-Presidents continued on page 2

SALT EQUALIZER

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Co-Presidents:

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SALT's efforts to create effective alternatives to the bar exam are also continuing. (See Eileen Kaufman's article on page 8.) What started out as an effort by a few SALT members has grown dramatically, and will continue at the AALS Annual Meeting in New Orleans, where a workshop on the bar exam will be held. Persuading each of the states to adopt alternatives to the traditional bar exam will not be easy – but that's why SALT as an institutional presence is so important. On any given day, any one of us can feel too tired or too overwhelmed to continue the effort. That's when it's crucial to remember that SALT and SALT members are there to help.

It's also essential to remember that our contributions can make a real difference. We were reminded of that these past few months with the successful effort to strengthen the ABA's accreditation standards for clinical faculty. (See article on page 9.) For us, SALT's support for equality for clinicians was never in question. SALT has long advocated clinical methodology as an essential part of a



SALT Board members at work

sound legal education. If we are serious about this basic claim, then we must be prepared to ensure that clinical faculty participate in governance and are offered security similar to that offered to stand-up teachers. Many SALT members are clinical teachers. Many SALT members are clinical teachers, including one of us (Holly).

A happy outcome of the events of the

past few months has been a strengthening of SALT's relationship with the Clinical Legal Education Association (CLEA). We



SALT Co-Presidents Holly Maguigan and Beto Juárez

hope to reach out to other legal educators as well. Membership in SALT is open to anyone who:

- (a) teaches law students for credit given by a law school; or
- (b) serves as a law school administrator or as a professional law librarian; or
- (c) is retired or on leave from such a position; or
- (d) was previously a member of SALT.

SALT is not just for stand-up classroom teachers! If you know a clinician, administrator, or law librarian (or yes, a stand-up teacher) who should belong to SALT, why not pass this issue of the Equalizer on to her or him, and encourage that person to send in the membership form at the back of this issue? (And if you haven't sent in your dues, why not take a moment now to do that as well?) Together we can make a difference!

Not everyone is able to contribute to SALT's work with time. We want to remind you of two opportunities to contribute in other ways to SALT's work. First, former SALT President Norman Dorsen made a generous contribution to SALT for the Dorsen Fellowship, which funds a law student to assist the Co-Presidents in carrying out SALT's work. The gift is conditioned on SALT's raising \$12,000 in matching funds each year. Second, the Stuart and Ellen Filler Fund supports the

work of law students doing public interest work in the summer.

Finally, an important part of SALT's ability to make a difference is the energy we get from each other when we meet. Do remember to SAVE THESE DATES:

- Thursday, October 6, 2005, and Friday, October 7, 2005, for our co-sponsored Junior Faculty Development Workshop at the LatCrit Conference in San Juan Puerto Rico. (See Frank Rudy Cooper's article on page 3 for more information.)

- Sunday, November 13, 2005, for the fall meeting of the SALT Board of Governors, at Georgetown Law Center in Washington, D.C. All SALT members are welcome to this post-"meat market" session. For details, write holly.maguigan@nyu.edu.

AALS events:

- Thursday, January 5, 2006, from 6:30 p.m. to 8:00 p.m., for the SALT and National Lawyers Guild welcoming reception for new and experienced faculty (See Nancy Cook's article on page 7 for more information.)

- Thursday, January 5, 2006, from 8:00 p.m. to 10:00 p.m., for the Robert M. Cover study group session, which will focus on academic freedom. (See the "Save the Date" box on page 7 for more information.)

- Saturday, January 7, 2006, from 6:30 p.m. to 9:30 p.m., for SALT's Annual Awards Dinner, at which we honor Eric Yamamoto with the Teaching Award and David Cole with the Human Rights Award.

- Sunday, January 8, 2006, for the winter meeting of the SALT Board of Governors.

We look forward to another eventful semester. We are optimistic, because SALT members are so generous with their time and their money, their energy and their ideas.

Warmest wishes,
Beto and Holly

Solomon:

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those very students." The government is supported by a number of amici, including the Center for Individual Rights, the Eagle Forum, the National Legal Foundation, the Boy Scouts of America, and the Dean and some professors from George Mason University School of Law.

Meanwhile, the plaintiffs' attorneys at Heller Erhman LLP are preparing a brief for filing in September. The attorneys have coordinated with a number of amici as well, including the AALS (whose brief is being written by Paul Smith), the American Association of University Professors (Kathleen Sullivan), the National Gay and Lesbian Task Force (Jon Hafetz), the National Association of Law Placement (Sam Heldman), and a few others. The plaintiffs have discouraged other amici from filing, in order to refrain from overwhelming the Court with additional briefs that might distract from our core points. Nevertheless, we know of a few additional amici that will file briefs in support of SALT and FAIR (the Forum for Academic and Institutional Rights). These amici not coordinating with the plaintiff group include the faculty at Harvard Law School, the faculty at Yale Law School, and the faculty at Columbia Law School. All the briefs will be available on www.solomonresponse.org as soon as they are filed.

SALT members should continue encouraging their institutions and law faculties to join FAIR, as it is important to have as many institutions as possible represented at the time of argument. Also, as the President of FAIR, I urge you to pursue any media relations efforts you can. As the argument approaches, op-eds or arguments in the media on behalf of the plaintiffs will be very important.

In October, a Faculty Development Workshop for Progressives

Frank Rudy Cooper, Suffolk University Law School

The goal of the LatCrit/SALT Junior Faculty Development Workshop is to make POTs – Progressive Outsiders Tenured. The Workshop helps create those people by providing progressive junior faculty, including clinicians, with some of the unwritten rules for success. It does so in a space that is safe and fosters discussion. Please tell your "tenure-free" colleagues to register for this invaluable event. (Registration information is in the box at right.)

There are three main components to the workshop:

- (1) discussion of unwritten rules;
- (2) concrete advice on scholarship and teaching; and
- (3) creation of networks. Within a year

of joining a law faculty, we realize that – alongside scholarship, teaching, and service – demonstrating knowledge of the unwritten rules is a fourth category of tenure evaluation. Hence, the Workshop begins with a session entitled "On Professionalism." This session concentrates on how to play institutional politics and demonstrate "collegiality." While "all tenure is local and personal," most of the pitfalls at a given institution have been sprung on people somewhere else. We will present a list of common unwritten rules and then allow junior faculty to ask questions about what to do in the situations they are actually facing.

The second session, "On Balance," will continue the discussion of the first session and also ask how we can balance professional demands with family responsibilities and personal interests. We will provide advice on how to carve out a personal life while still satisfying the written and unwritten job requirements.

Of course, many people are tripped up by the scholarship and teaching requirements. Because we are the rare academics who do not usually go through a training program, many people who have the desire to be great scholars and teachers are not sure how to accomplish their goals. Many people had to be pulled aside by a friendly colleague and told what a good article and good class look like. We hope to serve that function.

In our third session, "On Scholarship," both doctrinal and clinical scholars will provide roadmaps for how to conceive of, research, draft, finalize, and market an article. We strongly encourage attendees to bring drafts so that we can assign a reader who will be constructively critical but never discuss an article's early flaws with anyone else.

The fourth session, "On Pedagogy," will also provide step-by-step guides for teaching a class from both doctrinal and clinical perspectives. This session will pay special attention

The LatCrit/SALT Junior Faculty Development Workshop

When: From 4:00 p.m. on Thursday, October 6, 2005, to 3:00 p.m. on Friday, October 7, 2005, as a prelude to the tenth annual LatCrit Conference

Where: The Caribe Hilton Hotel, San Juan, Puerto Rico

To Register: Go to <http://personal.law.miami.edu/~fvaldes/latcrit/latcrit/LC10.htm>, or email Frank Rudy Cooper at fcooper@acad.suffolk.edu

Faculty Workshop continued on page 5

See the New National Lawyers Guild in Portland this Fall

Michael Avery, Suffolk University Law School

The National Lawyers Guild is growing and changing. Nowhere is this more apparent than at our national conventions. In the last two years we have made extraordinary efforts to broaden our program and our membership, and the Portland Convention from October 26 to 30, 2005, will reflect these changes.

As the President of the National Lawyers Guild, I can tell you that it is an excellent time for SALT members to join or rejoin the Guild. As part of our outreach efforts, we are making NLG membership available to dues-paying SALT members at the annual dues rate of fifty dollars. We hope to substantially broaden our base among progressive law professors.

Guild members of color organized The United People of Color Caucus (TUPOCC) at our Birmingham Convention in October, 2004. The Caucus has been very active since, working with others within the Guild to make our organization more multicultural. We have \$7,500 in our budget to make scholarships available to students of color to attend the Portland convention. (Interested students should apply to Laura Raymond in the NLG national office.)

The convention this year will feature a set of Constituency Panels, which is a new effort to invite communities that we represent to talk with us about how Guild members can better use our legal resources to address their needs. We have invited representatives of the African-American and Latino communities and the labor and environmental movements to speak about current issues of concern to them. The goal is to broaden our

programmatic work in concrete ways, as well as the base of our membership.

Also on the labor front, we have John Wilhelm, President, Hospitality Industry, of UNITE HERE as the convention keynote speaker. Wilhelm is one of the key progressive labor leaders involved in the very intense struggles in the AFL/CIO that took place this July. Wilhelm began working as a labor organizer in 1969 for HERE and has led several successful and creative hotel organizing drives. He has also been instrumental in diversifying the leadership of his union, including election in 2001 of the Union's first women General Officers, its first General Officer of color, its first Asian-American Vice President, and significant increases in the number of African-American, Latino, and women Vice Presidents. He is committed to rank-and-file member participation in union governance.

At our banquet on Saturday night, we will be honoring PCUN, the Oregon union of farmworkers, nursery and reforestation workers, and Oregon's largest Latino organization. Ramon Ramirez will speak at the banquet on behalf of the union.

Important components of ongoing Guild work will be featured at the convention. The Military Law Task Force will make several presentations, including a major panel, "What Is GI Resistance?", and a workshop on courts-martial. Lewis and Clark law students in Portland are very active in military counseling. Mass Defense will present skills workshops on representing protest demonstrators. The National Immigration Project will have a CLE program, workshops and its all-day annual meeting. The International Committee will be offering a particularly important and exciting CLE program on using international law in criminal, labor and employment, poverty and civil cases. The National Police Accountability Project will have a workshop on working with

community-based groups.

Major panels will include: "Queer Rebels and Gender Outlaws: Navigating the Legal System with Radical Queer Politics," "Educators, Judges and Lawyers Under Fire," "United States Torture of Prisoners in the U.S. and Abroad," and "Behind the Scenes of the Legal Machine: Radical Legal Workers and Grassroots Struggle."

There are many more exciting presentations that are described on the convention page on the NLG website (www.nlg.org). We have outstanding cultural attractions as well: Renowned activist and hip-hop artist Michael Franti and friends will perform at our Saturday banquet, and the March Fourth Marching Band will entertain at the student party on Friday. Portland itself is a wonderful city and the Benson Hotel is a charming, old world venue where we can meet in a relaxed atmosphere.

The convention is the best place for us to plan our work for the coming year and to make decisions as an organization. But it's much more than that. If you have never been to a Guild convention, you are missing out on the energy and passion that ignite when we bring together our youngest and oldest members, our newest ideas with the experience of many decades, and our best in creativity with our maximum in commitment. If you haven't come before, come now. If you came last year, come again and bring someone new.

To join the National Lawyers Guild at the special SALT rate, please download and complete the membership form from our website, write on it that you are a SALT member, and send it with your check for \$50.00 to the National Office address on the form.

ABA/LSAC Diversity Pipeline Conference to be Held in November

Charles Calleros, Arizona State University College of Law

Applications to law schools from members of minority groups have leveled off in recent years, even as the minority population in the United States is growing as a percentage of total population. Thus, the goal of attaining truly representative diversity in the legal profession is in danger of slipping away.

SALT has been at the forefront of the movement to champion affirmative action, and *Grutter* was a milestone in that campaign. Constitutional permission to broaden admissions criteria beyond purely quantitative measures, however, will not enable law schools to admit and enroll students who do not apply in the first place. Moreover, the insidious law school rankings criteria of *U.S. News & World Report* has put pressure on law schools to give disproportionate weight to LSAT scores, to a degree that the LSAC itself finds indefensible.

Thus, admissions criteria that seek a diverse student body must be coupled over the long run with efforts to reach diverse students well before law school, to give them tools for success, to inspire them, and to encourage them to set lofty goals. By enhancing the diversity pipeline in college and K-12, we can supplement the affirmative action programs at the end of the pipeline with an ever-increasing flow of applicants through the pipeline. Yes, some of the young students whom we inspire will go into business, engineering, or medicine rather than law, and that's all to the good. And many of them will remember their early contact with an attorney, law professor, or law student, and it will influence them throughout their academic careers, and their stories will be told in law school application files in the years ahead.

Now in place throughout the country are many programs that provide to non-mainstream students some of the mentoring, tutoring, coaching, guidance, and inspiration that more privileged students take for granted. Other programs have yet to be developed and will be the product of creative, energetic minds that turn their attention to this need. What we need now is a collective will to form partnerships with K-12 and college teachers and community leaders, and to implement such programs throughout the nation.

To this end, and at the recommendation of its Minority Affairs Committee, the LSAC gave the ABA a matching grant of \$100,000 to underwrite the costs of a no-registration-fee Diversity Pipeline Conference, to take place at Rice University in Houston from November 3 to November 5, 2005. The conference organizers are now in the process of inviting a select group of 200 teachers and administrators (K-12, college, and law school), lawyers, community leaders, and representatives of foundations to gather at this conference. They will share ideas about pipeline projects that appear to be successful, collaborate to generate new ideas, and devise ways to form community partnerships so that programs can be implemented more widely throughout the nation.

The full title for the conference is "Embracing the Opportunities for Increasing Diversity into the Legal Profession: Collaborating to Expand the Pipeline (Let's Get Real)." As a member of the planning committee for this conference, I hold a personal hope that the conference will help generate a grassroots movement throughout the country. Wouldn't it be grand if every law school could have at least one faculty or staff member who would then join with at least one representative of each local minority bar association to form a

Faculty Workshop:

▼ continued from page 3

to the ways in which students often challenge progressives and outsiders. Again, specific questions will be encouraged.

The fifth session, "On Jurisprudence," completes the Workshop with a summary of LatCrit principles. It is designed to give us a shared language for critical writing, teaching and practice.

Beyond the agenda, the Workshop is an excellent place for junior faculty to network with fellow progressives. One network we will help form is the group of junior colleagues at other schools who provide support and answers to the many junior faculty inquiries that begin with, "Is this a crazy question?" A second network the Workshop will help develop is a group of senior colleagues at other schools who can be called on for perspective and advice. Both of those groups can save juniors from "career limiting gestures."

If we are going to turn up the heat on the Bush appointees, we are going to need more POTs. Help us help your progressive junior colleagues by encouraging them to attend the Workshop.

[Editor's note: For the full conference schedule, visit http://nersp.nerdc.usf.edu/~malavel/latcrit/LCXProgram_Final.htm]

Diversity Pipeline continued on page 6

Save the Dates

for the annual Midwestern-, Western-, and Eastern-area public interest law retreats for law students, professors, and practitioners.

Fifth Annual Norman Amaker Public Interest Law Retreat

When: February 24–26, 2006

Where: Indiana University's Bradford Woods conference center, near Indianapolis, Indiana



Nineteenth Annual Robert M. Cover Public Interest Law Retreat

When: March 3–5, 2006

Where: Boston University's Sargent Camp in Peterborough, New Hampshire



Eighth Annual Trina Grillo Public Interest and Social Justice Law Retreat

When: March 11–12, 2006

Where: Santa Cruz, California

Diversity Pipeline:

▼ *continued from page 5*

committee, which would then recruit law students to join them in working with local schools and community leaders to implement outreach or mentoring programs, or to enhance existing programs designed to increase the flow through the diversity pipeline?

What can SALT members do to help achieve these goals?

- If you now are involved with a relevant community program and want to share your ideas, please write an article for the Equalizer about the program, so that others might consider adopting it. Better yet, upload information about your program at the Diversity Pipeline Conference website, so that it can be accessed in November by a national audience looking for just such information. To get to the website, go to the Advisory Council homepage (www.abanet.org/op/councilondiversity/home.html), and click on the link in the brown box that announces the Directory. The website will provide directions for submitting information online.
- In light of SALT's leadership in championing diversity in law schools and legal profession, the conference planning committee has invited the SALT co-presidents to participate in the conference or to designate one or two other representatives of SALT to attend. In light of the nature and underwritten expenses

of this conference, it cannot be open to all who are interested. However, the conference planners look forward to participation from SALT representatives and to broader follow-up efforts by the SALT membership.

- The ABA is still working hard to match the \$100,000 grant from LSAC to underwrite the conference expenses, which includes some travel funding for students or other invited participants who require financial assistance. If you would like to make an individual donation that can be aggregated into a SALT contribution to the conference, please send your check by September 23, 2005, to:

Pipeline Diversity Fund
c/o Professor David F. Chavkin
American University, Washington
College of Law
4801 Massachusetts Ave. NW
Washington, DC 20016

You can make your check out to SALT, but designate on the subject line of the check that it should go to the Diversity Pipeline fund. If 100 SALT members donate just \$20 each, those contributions would enhance a SALT gift by \$2,000.

- After the November conference, I will write another article about it, in which I will encourage SALT members to work with others in their communities to implement more programs to enhance the diversity pipeline. I hope you will join me in doing so.

Save the Date

Robert Cover Study Group at the AALS Annual Meeting

Where: New Orleans, Louisiana

When: January 5, 2006
8:00 p.m. - 10:00 p.m.

Topic: Academic Freedom in the
Post-9/11 World

In the midst of all that goes on at the AALS Annual Meeting, don't forget to join us at the Robert Cover study group session. The study group seeks

to continue the work of the late Robert Cover, professor at Yale Law School, who emphasized the importance of justice in the law.

This year's topic is one of fundamental importance to SALT members. Academic freedom is often attacked by those in society who prefer the maintenance of the status quo. After the terrorist attacks of September 11, 2001, pressure to adhere to the views of the United States government were often intense, inside and outside of academia. Within the academy, scholars whose views challenge the dominant paradigm have been subjected to intense pressure, including attempts to fire tenured scholars. (See Nancy Ehrenreich's article on page 13.)

Those who have attended past Cover group sessions know that they offer a unique experience at the AALS meeting: Audience members are encouraged to participate in the discussions. Those who prefer to listen to others will find they have learned something new. Come join us for an evening of fascinating discussion and camaraderie — and don't forget to stop by SALT's welcoming reception, scheduled immediately before the Cover study group session, to catch up with old friends, welcome newcomers to the academy, and have a nosh before settling in for a serious discussion about academic freedom in the post-9/11 world.

SALT Welcoming Events for Academy Newcomers: November in D.C. and January in New Orleans

*Nancy Cook, Roger Williams University
School of Law*

In January, as the AALS annual meeting gets underway in New Orleans, SALT will host a welcoming reception. The reception, scheduled for Thursday, January 5, 2006, from 6:30 p.m. to 8:00 p.m., is timed to immediately precede the Robert Cover study group session, so that those in attendance can fill up on refreshments, connect with old friends, and engage with new colleagues before moving on to serious discussions about academic freedom.

The welcoming reception at the AALS annual meeting, which is particularly geared to newer law faculty, has become

a SALT tradition. Last year's program, co-sponsored by the Equal Justice Society, drew the greatest participation ever, with more than 100 people crowding into the SALT Hospitality Suite and surrounding hallways. In the spirit of "one good collaboration deserves another," the 2006 event will be co-sponsored by the National Lawyers Guild. As in previous years, there will be an informal focus on finding a place in the academy, with support and sage advice for progressive newcomers. In addition, there will be plenty of opportunity to network with SALT allies and brainstorm possibilities for furthering alliances.

In November, to coincide with the annual faculty recruitment conference and the SALT Board of Directors meeting, SALT will be hosting a hospitality suite in Washington, D.C. As the date draws nearer, more information will be posted on the

SALT website (www.saltlaw.org), but this is a heads-up: If you or someone you know will be in Washington for the conference, there will be a friendly place to drop by in the evening as the conference comes to a close. As with the welcoming reception in January, the SALT Mentoring Committee hopes that the hospitality suite will provide a comfort zone for newcomers to the academy.

The past year was highly successful for SALT membership recruitment. These welcoming events provide great opportunities for new members of the academy to see SALT in action and also serve as ideal occasions to reach out for mentoring or alliance-building. SALT members can keep the momentum going by encouraging newer colleagues to take advantage of the open informality of welcoming events and by dropping by themselves to share in the hospitality.

Clinicians and Alternatives to the Bar Exam

Eileen Kaufman, *Touro Law School*



Eileen Kaufman

The role of clinicians in re-conceiving the bar exam was the subject of a program entitled "Transforming Legal Education, Act II: Clinicians Take on the Bar Exam" at

the AALS Clinical Workshop in Chicago on April 30, 2005. The first half of the program was devoted to describing a range of proposed alternatives to the bar exam; the second half consisted of a conversation among clinicians about the work that remains to be done to develop assessment instruments.

Joan Howarth (UNLV) moderated and introduced the program. She described SALT's long-standing objections to the traditional bar exam and its efforts to generate alternatives that better measure attorney competence to practice law. She explained that many state supreme court judges are among our greatest allies because they understand what is lost by relying exclusively on test-taking skills. She also explained the importance of involving clinicians in bar exam reform. The work that clinicians have done to transform legal education is directly linked to the work that remains to be done to transform the bar exam since both involve practice-based assessments. Joan outlined a wide variety of alternatives being explored throughout the country including the Arizona public service model, apprenticeship approaches, Wisconsin's diploma privilege, simulation

models, post-graduate training and assessment programs, open book research examinations, and staged assessments.

Kris Glen (Dean at CUNY) described the Public Service Alternative to the Bar Exam (PSABE), a proposal she has long championed. She emphasized that licensing is a weeding, not a sorting, process and that any alternative to the bar examination must address the range of skills identified by the MacCrane Report and must not further disadvantage those already hurt by the cost and timed nature of the traditional bar exam. The PSABE alternative is a performance test, in which students would be placed in the court system for ten to twelve weeks, rotating through various assignments that would demonstrate their ability to perform the MacCrane skills. Court attorneys trained by clinicians would evaluate the students. Students opting for the PSABE would be required to take ten to fourteen credits of skills-based courses while in law school.

The PSABE proposal would benefit



Peter Wright and Kris Glen

the courts because law graduates would provide a much needed resource. Additionally, students participating in the program would be required to commit to 150 hours of pro bono work, a commitment that is itself consistent with the MacCrane statement of values. The PSABE proposal is described in detail in Dean Glen's article, "Thinking out of the Bar Exam Box: A Proposal to 'MacCrane' Entry to the Profession," 23 Pace L. Rev. 343 (2003).

Peter Wright (Director of Clinical Programs at Franklin Pierce) next described the Webster Scholar Program, an alternative to the bar exam that is about to go into effect in New Hampshire.



Joan Howarth

Unlike the PSABE, this program occurs during law school. The stated goal of the program is for students to graduate with the competence of an

attorney with one to two years' experience. The pilot version of this program is designed as an honors program for fifteen to twenty students who, in their second and third years, will take 82 to 88 required credits, including two clinical courses and a variety of practical skill courses. Participating students will be assessed three times, with increasing vigor and depth. They will create portfolios consisting of written work, videos of performance, and reflective papers exploring their progress in mastering skills. Students will be required to defend their portfolios to an assessment committee. The final assessment will consist of two days of simulations involving problem-solving, research, interviewing, drafting, and counseling.

The Webster Scholar Program is a collaborative effort involving Franklin Pierce Law Center, the New Hampshire Supreme Court, the New Hampshire Board of Bar Examiners and the New Hampshire Bar Association. The New Hampshire Supreme Court will be issuing a new rule that recognizes the Webster Scholar

Program as an alternative way to be licensed in the state.

After a description of these two alternatives to the bar exam, Antoinette Sedillo López and Peggy Maisel led a discussion with clinicians covering a



Antoinette Sedillo López and Peggy Maisel

range of issues including the development of assessment instruments, the importance of training the evaluators, and the relevance of the Best Practices project. Considerable interest and enthusiasm was expressed for the work being done to propose licensing alternatives that address



Liz Ryan Cole and other audience members

the range of competencies that lawyers require. The program ended with an appreciation of the need for those active in promoting alternatives to the bar exam to work closely with clinicians in developing concrete assessment tools and training mechanisms for evaluators.

Anyone interested in obtaining a DVD of this program should contact Eileen Kaufman at eileenk@tourolaw.edu.

New ABA Standards for Clinicians' Job Security, Governance Roles

The ABA's Council on Legal Education and Admission to the Bar has recommended to the ABA House of Delegates important changes to the ABA Standards relating to security of position and participation in governance for clinicians. The Clinical Legal Education Association (CLEA) worked hard to get the changes approved, and SALT played an important role by stepping up to affirm its support for CLEA's position.

The following information on the proposed changes comes from Alexander Scherr, President of the Clinical Legal Education Association (CLEA), who noted that the Council's actions "represent an important change in the language of some key interpretations. While these changes leave work to be done, they represent a solid and positive step forward for clinicians."

According to Scherr (University of Georgia School of Law), the Council had before it two proposals to change interpretations to Standard 405(c), which requires that clinicians receive both a form of security of position that is "reasonably similar to tenure," and opportunities for participation in governance that are "reasonably similar to those of other full-time faculty members."

The proposal originally before the Council called for an interpretation of the clinicians' "security of position" provision under which a five-year contract, with no presumption of renewal at the end of the contract, would satisfy Standard 405(c). Scherr noted that this proposal, although an improvement over the Accreditation Committee's practice of viewing the Standard as satisfied by a three-year contract with no presumption of renewal, was very problematic because of the lack of any reference to a presumption of renewability.

Instead of the original proposal, the Council adopted the following Interpretation: "For the purposes of this Interpretation, 'long-term contract' means at least a five-year contract that is presumptively renewable, or other arrangement sufficient to protect academic freedom."

Under the language adopted by the Council, a five-year presumptively-renewable contract meets the Standard. The Council confirmed during debate that a shorter-term, presumptively-renewable contract would also satisfy the Standard, under the "other arrangement" clause. Another contractual arrangement might also satisfy the "other arrangement" language, but only if the law school could validate that the alternate contract sufficiently protected the clinician's academic freedom. Scherr said that during the debate, several Council members noted that the new interpretation provided grounds to address through the ABA accreditation process concerns about a school's failure to protect a clinician's academic freedom.

*"While these changes
leave work to be done,
they represent a
solid and positive
step forward for
clinicians."*

ABA Standards continued on page 10

ABA Standards:

▼ continued from page 9

As for the “governance rights” provision, the Council adopted an interpretation that requires law schools to give clinicians “participation in faculty meetings, committees and other aspects of law school governance . . . in a manner reasonably similar to other full-time faculty members.” This language replaced language that required only the “opportunity to participate.” Scherr pointed out that while the proposed Interpretation contains no specific language with respect to voting rights, the tenor of the Council’s discussions was that clinicians should participate in voting to the same extent as other faculty members. However, the Council chose not to mandate voting, out of a concern that it would be impossible to regulate all of the different ways in which schools arrange for voting for their faculty.

Both of these new interpretations went before the House of Delegates at the ABA Meeting in Chicago in August. At press time, Scherr had not yet been informed whether the House of Delegates had ratified the new interpretations or overturned them, but Scherr said that the odds were “very good – close to 100%” that they were ratified.

Scherr also commented that SALT had acted “quickly and decisively” to help CLEA in its efforts to improve the positions of academic clinicians: SALT Board members wrote and hand-delivered a letter of support that reiterated SALT’s approval of CLEA’s position. Scherr said that he and all of CLEA’s members wished to express their “strong appreciation for SALT’s act of collaboration and support.”

Strengthening ABA Accreditation Standards to Improve Minority Admissions

Beto Juárez, St. Mary’s University School of Law

SALT member Gary Palm (Chicago) has long been active in ABA committees. In the summer of 2004, he noticed a disturbing trend in the ABA statistics on the admission of minority law students. While the number of African-American and Mexican-American applicants had increased in the 1990s, and the median LSAT score of these applicants had also increased, the number of African-Americans and Mexican-Americans actually admitted to law school had decreased. In her report, *The Whitest Law Schools*, SALT member Vernellia Randall (Dayton) had noted a disturbing trend at many schools: the improper use of LSAT scores in the admission process to improve a school’s ranking in *U.S. News & World Report*.

Gary took the bull by the horns and invited a group of concerned legal academics to a day-long meeting in Chicago in September, 2004, to address the problem. Not surprisingly, virtually all in attendance were SALT members, and several were members of SALT’s Board of Governors (including Alicia Alvarez, Margaret Martin Barry, Jane Dolkart, and the author of this article, one of SALT’s two Co-Presidents). The participants at this meeting agreed that a proposal for changes to the ABA’s accreditation standards should be submitted as quickly as possible to stem the erosion in the numbers of African-American and Mexican-American law students and graduates.

Five individuals – the author, plus Peter Joy (Washington-St. Louis), Antoinette Sedillo López (New Mexico), Gary Palm, and Vernellia Randall – submitted the proposal to the ABA. Under the proposal:

- Schools would not be allowed to use an admission policy or practice that has the effect of discriminating unless the policy or practice is related to satisfactorily completing the school’s educational program. Policies and practices adopted to increase a critical mass of traditionally discriminated-against minorities would not violate this change.
- A law school would not be able to use individual test scores in making decisions because LSAC recommends against such use.
- A sound legal education policy would require that each school shall have a critical mass of traditionally discriminated-against minorities.
- A law school’s admissions policies and practices would be required to demonstrate how the school strives to promote the benefits of diversity as recognized in *Grutter v. Bollinger*, 539 U.S. 306 (2003).

*We must act
“as quickly as possible
to stem the erosion in
the numbers of African-
American and Mexican-
American law students
and graduates.”*

- A law school would only use an admissions test in a manner that conforms to the standards prescribed by the testing agency.
- Law schools would use other relevant factors in the admissions process, including the potential to add to the diversity of the law school community and the profession.

Together with other members of the original group, the indefatigable Vernellia Randall has obtained the endorsements of a broad range of minority bar associations and legal groups, as well as the endorsements of numerous individuals. The SALT Board of Governors endorsed the proposal when we met in Chicago in April, 2005. The group of endorsers has now become the Coalition for Racial and Ethnic Diversity in Law School and the Legal Profession ("the Coalition").

In her opinion in *Grutter*, Justice O'Connor suggested that affirmative action would only survive for another 25 years. If the decrease in African-American and Mexican-American students is to be reversed, we must act quickly. The ABA's Standards Review Committee was therefore asked to consider the proposal on an expedited basis. Even under the proposed expedited schedule, the proposals would not go into effect until the 2008-2009 school year.

At its May, 2005, meeting, the Standards Review Committee approved its own proposals for changes, but did not act on the Coalition's proposals. The Council of the Section of Legal Education and Admissions to the Bar met in Chicago in August, 2005. It made a few changes to ABA Standards 210, 211, and 212, that add to the list of efforts that law schools can

make to improve minority representation. However, the Coalition's proposals were never considered by the full Council.

Instead, the proposals are to be reported in the commentary accompanying the request for comment on the Council's proposed changes.

The Coalition's proposals for Standards 210 and 503 were remanded to the Standards Review Committee for consideration beginning this fall. The Council did agree to expedite the comment period so that the Standards Review Committee's public hearing will be at the 2006 AALS Annual Meeting. The Council will take final action at its February, 2006, meeting.

The comment period will be critical if we are to obtain substantive changes in the accreditation standards that will result in increases in the numbers of law students of color. How can you help?

- Add your name as a supporter of the proposed changes to the ABA Accreditation Standards. Ask your local bar associations to endorse the proposals.
- Send a letter of support to the ABA.
- Send comments on the Council's recommendations during the public comment phase.
- Help to educate the public, lawyers and bar associations.

You'll find more information, including the detailed proposal and the names and addresses of the persons to whom letters should be directed, at the Coalition's website: http://quickplace.udayton.edu/QuickPlace/coalition/Main.nsf/h_Toc/4df38292d748069d0525670800167212/?OpenDocument

Federal Judicial Nominations Update

Florence Wagman Roisman, Indiana University School of Law – Indianapolis

As reported in the last issue of the *Equalizer*, SALT has been actively involved with federal judicial nominations and related issues. SALT opposed the confirmation of now-Attorney General Alberto Gonzales

We "are paying close attention to those of the nominee's records that are (and are not) released, and all of us will carefully assess what Judge Roberts has to say" before the Senate Judiciary Committee.

and eight highly controversial nominees to federal courts of appeals, and SALT strongly supported the continued availability of the filibuster in the Senate's review of judicial nominations. (SALT statements on all of these issues are available on SALT's webpage, www.saltlaw.org.)

As readers of the *Equalizer* doubtless are aware, fourteen members of the U.S. Senate (seven Democrats and seven Republicans) struck a "deal" that rejected the so-called "nuclear option" and preserved the filibuster for use with respect to judicial nominations. Unfortunately,

Judicial Nominations continued on page 13

Lynne Stewart Sentencing Update

Natsu Taylor Saito, Georgia State University College of Law

In February 2005, Lynne Stewart, a 65-year-old criminal defense lawyer and political activist, was convicted by a federal jury in New York of terrorism-related offenses arising out of her representation of the blind Egyptian Sheik Omar Abdel Rahman.

Rahman's lawyers, including Stewart, were required to sign affirmations that they would abide by the Special Administrative Measures (SAMs) imposed on Rahman, prohibiting him from communicating with anyone other than his lawyers and specified family members. In June 2000, Stewart read to Reuters news service a statement from the Sheik, in which he withdrew his personal support for a ceasefire in effect in Egypt. No violence resulted from this announcement.

Normally the violation of an administrative agreement results in a warning to the lawyer, a prohibition on contact, or, at most, disciplinary charges. In this case, however, Lynne Stewart was charged with two counts of making false statements to the government; conspiracy to defraud the United States; conspiracy to provide or conceal material support to terrorist activity; and providing and concealing material support to terrorist activity.

Evidence against Stewart consisted primarily of tape recordings of her prison visits and telephone calls. The recordings were authorized first by a secret warrant under FISA (Foreign Intelligence Surveillance Act), and then by Attorney General Ashcroft's amendment of Bureau of Prisons regulations to allow electronic surveillance of attorney conversations with clients in custody.

The trial court refused to sever Stewart's case from that of Ahmed Sattar, against whom the government intro-

duced thousands of hours of wiretapped conversations with Islamic militants. Despite the fact that the conduct at issue occurred well before and had no connection to the attacks of September 11, 2001, the prosecution introduced evidence about Al Qaeda activities as "background." After a seven-month trial, Lynne Stewart was convicted on all counts; her sentencing is scheduled for September 23, 2005. She faces up to thirty years in prison.

On July 18, 2005, on behalf of the SALT Board of Directors, SALT's Co-Presidents, Holly Maguigan and Beto Juárez, sent the following letter concerning Stewart's sentencing to United States District Court Judge John G. Koeltl. Further information is available from the National Lawyers Guild, and at www.lynnestewart.org.



Dear Judge Koeltl:

The mission of the Society of American Law Teachers is to promote justice, diversity, and excellence in the legal academy and in the profession. With more than 900 members at over 160 law schools, it is the largest membership organization of law professors in the United States. We write to express our sincere hope that you will consider some of the factors we find to be of particular concern with respect to the sentencing of Lynne Stewart.

As lawyers we take very seriously our obligations to uphold the rule of law and to function as officers of the court, and as law professors we make every attempt to convey these responsibilities to our students. We also impress upon them the centrality of the constitutional right to counsel of every defendant, no matter how unpopular, and the role that zealous representation plays in maintaining our adversarial legal system.

Lynne Stewart has been convicted of

overstepping the bounds of such representation by violating her oath to abide by the Special Administrative Measures imposed upon her client, Sheik Omar Abdel Rahman, and of providing material support to terrorist organizations. According to the evidence produced at trial, she did so by publicly releasing a press

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statement on behalf of her client in June 2000 as well as by presenting certain letters to him. We are aware that the events of September 11, 2001, have heightened concerns about security issues. We believe it important to remember that Ms. Stewart was not involved in or responsible for the other crimes for which her co-defendant, Ahmed Abdel Sattar, was convicted.

Stewart continued on page 14

Ward Churchill Update

Nancy Ehrenreich, University of Denver
College of Law

As many *Equalizer* readers will recall, over the past several months SALT has been following closely the case of University of Colorado (CU) Ethnic Studies Professor Ward Churchill, who has been under attack by a coalition of politicians and media personalities (most visibly Colorado Governor Bill Owens and talk show host Bill O'Reilly) since late January, when an essay he wrote in September 2001 about the possible causes of the 9/11 attacks came to public attention.

Churchill's case is important because it is one of the most visible and lengthy cases in recent years of harassment of an academic for speech critical of U.S. policy. Moreover, a central point raised by Churchill in the essay—that 9/11 attacks were probably in part a response to destructive U.S. foreign policies aimed at furthering U.S. economic and corporate interests abroad—articulates a concern that many SALT members share, even those who would not have articulated the point quite like Churchill did.

Unfortunately, rather than defending the professor's right to freedom of speech, the University of Colorado has subjected Churchill to a lengthy "investigation." Circumventing normal procedures, CU's Interim Chancellor DiStefano convened an ad hoc committee to scrutinize "every word" Churchill has published to see if it "exceeded the bounds of free speech." In the meantime, widespread media attention—including more than 600 articles in primary Denver newspapers, daily attacks on local talk radio and 41 consecutive O'Reilly Factor segments—resulted in a wide range of allegations about Churchill's identity, scholarship, and personal life.

Many academic organizations,

including SALT and the American Association of University Professors (AAUP), issued statements condemning this attempt to silence Churchill, and thousands of individuals signed petitions or sent letters supporting him. Nonetheless, the publicity also generated thousands of hate e-mails and numerous death threats, aimed both at Ward Churchill and CU-Boulder's Ethnic Studies Department.

CU's ad hoc committee acknowledged that Churchill's writings and speeches were all protected by the First Amendment, but decided to investigate allegations pertaining to his scholarship and ethnicity. These were sent to a research misconduct committee and Churchill responded in detail to each allegation. Clearly attempting to influence this process, Denver's *Rocky Mountain News* ran a front-page, five-part series providing its "conclusions" on each allegation. CU sent Churchill the entire series, 59 pages downloaded from the paper's website, with instructions to answer "any new allegations." Most recently, the University is trying to deny him his scheduled sabbatical next spring.

It appears that Professor Churchill will be required to spend several years defending himself against a wide range of allegations generated as a result of his protected but politically unpopular speech. There have been similar, if less publicized, attacks on a number of academics around the country. In addition to First Amendment issues, this case raises concerns about scholars of color being required to "prove" their racial or ethnic identity, and the use of "academic fraud" charges to counter critiques of U.S. government policy. This development is paralleled in a recent demand by a Congressman that scientists predicting dire consequences of global warming produce all of the data used in reaching their conclusions.

The statement issued in Churchill's

case by SALT is available on the SALT website (www.saltlaw.org). Related articles, statements and petitions, and a summary of Churchill's substantive responses can be found at www.defendcriticalthinking.org.

Judicial Nominations:

▼ continued from page 11

however, that agreement also assured the confirmation of five of the eight controversial nominees: Priscilla Owen to the Fifth Circuit, David W. McKeague to the Sixth Circuit, William H. Pryor to the Eleventh Circuit, and Janice Rogers Brown and Thomas B. Griffith to the District of Columbia Circuit.

SALT has opposed three other nominees who have not yet been confirmed. A majority of the Senate Judiciary Committee has favorably reported to the full Senate the nominations of Terrence Boyle to the Fourth Circuit and William G. Myers III to the Ninth Circuit. (SALT opposed the Boyle nomination after the last issue of the *Equalizer* was published.) The nomination of Brett M. Kavanaugh to the D.C. Circuit still is pending in the Judiciary Committee. We encourage all members of SALT to contact their own Senators to express opposition to these nominees.

Meanwhile, of course, those concerned about the federal justice system are focusing on the nomination of John G. Roberts to replace Justice Sandra Day O'Connor on the Supreme Court. As this issue of the *Equalizer* goes to press, the members of SALT's Judicial Nominations Committee—and, probably, all members of SALT—are paying close attention to those of the nominee's records that are (and are not) released, and all of us will carefully assess what Judge Roberts has to say when the Judiciary Committee holds hearings on his nomination (now scheduled to begin on September 6).

Stewart:▼ *continued from page 12*

She was not involved with the attacks of September 11.

We also believe it worthy of note that Ms. Stewart's co-counsel, Ramsey Clark, under different circumstances, had also, in 1997, released a statement from their

Lynne Stewart "did not subscribe to the political beliefs of her client, does not personally advocate terrorism, and did not engage in any action which resulted in violence. The crimes for which she has been convicted occurred only within the context of her legal representation of her client."

client to the press. He and Ms. Stewart were jointly engaged in a legal strategy that required the client to be kept in the public eye, and both made efforts to do so. At the trial before you, evidence was introduced that Ms. Stewart released her client's statement to the press as part

of an overall attempt to have her client transferred to Egyptian custody because of his health concerns.

We realize that Ms. Stewart was tried and convicted under criminal statutes which address terrorist activity. It is significant that she did not subscribe to the political beliefs of her client, does not personally advocate terrorism, and did not engage in any action which resulted in violence. The crimes for which she has been convicted occurred only within the context of her legal representation of her client. As she will be disbarred from the practice of law, there is no possibility that she will engage in any such actions in the future, and there is no evidence that she poses any threat to society. Indeed, there is every indication that Ms. Stewart will devote her energies to furthering peace and justice in this country.

We write you to urge justice for Lynne Stewart as a person, but not only for that reason. We are moved also by our belief that fundamental principles of democracy and the rule of law are implicated in her sentencing.

The government has been given dramatically expanded powers to fight the current war on terror and there has been much national debate on their potential for eviscerating constitutional rights. The possibility that Lynne Stewart will receive a lengthy prison sentence increases our concern that public reaction to the current climate will be to tolerate the weakening of constitutional protections. Your sentencing decision will have enormous impact beyond this case.

Today's anti-terrorism initiatives are broadly framed and give enforcement officials and prosecutors wide discretion, presumably in order to prevent those who pose serious threats to the national security from evading prosecution on mere technicalities. We are concerned that if anti-terrorism laws are used — or are perceived as being used — not to combat

actual threats to national security, but to discourage lawyers from representing politically unpopular clients, long-term damage may be done to the criminal justice system.

The democracy we all hope to protect relies on fundamental principles which include the presumption of innocence and the right to counsel. As law professors, we are uniquely aware of the central role that defense lawyers play in ensuring justice, especially for those accused of heinous crimes, and in maintaining the actual and perceived legitimacy of the criminal justice system. Recent changes to the rules governing attorney-client privilege, the nature of the prosecution of Ms. Stewart, and the lengthy sentence she faces threaten to chill lawyers from representing clients charged with terrorism-related offenses. Without lawyers willing to represent those clients, our ability to distinguish those who pose actual threats to the national security from those wrongfully charged will be greatly diminished.

With these concerns in mind, we hope that you will consider Lynne Stewart's long history of work within the legal system, the fact that she has never advocated terrorism, and her many contributions to social justice as you decide her sentence. The jury having found that Ms. Stewart's actions did violate her oath to abide by certain restrictions, we hope you will impose a sentence in keeping with the disciplinary expectations for such a violation when it occurred. Of course, it would be manifestly unjust for her sentence to be enhanced by political developments occurring after the violation, of which she had no knowledge and over which she had no control.

Sincerely yours,
 José Roberto Juárez, Jr., and
 Holly Maguigan, Co-Presidents, and the
 Board of Governors of the
 Society of American Law Teachers

SALT Calendar of Events

October 6-7

SALT/LatCrit Junior Faculty
Development Workshop,
San Juan, PR

October 26-30

NLG Convention, Portland, OR

November 3-5

ABA/LSAC Diversity Pipeline
Conference, Houston, TX

November 13

SALT Board of Governors meeting,
Washington, D.C.

December 6

Supreme Court argument in *FAIR v. Rumsfeld*, Washington, D.C.

2006

January 5

SALT/NLG Welcoming Reception, New
Orleans, LA

January 5

Robert M. Cover Study Group, New
Orleans, LA

January 7

SALT Annual Awards Dinner, New
Orleans, LA

January 8

SALT Board of Governors meeting,
New Orleans, LA

February 24-26

Amaker Retreat, Indianapolis, IN

March 3-5

Cover Retreat, Peterborough, NH

March 11-12

Grillo Retreat, Santa Cruz, CA

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